

## ACS Submission: Tobacco and vapes: packaging, appearance and display

### Vaping and nicotine product packaging and flavour descriptors

The questions in this section are on proposals to introduce restrictions on the packaging of all vaping and nicotine products to reduce their appeal to young people. This includes restrictions on packaging:

- colour
- imagery, branding, text or other promotional features
- shape, material and safety features

We also propose to introduce requirements relating to the information provided on and inside the packaging of vaping and nicotine products, including:

- limitations on flavour descriptors
- a requirement to include specific consumer information

Would you like to answer the questions in this section?

**YES**

### Restricting the colour on packaging for all vaping and nicotine products

We propose that the packaging for vaping and nicotine products should be white.

1. Do you agree or disagree with our proposal to restrict the colour of packaging of all vaping products to white? **Neither agree or disagree**
2. Do you agree or disagree with our proposal to restrict the colour of packaging of all nicotine products to white? **Neither agree or disagree**

**Please explain your answers. (Optional)**

#### ACS Formal Response

ACS recognises the Government's objective of reducing the appeal of vaping and nicotine products to children.

There are practical implications for retailers of introducing packaging restrictions. Convenience stores can stock a large number of vaping and nicotine product variants, with different brands, flavours, strengths and formats. Making all products visually similar could make it harder for colleagues to identify individual products quickly, particularly where several variants from the same brand are stocked. This could increase transaction times and the risk of an incorrect product or strength being supplied.

These challenges would be further compounded by the proposed display restrictions, where products would generally only be displayed following a specific customer request. Colleagues would need to identify and retrieve the correct product from a larger range of visually similar packaging, increasing the time required to complete transactions. The Government should therefore consider the cumulative operational impact of these measures rather than assessing packaging and display restrictions in isolation.

### Restricting imagery, branding, text and other promotional features

We propose that the packaging for all vaping and nicotine products should not include imagery, and that all text on the packaging, including any branding or brand names, should be in a standard colour, font and typeface.

There should be no other promotional features on the outside or inside of packs or attached to the packaging, such as links to social media accounts or any feature that suggests a financial benefit, such as vouchers or discounts.

We recognise that there may be a case to allow packaging of vaping products to display a picture of the product contained inside (for example, a mouthpiece). We welcome views on whether any limited exemptions may be appropriate in the free text box.

1. Do you agree or disagree with our proposal to introduce the restrictions to imagery, branding, text and promotional features outlined above for the packaging of all vaping products? **Neither agree or disagree**
2. Do you agree or disagree with our proposal to introduce the restrictions to imagery, branding, text and promotional features outlined above for the packaging of all nicotine products? **Neither agree or disagree**

**Please explain your answers. (Optional)**

#### ACS Formal Response

ACS recognises the Government's objective of reducing the appeal of vaping and nicotine products to children. However, from a retail perspective, it is important that any restrictions on imagery, branding and text do not make products unnecessarily difficult to identify at the point of sale.

Convenience retailers stock a wide variety of vaping and nicotine products, including different brands, flavours, strengths and formats. Brand names and other product identifiers remain important for colleagues to distinguish between products, particularly where there are multiple strengths, flavours and variants from the same brand. The same considerations apply to flavour descriptors, which need to provide sufficient information for retailers and adult consumers to identify the product being requested. Requirements should therefore allow clear and functional product identification while restricting features that are genuinely promotional.

The regulations should also clearly distinguish between promotional content and information that is necessary for consumers, retailers or regulators. For example, information relating to vape recycling requirements or duty stamps should not inadvertently be captured by restrictions intended to prevent promotional messaging.

There should also be a consistent approach across the regulatory framework. In particular, the Government should provide clarity on how these packaging requirements will interact with existing ASA rules and forthcoming restrictions on advertising and sponsorship. For example, there is currently uncertainty around the application of ASA rules on what is considered genuinely factual and promotional regarding advertisement of these products. The Government should ensure that the new packaging requirements do not create further uncertainty or overlap between different regulatory regimes.

Responsibility for ensuring packaging is compliant should principally rest with manufacturers and suppliers. Retailers, particularly independent retailers purchasing through legitimate wholesale channels, should not be expected to determine whether an individual font, logo, image or piece of text complies with complex packaging requirements.

There should also be a clear due diligence defence for retailers who can demonstrate that products were purchased from legitimate suppliers on the basis that they were compliant. Where a retailer has obtained products through legitimate wholesale channels and is selling them in good faith, enforcement action should not be taken against the retailer where the underlying packaging is subsequently found to be non-compliant. The regulatory framework should provide retailers with clear assurance that products supplied through legitimate channels are compliant before they reach the point of sale.

**Restricting flavour descriptions on vaping and nicotine products packaging**

**Single lead flavour**

We propose to restrict flavour descriptors on the packaging for vaping and nicotine products to a single, recognised flavour name, like apple or strawberry. This would include restricting hyphenated or combined flavour names, such as blueberry-apple.

1. Do you agree or disagree with our proposal to restrict flavour descriptors on the packaging of all vaping products to a single lead flavour? **Neither agree or disagree**
2. Do you agree or disagree with our proposal to restrict flavour descriptors on the packaging of all nicotine products to a single lead flavour? **Neither agree or disagree**

**Concept, sensory, food and drink categories**

We also propose restricting any concept or sensory words from being used to describe a flavour.

A concept name refers to any flavour name that does not directly describe a recognisable food, drink or natural flavour. Instead, the word conveys a mood, an idea, a brand or even a number or codename, rather than describing an actual flavour. This could include flavour names such as:

- 'Unicorn Dream'
- 'DC100'

A sensory name refers to a recognisable taste, smell or sensation experienced when using a vape or nicotine product, such as 'Mint Blast'.

1. Do you agree or disagree with our proposal that concept and sensory flavour descriptors should be restricted on the packaging of all vaping products? **Neither agree or disagree**
2. Do you agree or disagree with our proposal that concept and sensory flavour descriptors should be restricted on the packaging of all nicotine products? **Neither agree or disagree**

We also propose restricting descriptor names of certain food and drink categories that appeal to children and young people. This includes flavours like:

- confectionery and sweets (such as 'Chocolate', 'Candy' and 'Bubblegum')
  - desserts and cakes (such as 'Brownie' and 'Cheesecake')
  - alcohol and other drinks (such as 'Cola')
1. Do you agree or disagree with our proposal that confectionery, sweets, dessert and cake name descriptors should be restricted on the packaging of all vaping products? **Neither agree or disagree**
2. Do you agree or disagree with our proposal that confectionery, sweets, dessert and cake name descriptors should be restricted on the packaging of all nicotine products? **Neither agree or disagree**
3. Do you agree or disagree with our proposal that alcohol and drink name descriptors should be restricted on the packaging of all vaping products? **Neither agree or disagree**
4. Do you agree or disagree with our proposal that alcohol and drink name descriptors should be restricted on the packaging of all nicotine products? **Neither agree or disagree**

**Please explain your answers. (Optional)**

**ACS Formal Response**

There is a balance to be struck between reducing the use of flavour descriptors that may appeal to children and maintaining a range of vaping products for adult smokers. Any restrictions should be targeted at genuinely promotional or youth-oriented descriptors without unnecessarily limiting product choice or making products harder for adult consumers to identify.

Maintaining a differentiated range of vaping products is important to ensure adult smokers have access to products that meet their preferences and can continue to use vaping as a smoking cessation aid. The Government should therefore provide clear evidence that the proposed restrictions on flavour descriptors will not unnecessarily reduce consumer choice or undermine the viability of the adult vaping market.

There is evidence that flavour availability can be important to adult vapers. Polling by Action on Smoking and Health (ASH) indicates that adult vapers use a range of flavours with most popular being fruit (60%), menthol/mint (15%), tobacco (9%). The Government should take this evidence into account when assessing whether restrictions on flavour descriptors could have unintended consequences for adult smokers seeking to switch from tobacco.<sup>1</sup>

<sup>1</sup> [ASH Use of vapes and other novel tobacco and nicotine products among adults in Great Britain](#)

If the government decide to implement flavour descriptor restrictions, it should focus on those that genuinely promotional or likely to appeal to children, without removing straightforward information that helps retailers and adult consumers identify the flavour of a product. This is particularly important in convenience stores, where colleagues need to be able to identify products quickly from a large range of brands, flavours and strengths.

The Government should provide clear definitions and practical examples of what constitutes a prohibited concept, sensory, food or drink descriptor. Terms such as ‘sensory’ and ‘concept’ could otherwise be open to subjective interpretation, creating uncertainty for retailers and enforcement officers and potentially resulting in inconsistent application of the rules.

Retailers should not be expected to make subjective judgements about whether an individual flavour name complies with the regulations. The requirements should be sufficiently precise that a colleague can determine whether a product is compliant without specialist knowledge. Responsibility for ensuring that flavour descriptors comply should principally rest with manufacturers and suppliers, with a clear due diligence defence for retailers purchasing products through legitimate supply chains.

**Time allowed to implement new packaging requirements**

If and when new requirements are introduced, manufacturers will need time to update their packaging to be compliant. Retailers may also need time to sell old stock that does not comply with the new law.

There should be a long enough notice period before new requirements come into force. This period would start from when the details of the new requirements are made clear. We have not yet decided what is the best way to share those details, but it could be, for example, in a government response to this consultation or when regulations are presented to the relevant national Parliament.

We propose a minimum notice period of 12 months would be enough. This would mean all products in scope of our vaping and nicotine product packaging proposals would need to comply with any new regulatory requirements by the end of a 12 month implementation period. However, a longer or shorter notice period may be needed, and we welcome views on this.

1.

Do you agree or disagree with our proposed implementation period of no less than 12 months (from when the detail of any new requirements is clear)?

Yes

**Please explain your answer. (Optional)**

**ACS Formal Response**

ACS agrees that a minimum 12-month implementation period is appropriate, but this should run from the point at which the Statutory Instrument has been made and final guidance has been published.

- Retailers need sufficient time to understand the final requirements, work with suppliers and prepare for compliant stock.
- The 12-month period should be the point by which the new requirements must be fully implemented, rather than the point at which retailers must stop selling existing stock.
- Within this period, there should be a minimum six-month transition/sell-through period allowing retailers to sell legitimately purchased stock that complied with the rules when it entered the supply chain.
- The Government should clearly set out the date from which manufacturers can no longer place non-compliant products on the UK market and the later date by which retailers must cease selling them.

The key principle for ACS is that retailers should not be left with unsaleable stock or expected to prepare for requirements that have not yet been fully confirmed.

**Retail display**

The questions in the first part of this section are on proposals to introduce new restrictions and requirements for the retail display of:

- tobacco products
- heated and other tobacco-related devices
- herbal smoking products
- cigarette papers

The policy approach for the retail display of products in scope of this consultation is aligned across all 4 nations in the UK. However, due to differences in existing legislation, we are asking separately about:

- proposals for England, Wales and Northern Ireland
- proposals for Scotland

Which questions, if any, would you like to answer?

Both

**Requested temporary and incidental displays in England, Wales and Northern Ireland**

Under existing legislation, tobacco products cannot be displayed inside or outside most shops across the UK. However, tobacco products can be shown to a customer following a request. The request must be by a person who is of the legal age of sale in England, Wales and Northern Ireland. We call this a ‘requested temporary display’ in this consultation.

Requested temporary displays enable informed purchasing decisions. As a result of a requested temporary display, other people nearby may also incidentally see these products. Current legislation in England, Wales and Northern Ireland also makes allowances for:

- restocking
- staff training
- pricing

- display unit maintenance

We call this ‘incidental display’ in this consultation.

## Tobacco products

We propose that the requested temporary display of all tobacco products should only be allowed from behind a sales counter, and not another location within a retail setting.

Do you agree or disagree with our proposal to introduce a legal requirement that the requested temporary display of all tobacco products must take place from behind a sales counter? **Neither agree or disagree**

## Cigarette papers, heated and other tobacco-related devices and herbal smoking products

We propose that most of the restrictions and allowances that apply to the display of tobacco products should apply to cigarette papers, heated and other tobacco-related devices and herbal smoking products too.

This includes:

- restricting the display of these products outside of all retail settings and inside the majority of retail settings
- providing allowances enabling display unit restocking, maintenance, pricing, staff training and requested temporary displays
- permitting the same maximum visible areas (1.5 square metres)

We also propose that the requested temporary display of these products should only be allowed from behind a sales counter, and not another location within a retail setting in the same way as we are proposing to make this a legal requirement for tobacco products.

1. Do you agree or disagree with our proposal to restrict the display of cigarette papers?

This would include the requirement that their requested temporary display must take place from behind a sales counter.

**Neither agree or disagree**

2. Do you agree or disagree with our proposal to restrict the display of heated and other tobacco-related devices?

This would include the requirement that their requested temporary display must take place from behind a sales counter.

**Neither agree or disagree**

3. Do you agree or disagree with our proposal to restrict the display of herbal smoking products? **Neither agree or disagree**

This would include the requirement that their requested temporary display must take place from behind a sales counter.

## Please explain your answers. (Optional)

This could include, for example, sharing comments on why you think our proposed restrictions should or should not apply to certain types of products.

**No response**

4. Do you agree or disagree with our proposal to restrict the display of prices for cigarette papers? **AGREE**

5. Do you agree or disagree with our proposal to restrict the display of prices for all tobacco-related devices including heated tobacco devices? **AGREE**

6. Do you agree or disagree with our proposal to restrict the display of prices for herbal smoking products? **AGREE**

## Please explain your answers. (Optional)

### ACS Formal Response

If Government proceeds with the proposed display restrictions, ACS considers it important that the approach to price displays is consistent with the existing requirements that apply to tobacco products. Retailers are already familiar with these requirements, and extending a consistent approach to other products subject to display restrictions would provide greater clarity and avoid introducing unnecessary differences in how products and prices are displayed.

A consistent approach would also help retailers implement and operate the requirements in practice, particularly where multiple product categories are stored and sold from the same point of sale.

## Exemptions to display restrictions for tobacco products, cigarette papers, tobacco-related devices and herbal smoking products in England, Wales and Northern Ireland

### Display exemptions for trade premises

1. Do you agree or disagree with our proposal to allow for the display of cigarette papers and their prices in relevant trade premises? **AGREE**
2. Do you agree or disagree with our proposal to allow for the display of tobacco-related devices, including heated tobacco devices, and their prices in relevant trade premises? **AGREE**
3. Do you agree or disagree with our proposal to allow for the display of herbal smoking products and their prices in relevant trade premises? **AGREE**

## Please explain your answers. (Optional)

### ACS Formal Response

ACS agrees with the proposals to allow the display of cigarette papers, tobacco-related devices, including heated tobacco devices, and herbal smoking products, together with their prices, in relevant trade premises.

Businesses operating in these settings should continue to be able to view the products available and their prices when making purchasing decisions.

## Requested temporary and incidental displays in Scotland

### Tobacco products and smoking-related products

We propose that the requested temporary display of tobacco products and smoking-related products should only be allowed from behind a sales counter, and not another location within a retail setting.

1.

Do you agree or disagree with our proposal to introduce a legal requirement that the requested temporary display of tobacco products and smoking-related products must take place from behind a sales counter?

Neither agree or disagree

**Heated tobacco devices and herbal smoking products**

We propose to ban the retail display of heated tobacco devices and herbal smoking products in Scotland. As part of this, we propose that the existing restrictions and allowances that apply to the retail display of tobacco products and smoking-related products should apply to these products too.

This includes:

- restricting the display of products in places where they are offered for sale
- allowances for incidental displays and requested temporary displays
- permitting the same maximum visible areas (0.1 square metres)

We also propose that the requested temporary display of these products should only be allowed from behind a sales counter, and not another location within a retail setting. This is the same way as we are proposing to make this a legal requirement for tobacco products and smoking-related products.

To make it more practical for the retailers of waterpipes like shisha to comply with regulations due to their size, we are also proposing an expansion of the maximum permitted area of display as a result of a requested temporary display or incidental display for waterpipes.

2.

Do you agree or disagree with our proposal to restrict the display of heated tobacco devices?

This would include the requirement that their requested temporary display must take place from behind a sales counter.

Neither agree or disagree

3.

Do you agree or disagree with our proposal to restrict the display of herbal smoking products?

This would include the requirement that their requested temporary display must take place from behind a sales counter.

Neither agree or disagree

4.

Do you agree or disagree that the maximum visible area of display unit permitted as a result of a requested or incidental display of herbal smoking products or heated tobacco devices in Scotland should be 0.1 square metres?

Agree

**Waterpipes**

We propose to expand the maximum visible area of display unit permitted as result of a requested or incidental display for waterpipes like shisha, due to their size.

5.

If we expand the area of display, what size do you think it should be increased to?

Don't know

**Smoking-related products**

The current list of ‘smoking-related products’, as defined by the Tobacco and Primary Medical Services (Scotland) Act 2010, includes:

- cigarette papers
- cigarette tubes
- filters that do not form part of a tobacco product or smoking-related product
- apparatus for making cigarettes
- cigarette holders
- pipes for smoking tobacco products (which would include waterpipes like shisha)

6.

Do you agree or disagree that the current list of smoking-related products reflects all tobacco-related devices used for smoking currently available to purchase?

Don't know

**Please explain your answers. (Optional)**

**ACS Formal Response**

ACS has selected neither agree nor disagree on restricting the display of heated tobacco devices and herbal smoking products because we have received mixed views from members on extending display restrictions to additional product categories. Some members support a consistent approach with existing tobacco display requirements, while others have raised concerns about the additional costs and practical implications for retailers.

Where the Scottish Government does proceed with restrictions, ACS supports consistency with the existing tobacco display regime. This is why we have agreed with the proposed 0.1 square metre maximum visible area, which reflects the existing approach retailers are already familiar with.

**Tobacco and vapes: packaging, appearance and display**

**Display of prices for heated tobacco devices and herbal smoking products in Scotland**

Current regulations in Scotland restrict the display of prices for tobacco products and smoking-related products in places where tobacco products are offered for sale. Prices must be presented in a consistent format using specific fonts and can only include the:

- brand name of the product
- number of units in the package or the net weight of the product
- price of the product

For cigars, the information displayed can also include the country of origin and dimensions. For pipe tobacco, it can include the cut and type of tobacco used.

Retailers can display prices for tobacco products and smoking-related products in 3 formats:

- a single price list, which can be permanently displayed at each point of sale but must be text-only and meet size and font requirements

- a picture price list, which can include product images and can only be shown in response to a request by a customer
- small price labels, which can be placed on the covered shelf or display unit where the product is kept, pending sale

We propose to apply the same principles for the display of prices to:

- heated tobacco devices
- herbal smoking products

1. Do you agree or disagree with our proposal to restrict the display of prices of heated tobacco devices? **Agree**
2. Do you agree or disagree with our proposal to restrict the display of prices for herbal smoking products? **Agree**

**Please explain your answers. (Optional)**

#### ACS Formal Response

If these products are brought within the wider display restrictions, ACS considers that the approach to displaying prices should be consistent with the existing requirements that apply to tobacco products and smoking-related products in Scotland. Retailers are already familiar with these formats and requirements, including the use of price lists and shelf labels.

Applying the same principles would provide a clear and consistent framework for retailers and avoid introducing unnecessary differences in how prices can be displayed across products subject to similar display restrictions.

#### Exemptions to display regulations for tobacco products, smoking-related products, heated tobacco devices and herbal smoking products in Scotland

In Scotland, there are exemptions that allow tobacco products, smoking-related products and their respective prices to be on display inside certain premises. These premises include:

- trade tobacconists
- specialist tobacconists
- bulk tobacconists and duty-free tobacco areas

We propose to maintain current exemptions for tobacco products and smoking-related products for relevant trade premises and specialist tobacconists. If and when additional retail display restrictions are brought in, we also propose that relevant trade premises and specialist tobacconists will continue to be allowed to display the following products, and their prices:

- heated tobacco devices
- herbal smoking products

We propose to remove the bulk tobacconist exemption for tobacco products and smoking-related products and to not replicate it for any other products in scope of this consultation, because these products may be visibly accessible to the public, including children and young people.

#### Display exemptions for trade premises

1. Do you agree or disagree with our proposal to allow for the display of heated tobacco devices and prices in relevant trade premises in Scotland? **AGREE**
2. Do you agree or disagree with our proposal to allow for the display of herbal smoking products and prices in relevant trade premises in Scotland? **AGREE**

**Please explain your answers. (Optional)**

#### ACS Formal Response

ACS agrees that relevant trade premises in Scotland should continue to be permitted to display heated tobacco devices, herbal smoking products and their prices.

These premises are not open to the general public and are only accessible to people working in the relevant trade. The policy objective of reducing the visibility of these products to children and young people therefore does not apply in the same way as it does in public-facing retail settings.

The exemption is important for the practical operation of the retail supply chain. Retailers using wholesalers and other trade premises need to be able to view available products and prices when making purchasing decisions. Requiring these products to be concealed in a trade-only environment would add unnecessary complexity to normal wholesale and retail operations without providing a clear additional public health benefit.

Maintaining the exemption would also provide consistency with the existing approach for tobacco products and smoking-related products. ACS would welcome clear guidance on which premises qualify for the exemption so that wholesalers and retailers can determine confidently how the requirements apply in practice.

1. Do you agree or disagree with our proposal to allow for the display of heated tobacco devices and prices inside specialist tobacconists in Scotland? **Don't know**
2. Do you agree or disagree with our proposal to allow for the display of herbal smoking products and prices inside specialist tobacconists in Scotland? **Don't know**

#### Display exemptions for bulk tobacconists

3. Do you agree or disagree with our proposal to remove and not replicate the bulk tobacconist exemption for all products in scope of this consultation? **Don't Know**

**Please explain your answer. (Optional)**

#### Retail display - vaping and nicotine products

#### Restricting the display of vaping and nicotine products across the UK

We propose that the display of vaping products and nicotine products is restricted.

We propose that the same allowances for temporary and incidental displays as we have proposed for most other products within scope of this consultation are applied across the UK. This includes a temporary requested display taking place behind a sales counter. This would make the maximum visible area permitted for a requested temporary display or incidental display:

- 1.5 square metres in England, Wales and Northern Ireland
- 0.1 square metres in Scotland

We also propose that a requested temporary or incidental display of vaping or nicotine products must not result in the display of:

- tobacco products (and smoking-related products in Scotland)
- cigarette papers
- heated and other tobacco-related devices
- herbal smoking products

1. Do you agree or disagree with our proposal to restrict the display of vaping products? **DISAGREE**

This would include the requirement that their requested temporary display must take place from behind a sales counter.

2. Do you agree or disagree with our proposal to restrict the display of nicotine products? **DISAGREE**

This would include the requirement that their requested temporary display must take place from behind a sales counter.

3. Do you agree or disagree that the requested temporary or incidental display of vaping and nicotine products should not result in the display of tobacco products (and smoking-related products in Scotland), cigarette papers, heated and other tobacco devices or herbal smoking products? **DISAGREE**

Please explain your answers. (Optional)

**ACS Formal Response**

ACS disagrees with the proposed display restrictions for vaping and nicotine products. We believe a more proportionate approach would be to restrict displays to on or behind the sales counter. We do not support equalising the display requirements for vaping and nicotine products with those that apply to tobacco.

Our preferred approach would still meet the Government’s objectives of reducing the visibility and appeal of these products to children. Prohibiting displays elsewhere on the shop floor would remove vaping and nicotine products from prominent locations throughout stores and concentrate any display at or behind the sales counter, where transactions take place and age restrictions are enforced. At the same time, allowing products to remain visible on or behind the counter would preserve a clear distinction from tobacco and allow adult smokers to identify the alternatives available to them.

This balance is important given the Government’s stated objectives of preventing youth vaping while continuing to enable vaping as an alternative to smoking for adults. ACS does not believe that full tobacco-style concealment for vapes and nicotine products is necessary to achieve these objectives, particularly when considered alongside the proposed restrictions on packaging, flavour descriptors and product appearance, which will themselves significantly reduce the prominence and presentation of these products.

ACS also disagrees with the proposal that a requested temporary or incidental display of vaping and nicotine products must not result in the display of tobacco or other products within scope of the regulations. In practice, this would add further complexity and cost for retailers by preventing them from using the same display infrastructure. Many retailers would need to install a separate additional concealed gantry for vaping and nicotine products in addition to their existing tobacco gantry.

ACS has gathered evidence directly from convenience retailers on the likely cost of complying with the proposed display restrictions. Retailer estimates indicate an average implementation cost of approximately £3,214 per store, which would equate to a total sector cost of approximately £163 million. This provides further real-world evidence that the cost of compliance is likely to be substantially higher than assumed in the Government’s impact assessment of £151.20 per store.<sup>2</sup>

Additional gantries would place further pressure on the limited space available behind convenience store tills. Among independent convenience stores, 47% have a sales area of less than 1,000 sq. ft., 43% are between 1,000 and 1,999 sq. ft., and only 10% are between 2,000 and 3,000 sq. ft. This means many retailers are operating within very constrained footprints. Space behind the till is already used for tobacco displays, high-value products kept there to reduce shop theft, parcel collection services and other essential equipment. Retailers will also need to accommodate additional equipment associated with the Deposit Return Scheme. These pressures are particularly acute for smaller stores, where there may be little or no practical capacity to install an additional gantry without wider changes to the checkout area.

Evidence commissioned by ACS from SmartSpotter shows that the majority of vape displays are on or already behind the counter. This is in the files attached in this submission. In addition, ACS’ Voice of Local Shops survey, found that vaping products are already predominantly displayed around the checkout: 63% of retailers displayed them behind the counter and 9% on the counter, while only 3.5% displayed them openly elsewhere on the shop floor.<sup>3</sup>

By the time these display restrictions are implemented, the wider regulatory framework for vaping and nicotine products will also have been significantly strengthened. Retailers continuing to sell these products will be operating within a much tighter compliance regime. Responsible businesses should therefore not face disproportionate additional costs where a less burdensome approach can achieve the Government’s objectives.

**Display of prices of vaping and nicotine products across the UK**

Across the UK, we propose to apply the same principles for the display of prices of tobacco products to:

- vaping products
- nicotine products

We propose that the price lists for vaping and nicotine products are permitted to also include nicotine strength and ingredients. This will help consumers make informed purchases.

We propose that separate price lists must be used for vaping and nicotine products and for tobacco products, for both permanently displayed price lists and picture prices lists, given vaping and nicotine products carry lower levels of harm than tobacco products.

<sup>2</sup> Independent and multiple format convenience store retailers were asked to estimate the cost of meeting the requirement proposed. The averages of those estimates were weighted according to the proportion of independent and multiple stores throughout the sector (71% and 29%, respectively). The sector average was taken from those weighted costs, and then multiplied by the number of stores across the sector to reach the total sector cost.

<sup>3</sup> The Voice of Local Shops Survey (VOLS) is a survey of 1,100 independent and symbol group retailers, split across UK regions. The survey is conducted over the phone twice per year, and responses are anonymous. There are 21 questions in each wave of VOLS, some of which are tracker questions some of which are asked as a one-off to help ACS understand the views of retailers in more detail.

1. Do you agree or disagree with our proposal to restrict the display of prices for vaping products, and allow for additional information on nicotine strength and ingredients? **DISAGREE**
2. Do you agree or disagree with our proposal to restrict the display of prices for nicotine products and allow for additional information on nicotine strength and ingredients? **DISAGREE**

**Please explain your answers. (Optional)**

#### ACS Formal Response

ACS disagrees with the proposals because they are dependent on the wider proposal to restrict the display of vaping and nicotine products in the same way as tobacco. As set out above, ACS believes a more proportionate approach would be to restrict vaping and nicotine product displays to on or behind the sales counter, rather than requiring them to be concealed.

Applying the same principles that govern tobacco price displays risks further equalising the treatment of vaping and nicotine products with tobacco. The Government recognised that these products carry lower levels of harm than tobacco and that maintaining a distinction between them is important for adult smokers seeking alternatives to smoking. The consultation itself proposes separate price lists for vaping and nicotine products specifically to recognise this difference in harm.

If the Government proceeds with the wider display restrictions despite these concerns, ACS supports having clear and consistent rules for how retailers can communicate prices. We also support allowing price lists to include nicotine strength and ingredients, as this is useful information for customers when selecting products.

However, our preferred approach remains for vaping and nicotine products, including their prices, to be displayed on or behind the sales counter rather than being subject to the same restrictions that apply to tobacco.

#### Exemptions to display restrictions of vaping and nicotine products across the UK

Across the UK, it is permitted to display tobacco products inside premises that are only accessible to people working in the tobacco trade as long as this is not visible to the public from the outside. We propose to have this exemption to allow for relevant trade premises to display vaping products and nicotine products.

1. Do you agree or disagree with our proposal to allow for the display of vaping products in relevant trade premises? **AGREE**
2. Do you agree or disagree with our proposal to allow for the display of nicotine products in relevant trade premises? **AGREE**

Please explain your answers. (Optional)

#### ACS Formal Response

While ACS does not support the wider proposal to apply tobacco-style display restrictions to vaping and nicotine products, if these restrictions are introduced it is appropriate to retain an exemption for genuine trade-only premises. The policy objective of reducing the visibility and appeal of these products to children and the wider public does not apply in the same way in premises that are not accessible to consumers.

Maintaining this exemption would also avoid unnecessary operational restrictions within the wholesale supply chain and provide consistency with the existing approach for tobacco products.

#### Exemptions to display restrictions for vaping and nicotine products in pharmacies in England, Wales and Scotland

We welcome views on exemptions that allow a limited display of vaping and nicotine products inside community pharmacies in England, Wales and Scotland. For example, this could include locked transparent display units. This could help people to try to quit smoking, while restricting accessibility to young people.

However, we do not propose that the same exemption applies to vape shops, since they are not clinical settings.

1. Do you agree or disagree that community pharmacies in England, Wales and Scotland should be permitted an exemption to allow for the limited display of vaping and nicotine products? **DISAGREE**

**Please explain your answer. (Optional)**

#### ACS Formal Response

As set out elsewhere in our response, ACS does not support tobacco-style display restrictions for vaping and nicotine products. We believe a more proportionate approach would be to allow these products to be displayed on or behind the sales counter only.

If the Government proceeds with display restrictions, they should be applied consistently across retail settings. Allowing pharmacies to display these products while requiring other responsible retailers to conceal them would create an unnecessary distinction between businesses selling the same regulated products.

#### Time allowed to implement all new display restrictions

If and when new requirements are introduced, retailers will need time to update their shops to comply with the necessary changes.

There should be a long enough notice period before new requirements come into force. This period would start from when the details of the new requirements are made clear. We have not yet decided what is the best way to share those details, but it could be, for example, in a government response to this consultation or when regulations are presented to the relevant national Parliament.

We propose that a minimum notice period of 6 months would be enough. This would mean the display of products in scope would need to comply with any new requirements by the end of a 6-month implementation period. However, a longer or shorter notice period may be needed, and we welcome views on this.

1. Do you agree with our proposal that there should be a minimum of 6 months' notice (from when the detail if any new requirements is clear)?

**Disagree**

**Please explain your answer. (Optional)**

## ACS Formal Response

ACS disagrees that six months would provide sufficient time to implement the proposed display restrictions.

If the Government proceeds with its proposed tobacco-style restrictions for vaping and nicotine products, ACS recommends a minimum implementation period of two years from the point at which the relevant Statutory Instrument has been made and final implementation guidance has been published.

The Government's preferred approach would require significant physical and operational changes for many convenience retailers. In particular, the restrictions on incidental displays could prevent retailers from using existing tobacco display infrastructure and require separate concealed gantries for vaping and nicotine products. Retailers would need time to assess available space, commission equipment, agree designs, undertake store works and train colleagues. These challenges would need to be addressed across thousands of individual stores, each with different layouts and space constraints.

The practical challenges are also recognised by the Regulatory Policy Committee. In its assessment of the Government's display proposals, the RPC highlighted uncertainty around the logistical feasibility of all affected businesses storing products within scope behind a sales counter. It also identified the potential for disproportionate impacts on smaller businesses, including familiarisation costs, and noted that businesses holding larger amounts of stock could face higher storage costs.<sup>4</sup>

There is also precedent for allowing significant lead-in time for major changes to retail displays. Tobacco display regulations in England were made in 2010, with the requirements coming into force for large stores in April 2012 and for smaller retailers in April 2015. While ACS is not seeking an equivalent period, this demonstrates the importance previously attached to giving retailers sufficient time to make substantial changes to their stores.

If the Government instead adopts our preferred approach of restricting vaping and nicotine product displays to on or behind the sales counter, we consider a minimum 12-month implementation period appropriate. This approach would involve significantly less physical alteration to stores and would avoid the need for many retailers to install separate concealed gantries. However, retailers would still need sufficient time to understand the final requirements, review store layouts and displays, update procedures and train colleagues.

In either scenario, the implementation period should only begin once the legislation has been made and final implementation guidance has been published, so retailers have complete certainty about the requirements before investing in changes to their stores.

### Impact assessments on retail display

There are 4 impact assessments available on proposals relating to the retail display of products:

- a consultation stage impact assessment for restricting the display of vaping, nicotine products and tobacco-related devices and products for England
- a partial business and regulatory impact assessment on proposed measures for display of tobacco products, smoking-related products, heated tobacco devices and herbal smoking products for Scotland
- a consultation stage impact assessment for the proposed policy of restricting the display of relevant products in Wales
- a regulatory impact assessment on proposed measures to restrict the displays of relevant products in Northern Ireland

If you have any evidence or data to inform the assumptions or estimates in any of these impact assessments, please enter it in the relevant free text box below. Please ensure it is clear which impact assessment you are referring to. Do not include any personal information in your response. Provide any evidence to inform our estimates in the impact assessments of the benefits of the proposed policy. (Optional)

For example, information on the impact that options will have on the number of people using products in scope and/or health benefits associated with any reduction in usage. In your response, please specify which impact assessments you are referring to.

Maximum 600 words.

**Provide any evidence to inform our estimates in the impact assessments of the costs of the proposed policy. (Optional)**

## ACS Formal Response

ACS considers that the costs of complying with the proposed display restrictions are significantly underestimated. This response relates principally to the England consultation-stage impact assessment and the similar assumptions used in the Scottish BRIA.

The England impact assessment estimates a storage cost of approximately £151.20 for convenience and small shops.<sup>5</sup> ACS does not consider this estimate representative of the changes that many convenience retailers would need to make to comply with the Government's preferred approach.

The modelling assumes that relatively small under-counter or drawer storage will provide an adequate solution. This does not reflect the number and range of vaping and nicotine products stocked by many convenience stores or the practical requirements created by the proposed restrictions. Retailers would need sufficient concealed capacity for their existing product range while ensuring that requested temporary or incidental displays of vaping and nicotine products do not result in the display of tobacco and other products covered by the regulations.

In practice, this is likely to require many retailers to install a separate purpose-built gantry or make significant modifications to their existing display infrastructure. The costs therefore extend beyond simply purchasing a storage unit and can include design, manufacture, installation and alterations to existing till areas.

As highlighted in previous responses, ACS gathered evidence directly from convenience retailers on the likely cost of complying with the proposed display restrictions. Retailer estimates indicate an average implementation cost of approximately £3,214 per store, which would equate to a total sector cost of approximately £163 million. This provides further real-world evidence that the cost of compliance is likely to be substantially higher than assumed in the Government's impact assessment of £151.20 per store.

Space is also a significant practical constraint. Convenience store checkout areas are typically limited and are already used for tobacco gantries, high-value products that are kept behind the counter to prevent shop theft, parcel collection services and other equipment. Retailers will also face additional demands on store space associated with the Deposit Return Scheme. It cannot therefore be assumed that an additional drawer or under-counter unit can simply be accommodated without wider changes to the checkout area.

The Government's proposed restrictions on incidental displays adds an extra layer of complexity. Preventing the display of tobacco and other products when vaping and nicotine products are temporarily displayed could limit retailers' ability to adapt existing infrastructure and increase the likelihood that separate display units are required.

ACS therefore considers the approximately £151.20 estimate to materially understate the likely cost to convenience retailers. We recommend that the final impact assessment reflects evidence from retailers and specialist display providers and fully accounts for the cost of appropriate storage capacity, installation, store reconfiguration and the additional requirements created by restrictions on incidental displays.

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<sup>4</sup> [RPC opinion: options for standardising packaging for vaping products and nicotine products](#)

<sup>5</sup> [Restricting the display of vaping, nicotine products and tobacco related devices and products: impact assessment](#)

Maximum 600 words.  
Specify any stakeholders that may be impacted by the proposed policy and/or costs and benefits that we have not identified in the impact assessments. (Optional)  
In your response, please specify which impact assessments you are referring to.

Maximum 600 words.  
**Outline any potential unintended consequences of the proposed policy that we have not identified in the impact assessments. (Optional)**  
In your response, please specify which impact assessments you are referring to.

**Please see response above.**

Maximum 600 words.  
**Provide any other comments to inform our assumptions or analysis in the impact assessments. (Optional)**  
In your response, please specify which impact assessments you are referring to.

**Please see response above.**

**File upload**

If you would like to upload a document to support your submission, please do so here. (Optional)  
Please do not upload information that could identify you or another member of the public.