



All-Party Parliamentary Group on Vaping's inquiry into COP9

UK Vaping Industry Association evidence submission

January 2021

Who is the UKVIA?

The UK Vaping Industry Association (UKVIA) is a non-profit organisation, run by its membership: the UK's leading vaping businesses, as well as international firms active in the UK market. Our membership represents the majority of the UK industry by volume, supporting the 3.8m British vapers.¹

As the country's leading vaping trade body, the UKVIA supports evidence-based, proportionate regulation that clearly sets vaping apart from combustible cigarettes. We work with a range of partners to promote proven benefits of harm reduction.

We focus our efforts around five key strategic objectives:

- Highlighting the public health potential of vaping.
- Driving a highly responsible vaping industry.
- Ensuring fair and proportionate legislation and regulation.
- Putting right the misinformation around vaping which deters smokers making the switch.
- Promoting the economic and social impact of vaping.

Our vision is for a world where the evidence-based, life-changing public health benefits of vaping products are fully understood, so that their positive impact on public health can be maximised.

The UKVIA welcomes this opportunity to submit evidence to the All-Party Parliamentary Group (APPG) for Vaping inquiry into the Framework Convention of Tobacco Control (FCTC) Conference of Parties (COP) 9.

Our submission addresses the first two issues identified as the focus of this inquiry (i.e. examining and evaluating proposals at COP9, and enquiring how the UK will defend its smoking cessation strategies at COP9), while also providing overall recommendations. Our recommendations are laid out below and discussed in more detail throughout the document.

The UKVIA recommends the following actions:

1. Actively promote the UK's pragmatic, science-led approach vaping and the role they play in tobacco harm reduction not only at COP9 but in key international forums and papers leading to COP9, such as:
 - a. WHO Europe Regional Meetings;
 - b. The expected WHO regulatory framework for novel tobacco products (including vapour products);

¹ For more information visit www.ukvia.co.uk



- c. Expected FCTC/WHO reports on vaping (covering initiation, cessation, advertising and promotion, contents and emissions of vaping); and
 - d. World Conference on Tobacco or Health (Leadership Summit).
2. Table a provisional agenda item to COP9 to discuss the positive role vaping can play in harm reduction.
 3. Call for a decision at COP9 that reaffirms the commitments of the Parties to the principles of tobacco harm reduction, as set out in, and which elaborates on, FCTC Article 1(d).
 4. Develop a coalition of aligned Parties (i.e. countries) to oppose any WHO proposals that by-pass COP policymaking procedures, equate vaping with combustible tobacco products or call for them to be regulated like tobacco products, all of which would undermine the UK's approach to public health and reducing smoking rates.
 5. Request an update from the UK FCTC Focal Point Person regarding the activities of the FCTC Secretariat, as well as a 6-month status report of action items that result from this consultation.
 6. Demand maximum transparency in decision-making to ensure that measures adopted are evidence-based and do not undermine or contradict the UK's public health messages from the NHS, Public Health England and other leading medical organisations aimed at communicating the positive role that vapour products can play in providing a less harmful alternative to adult smokers.

Proposals at COP9, domestic legislation and smoke free targets

COP 9 will be one of the first opportunities to showcase the UK's ambition described in June 2020 by Prime Minister Boris Johnson on Global Britain, in which he laid out his government's intention to "bring this country's strengths and expertise to bear on the world's biggest problems."²

As a global leader in tobacco control and following Brexit, the UK government is presented with an opportunity to play a central role in shaping and influencing outcomes of COP9 in a manner that can have a lasting impact in advancing the UK government's efforts to achieve its ambition of being smoke free by 2030.

For the first time since the FCTC came into force in 2005, the UK government will participate in the FCTC COP not as a member of the European Union delegation, bound by a common EU position, but as an independent, sovereign nation, free to advance the interests of UK citizens through the promotion of science and evidence based tobacco control policies.

Proactively promoting and mirroring its pragmatic domestic policy approach to vaping in the international COP process could form a key part of Global Britain's re-emergence on the world stage in the key area of public health.

In a post-Brexit UK, it is imperative that the government leverage its newly established independence as well as its strengths and expertise in tobacco control and harm reduction to

² [Global Britain, Hansard, 2020](#)



influence COP decisions on vaping. This will require the UK government and its COP delegation to not just **play a leading and active role during the COP meeting itself in November**, but crucially also **in the months leading up to the meeting as various reports and decisions are formulated and tabled**.

Failure to act will undoubtedly lead to negative treatment of vaping being adopted by the FCTC and further reverse the global acceptance of vapour products as a component of harm reduction, a position that contrasts starkly from the one adopted by the Department of Health and Social Care, Public Health England, the NHS and almost all of the UK's leading medical and scientific organisations and NGOs.

Domestic Targets

The UK Government is committed to reaching its smoke free target in England by 2030. In practise (and according to 2017 guidelines), this means lowering smoking levels in the adult population to 5%. A similar smoke free initiative in Scotland, instituted in 2013, has a target set for 2034.

On current projections both targets are set to be missed. Cancer Research UK estimates that England will only achieve its smoke free target by 2037, and for the country's poorest communities it will take well into the 2040s. Similarly, Scotland is predicted to miss its smoke free target, and in the poorest communities this may be by as much as 16 years.

While the Office for National Statistics has reported a decline in the UK's smoking rate each year since 2011 it is clear that the trend must be accelerated. Additionally, any reverse in the UK's support for harm-reduction would likely delay success even further, as more than 3 million people in Britain use vaping devices.

For these targets to be reached as soon as possible, and to ensure the greatest gains in public health, it is therefore key that the provision of harm-reduction tools be championed.

The WHO's position towards vaping regulation differs markedly from that of the UK's; the WHO remains a consistent opponent of regulation that provides potential and current vapers with information, choice, and access to these life-saving products.

1. Secretariat Progress Report on vaping

At COP9, the Secretariat is likely to report on "scientific, regulatory and market developments such as initiative, cessation, advertising and promotion". Undoubtedly, the content of such a report will play a major role in shaping the views of the Parties as to the evidence base regarding vaping and their safety and efficacy as a smoking cessation tool. Additionally, the findings of such a report are likely to provide the basis for a potential decision of the Parties recommending various regulatory measures.

Based on prior reports of the WHO and FCTC Secretariat, such recommendations are likely to include bans or restrictions on flavours, comprehensive restrictions on product communications, bans on health and cessation related claims, limits on products formats, increased taxes, large graphic health warnings and plain packaging. These recommendations, almost all of which are out of step with the UK's preferred approach to the regulation of vaping products, will in turn become the global



standard by which to measure and evaluate the efforts of the Parties, including the UK, to implement their FCTC obligations.

While COP Decisions and Guidelines are not legally binding and countries can choose to transpose these into local regulations according to national circumstances and laws, any negative decisions towards vaping will likely be used by anti-vaping groups to continue to criticize the category and question its role in harm reduction. There are already signs that the devolved government in Scotland is looking to clamp down on vapers'/smokers' ability to access, and be made aware of, vaping. An anti-vaping conclusion at COP could accelerate and give support to this, undermining public health in a country of the UK with the highest smoking rates.

It is therefore clear that the UK delegation should make strenuous representations on the benefits of progressive, evidence-based policy at all opportunities, including at WHO Europe Regional Meetings, the World Conference on Tobacco or Health and COP9 itself. The UK approach should also be promoted in upcoming papers, such as the expected WHO regulatory framework for novel tobacco products and the expected FCTC/WHO reports on vaping.

2. Proposed supplemental guidelines for Tobacco Advertising, Promotion and Sponsorship

A Working Group on Article 13 (Tobacco Advertising, Promotion and Sponsorship) has been tasked with examining and reporting to COP9 on cross-border and social media advertising. Given the composition of this Working Group, including NGO observers, it is likely that – even though their mandate does not include vaping products – they will add draft guidelines that relate to vaping regulation.

Article 13 of the FCTC and the Article 13 guidelines, adopted by the Parties in 2008, make no mention of vaping products and are thus not applicable to the category. Clearly, had the Parties wished to include vaping products within the scope of their mandate to the Working Group, they could have chosen to do so. However, they did not. With this in mind, the UKVIA makes the following recommendations:

2.1 Immediately seek an update from the FCTC Secretariat and COP9 Bureau on work being undertaken by the Article 13 intersessional Working Group and the scope of their draft guidelines.

2.2 Raise objections with the FCTC Secretariat to any inclusion of vaping products in the Article 13 supplemental guidelines as beyond the scope of its mandate as per FCTC/COP8(17).

3. Report on novel and emerging tobacco products

At COP8, the Parties adopted a decision calling on the Secretariat to invite the WHO Tobacco Laboratory Network (TobLabNet) to prepare a comprehensive report on novel and emerging tobacco products.³

³ [FCTC/COP8\(22\) Novel and emerging tobacco products](#)



It is important to note the conspicuous absence of any mention of vaping products in this COP8 decision on novel and emerging tobacco products. Consistent with prior COP reports and deliberations on novel and emerging products, which have explicitly or by omission excluded vaping products, the decision reflects the consensus of the Parties (i.e. sovereign nations) to treat and address vaping products as a separate category of non-tobacco, nicotine containing products requiring a distinct regulatory approach.

While the report on novel and emerging tobacco products is not yet available to the Parties and its content remain unknown, there is a serious risk that the WHO and TobLabNet will exceed the limited mandate provided by the Parties and attempt to include vaping within the scope of the report and its policy recommendations which could result in significant pressure on the Parties to implement regulatory controls that will seek to prevent and control the uptake of these products. For this reason, the UKVIA suggests the following:

3.1 Raise objections (should they become necessary) with the FCTC Secretariat to any potential inclusion of vaping products in the report on novel and emerging products as beyond the scope of its mandate as per FCTC/COP8(22) and oppose any decision proposed by the FCTC Secretariat or by a Party that would include vaping products within the scope of policy recommendations on novel and emerging products or would equate vaping products with combustible tobacco products.

4. Other WHO Workstreams on vaping

The WHO continues to develop recommendations regarding the regulation of vaping. This is often done without input from member countries (including those that have experience with the products) and risks a 'rubber stamping' exercise of anti-vaping positions by the WHO that could have a significant influence on sovereign Parties' positions at COP9 and any resulting decisions. For example:

- In December 2020, WHO TobReg published a list of recommendations on vaping regulation which will be published formally alongside supporting evidence in a forthcoming report.⁴ While this report is unlikely to be published before COP9, recommendations include banning all activities related to the commercial marketing; banning the sale of vaping that have a higher abuse liability than conventional cigarettes; and ban cannabis/THC in products.
- The WHO is also currently (reportedly) developing Regulatory Frameworks for novel tobacco products, including vapour products and THPs. Vinayak Prasad, Programme Manager of the WHO Tobacco Free Initiative (TFI), said at a webinar in October 2020 that a set of recommendations for the regulation of these products could be published within the next year prior to COP9.
- Finally, a WHO Global Consultation on vaping had been expected to take place in April 2020 in Moscow.⁵ It was unclear who would be invited to this consultation and due to COVID-19 it

⁴ [WHO Executive Board: Report on meetings of expert committees and study groups](#)

⁵ [Global consultation on novel and emerging nicotine and tobacco products](#)



has been postponed with no new date set. There is little transparency related to this consultation and no details of the agenda and participants are available publicly.

The UKVIA therefore makes the following recommendation:

4.1 Immediately seek an update from the WHO and FCTC Secretariat as to the status and timings of these three workstreams and the scope and intended use of this work and where appropriate, raise questions as to why countries with experience in the vaping category have not been asked to provide input.

Towards global leadership on harm-reduction: defending UK smoking cessation policies at COP9

There is clear evidence that embedding the use of vaping in the UK as part of its tobacco harm reduction and cessation efforts has achieved extremely positive results, with smoking rates reduced by almost 5% in the last 5 years to 14.1%.⁶ Yet the WHO continues to attempt to discredit the UK's science, its approach and progress made.

As well as supporting the use of vaping, the UK has implemented some of the strictest anti-tobacco regulation measures in the world including plain packaging, a retail display ban, a public place smoking and high excise tax rates.

Tobacco harm reduction principles are a key component of the FCTC's original aims (set out in Article 1d) and are embedded in the language of the Convention. The COP should be reminded of this and follow this core principle, rather than be guided by questionable science or dogma which ignores the real-world, positive impact vaping have played in the UK in accelerating the reduction in smoking rates.

To this end, the UKVIA makes the following recommendations:

1. Incorporate a dedicated expert in the field of tobacco harm-reduction to the UK delegation.

While the WHO has previously discouraged this approach, the UK retains the right to send a delegation comprised of representatives of its choosing.

The inclusion of an impartial expert, selected by the UK Government, would ensure the delegation is best advised on how all COP9 proceedings could potentially impact on our domestic aims for harm-reduction.

While the FCTC largely predates the mass adoption of vaping devices, it nonetheless recognises harm-reduction in its text, defining 'tobacco control' as:

"a range of supply, demand and harm reduction strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke."

⁶ [Adult smoking habits in the UK - Office for National Statistics \(ons.gov.uk\)](https://ons.gov.uk)



By ensuring the presence of a harm-reduction expert at COP9, the UK can demonstrate the importance of this matter while providing the highest quality guidance to its delegation.

2. Table a provisional agenda item to COP9 highlighting the positive role of vaping in harm-reduction and develop a “Country Experience” report on the UK approach to vaping.

Since 2012 (when vaping became an increasingly mainstream consumer product in the UK), UK smoking rates have declined by 22%. While some of this decline can be attributed to various ‘traditional’ tobacco regulations e.g. a 2% tax escalator above inflation on cigarettes since 2014, retail display bans in 2015, and plain packaging in 2016, countries like Australia and Singapore that have similar traditional tobacco control measures while maintaining a ban on vaping, have not experienced as much (if any significant) progress on reducing smoking rates over a similar period of time.

By properly showcasing its approach to vaping and the contribution it has made, the UK can credibly position itself as a progressive global leader on tobacco control and harm reduction.

A comprehensive narrative in the form of a “Country Experience” report on the UK’s approach to vaping, which covers real-world progress in relation to comparable countries, would further highlight the positive impact that progressive policies have on smoking rates.

3. Establish a COP Working Group on harm-reduction.

A range of working groups have already been mandated by COP, but none currently focus on the matter of harm-reduction.

A working group could act to clarify and strengthen the role of harm-reduction within COP, whilst highlighting the esteem in which it is held by progressive governments. A working group could also oppose any WHO proposals that by-pass COP policymaking procedures, equate vaping with combustible tobacco products or call for them to be regulated like tobacco products, thus safeguarding the UK’s progressive approach.

If the UK were to propose such a group at COP9, it would require support and endorsement from other Parties. We believe that if the UK Government were to work proactively with its international partners this would be eminently achievable and beneficial.

The UK is already accustomed to partaking in COP working groups, and this course of action could serve to further underline the Government’s position as a leader on harm-reduction.

4. Rebut WHO attempts to discredit the UK Government’s approach to vaping.

The WHO has been attempting to internationally discredit the UK’s experience and approach regarding vaping, which undermines the UK government’s and NHS public health messaging directed at smokers/vapers, reducing trust, the longer-term credibility of vaping and, ultimately, the nation’s public health.

For example, in March 2019, the FCTC Knowledge Hub on Article 5.3, based at the Global Center for Good Governance in Tobacco Control (GGTC) in Bangkok, Thailand, published leaflets on “E-cigs: The future of addiction” and “E-cigs: Myths”. The leaflets suggest vapour products “lure kids into



addiction”, alleging that the products “do not help in quitting”, “lead to recreational use”, “are a gateway to drugs” and “attract a teen market”, among other things.

The papers sought to undermine the evidence from the UK, questioning the country’s “success story”, alleging that the UK “is now seeing an increase in teen vaping” and suggesting that findings from US studies contradict those from the UK that show that “youth experimentation on vaping does not translate to use of traditional cigarettes”.

These and other examples have resulted in negative changes to public perception as referenced earlier which have seen a decrease in the proportion of those who accurately believe vaping is less harmful than cigarettes decline year on year.

The UK must therefore seek to champion the science and conclusions of the internationally known UK PHE annual reports on vaping, as well as the UK Cochrane Reviews.

Positions should also be aligned with countries that are progressive with respect to vaping and harm reduction, in order to strengthen our shared voice.

5. Pursue a decision affirming support for, and elaborating on, FCTC Article 1(d).

Over the course of the last five COPs, five separate reports on vaping have been submitted to the Parties for their consideration.⁷ These reports have in their various forms represented the ongoing struggle of the WHO and FCTC Secretariat to grapple with the often incomplete, conflicting and questionable data they have relied upon to assess the potential risks and benefits of the category.

Despite eventually acknowledging a legitimate debate within the public health community regarding these risks and benefits, the recommendations contained in the five reports have exclusively focused on various possible measures to prevent and control the spread of vaping. Among these have been recommendations that Parties consider banning vaping, regulating them as tobacco products or regulating them as medicinal products. These reports have also included recommendations that Parties adopt various restrictions regarding health claims, public use, product design, health warnings, advertising, promotion and sponsorship.

What is conspicuous in its absence from the reports and various COP deliberations and decisions is any consideration of measures by which to actively promote the trial and adoption of vaping by adult smokers who are unable or unwilling to quit. This is the case, despite the fact that the text of FCTC defines “tobacco control” as “a range of supply, demand and harm reduction strategies that aim to improve health by eliminating or reducing consumption of tobacco products and exposure to tobacco smoke.”⁸

Given the failure of past COPs, the WHO and FCTC Secretariat to develop a comprehensive set of harm reduction strategies, COP9 will present the UK government with a historic opportunity to empower millions of smokers in the UK and around the world by tabling a decision that reaffirms the

⁷ Control and prevention of smokeless tobacco products and electronic cigarettes, Report by the Convention Secretariat, FCTC/COP/4/12, September 2010; Electronic nicotine delivery systems, including electronic cigarettes, Report by the Convention Secretariat, FCTC/COP/5/13, June 2010; Electronic nicotine delivery systems, Report by the WHO, FCTC/COP6/10, September 2014; Electronic Nicotine Delivery Systems and Electronic Non-Nicotine Delivery Systems (ENDS/ENNDS), Report by the WHO, FCTC/COP7/11, August 2016, and Progress report on regulatory and market developments on electronic nicotine delivery systems (ENDS) and electronic non-nicotine delivery systems (ENNDS), Report by the Convention Secretariat, FCTC/COP8/10, June 2018.

⁸ FCTC Article 1 (d)



commitment of the Parties to the principle of harm reduction and calls for an elaboration FCTC Article 1(d). Such a decision would put in place a meaningful, science and evidence-based process to develop specific policy options to advance tobacco harm reduction and risk-proportionate regulation.

The UK should therefore table a decision that reaffirms the commitment of the Parties to the principle of harm reduction and calls for an elaboration of FCTC Article 1(d).

6. Promote transparency, accountability and inclusion for COP discussion on vaping.

Over the course of the last several meetings of the COP, proceedings have been increasingly characterized by a degree of exclusion, secrecy and lack of adherence to FCTC rules of procedure that is impossible to reconcile with accepted norms of diplomacy, international law making and informed policy making. These actions have included bans on public and media attendance, excessive restrictions on the granting of observer status and the elimination of verbatim record keeping for all proceedings other than the plenary.

As will be well understood by the members of this APPG and as lies at the essence of this public inquiry, openness, transparency and accountability of government and public policy making is central to the health of democracy and the credibility of public institutions. It is a duty that is owed to those impacted by the decisions and actions of their elected and unelected officials.

As a global leader in transparent and accountable government, consistently ranking at the top of global transparency surveys, the UK government has an opportunity to advance the case for transparency, accountability and inclusion in the COP policy making process.

The UK should oppose any attempts by the Secretariat, COP Bureau or a Party to block the granting of observer status to vaping consumer groups that seek to participate in COP meetings as those impacted by COP decision making.

The attendance of the public and media during meetings of the plenary or Committees A and B should likewise not be unduly restricted.

The UK should also raise procedural objections to any lack of adherence to the FCTC Rules of Procedure, including but not limited to the taking of decisions without consensus where it is required by Rule 50.⁹

There should also be advocacy for the reinstatement of verbatim record keeping of all COP proceedings.

Conclusions

Post-Brexit, the UK has a unique opportunity to promote its expertise and experience to protect its own public health policies, as well as promote them around the world. To combat the anti-vapour ideology of the WHO, the UK must play an active, vocal role regarding its approach to vaping not only at COP9, but in key WHO/FCTC international forums and meetings leading up to COP9.

⁹ [WHO FCTC Rules of Procedure of the Conference of the Parties, Rule 50, p.15](#)



Failure to do so will lead to negative outcomes for the treatment of vaping being adopted by the FTC. This will undermine the UK's policy approach to vaping and, crucially, confuse its public health messaging as communicated by the NHS and other public health providers who are trying to help smokers to quit.

Success in this endeavour, which we believe will be aided by the recommendations of this document, will ensure the UK's progressive leadership on one of the world's most pressing public health issues.