

**Comment to All Party Parliamentary Group for Vaping  
UK Parliament  
Regarding Conference of the Parties 9  
Lindsey Stroud, Policy Analyst  
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Chair Pawsey and members of the Committee,

Thank you for inquiry on the role of electronic cigarettes and heat-not-burn products and the United Kingdom's (UK)'s existing efforts as a party of the World Health Organization (WHO) Framework Convention on Tobacco Control. My name is Lindsey Stroud and I am a Policy Analyst with the Taxpayers Protection Alliance (TPA). TPA is a non-profit, non-partisan organization with headquarters in Washington, DC, that is dedicated to educating the public through the research, analysis and dissemination of information on the government's effects on the economy.

**Framework Convention on Tobacco Control and UK Policies**

The UK is a signatory to the WHO's Framework Convention on Tobacco Control (FCTC), signing the treaty in June, 2003 and ratifying in December, 2004.<sup>1</sup> As a party to the FCTC, the UK must adhere to adopted guidelines including:

- Protecting public health from tobacco company interests, including restricting tobacco advertising, promotion and sponsorship, and regulating tobacco products, including packaging and labelling
- Utilizing pricing and taxing measures to reduce demand
- Public protection from secondhand smoke
- Raising public awareness through education, communication and training
- Reduce tobacco dependence and promote cessation

To date, the UK has practiced the guidelines imposed by the FCTC. Prior to joining the FCTC, the UK had already restricted tobacco advertising.<sup>2</sup> In 1965, the Television Act was enacted, which banned advertising on television. In 1990, the Broadcasting Act went into effect, with banned advertisements of loose tobacco and cigars on television and banned radio advertisements of all tobacco products. In 2003, the Tobacco Advertising and Promotion Act was enacted and banned advertisements in the press and on billboards, as well as a ban on direct marketing. After becoming a signatory and party to the FCTC, the UK further restricted tobacco product advertising. In 2005, tobacco sponsorship was banned from sporting events by the Tobacco Advertising and Promotion Act. In 2011, through the Health Act, tobacco products were prohibited from being sold in vending machines. Further, with legislation enacted in the Health Act, open displays were banned in large shops and supermarkets in 2012, and open displays were banned in small shops in 2015.

In 2016, the UK took a bold step and became the “second country in the world and the first in Europe to require cigarettes to be sold in plain, standardized packaging.”<sup>3</sup> A 2020 study found that the packaging, as well as the minimum excise tax, “was associated with significant decline in sales and in tobacco industry revenues.” Further, the researchers found that “the average monthly decline in [cigarette] stick sales was 6.4 million sticks faster than pre-legislation, almost doubling the speed of decline.”<sup>4</sup>

It should be noted that some of the policies the UK enacted came in response to youth use of tobacco products. For example, after the UK raised the minimum age for cigarettes from 16 to 18 in 2007, a study examined young persons purchase of cigarettes from vending machines and “found an almost two-fold increase in illegal sales of tobacco to minors from vending machines after the change in minimum age of sale.”<sup>5</sup> This study prompted the UK government to thus ban the sale of tobacco products from all vending machines.

The U.K. has also utilized price and tax measures to reduce cigarette consumption. Between 2013 and 2014, the UK collected approximately £9.7 billion in tobacco taxes.<sup>6</sup> In 2014, the excise tax on all tobacco products “was increased by 2% above RPI inflation.”<sup>7</sup> In 2016, the UK implemented a “Minimum Excise Tax (MET) for cigarettes.”<sup>8</sup> Under the legislation, the MET “will set a minimum level of excise duty for any packet of cigarettes,” with the total excise tax on cigarette “higher of either the MET, or the usual application of duties.” The tax went into effect in 2017.

In 2007, the UK implemented the Smoke Free Law, which made “it illegal to smoke in all public enclosed or substantially enclosed area and workplaces [and] includes smoking on vehicles which serve the public and/or used for work purposes.”<sup>9</sup> The Smoke Free Law has helped reduce health issues associated with secondhand smoke. Indeed, a “study of barworkers in England showed that their exposure reduced on average between 73% and 91% and measure of their respiratory health significantly improved after the introduction of the legislation.”<sup>10</sup>

### **Reduction of Cigarette Smoking in the UK**

The UK has done an exceptional job in reducing the consumption of combustible cigarettes. For example, in 2018, only 14.7 percent of UK adults that were 18 years or older smoked, which “represents a statistically significant decline of more than 5 percentage points since 2011.”<sup>11</sup>

Further, among data from smokers that had quit or intended to quit found that in 2018, “the proportion of smokers who have quit is at one of the highest levels to date.” Moreover, in 2018, among ever-smokers, over 61 percent reported having quit, which was “around 35 percent points higher than observed in 1974.”

Average cigarettes smoked per day has also significantly decreased. In 2011, men and women reported smoking 13 and 12 cigarettes per day, respectively. This decreased to 8.6 and 6.6

cigarettes per day, for men and women, respectively, in 2018. This represents a 33.8 percent decrease of in cigarettes per day for men, and 45 percent decrease for women.

It should be noted that cigarette smoking has significantly declined among individuals aged 18 to 24 years. Indeed, in 2011, among current smokers, 25.7 percent were between 18 to 24 years old. This decreased by 34.6 percent in 2018, to 16.8 percent of current smokers being between 18 to 24 years old.

### **Tobacco Harm Reduction**

Despite a guideline that requires parties to promote reduction and cessation, the FCTC does not acknowledge the various levels of harm posed by tobacco products.

Efforts to reduce smoking by the WHO (and specifically the FCTC) rely on regulations, sin taxes, and public education campaigns and have been ineffective at significantly reducing cigarette consumption.

These efforts have failed because the “quit or die” strategy does not resonate with all smokers. Under this strategic campaign, smokers are typically limited to two cessation choices: behavioural therapy or “the use of pharmaceutical nicotine and other medications.”<sup>12</sup> However, there is another approach: tobacco harm reduction (THR) products. THR includes tobacco or nicotine in products designed to reduce the harms associated with traditional tobacco products, such as combustible cigarettes.<sup>13</sup>

Research shows it is the *smoke* created by the burning of tobacco, rather than the *nicotine*, that produces the harmful constituents found in combustible cigarettes. THR products—including smokeless tobacco, snus, electronic cigarettes and vaping devices, and heat-not-burn products—are already on the market in the UK. All these products effectively deliver nicotine without the risks associated with the *burning* of tobacco.

It is important for regulatory agencies to understand that nicotine, while addictive, is relatively harmless when consumed outside of combustible cigarettes. The Schroeder Institute for Tobacco Research and Policy Studies concluded “nicotine itself, while not completely benign, carries substantially lower risks than smoking.”<sup>14</sup>

In a comprehensive study on nicotine health effects, Raymond Niarua, Ph.D., noted “that even very high doses of medicinal nicotine had little effect on cardiovascular function.” Emphasizing “a continuum of harm among combustible and noncombustible, nicotine-containing products,” Niarua urged the use of alternative nicotine products, with “the goal of moving users away from the most addictive, appealing and toxic combustible to less harmful alternatives—ideally FDA-approved [modified risk tobacco products.]” The U.S. surgeon general and the Royal College of Physicians agree that “nicotine, while addictive, is not the primary cause of smoking-related diseases.”<sup>15</sup>

The UK has embraced electronic cigarettes and heat-not-burn products and have successfully regulated a welcoming tobacco harm reduction market.

Nicotine-containing vapor products are currently regulated under the European Union Tobacco Products Directive and are subjected to strict regulations.<sup>16</sup> Selling and/or purchasing vapor products to persons under 18 is prohibited. Manufacturers must submit annual reports and adhere to specific restrictions on e-liquids and products including:

- Refill containers cannot exceed 10 milliliters
- Disposable electronic cigarettes and single-use cartridges cannot exceed 2 milliliters
- Tank capacity in mods cannot exceed 2 milliliters
- Nicotine-containing e-liquid cannot contain in excess of 20 milligrams per milliliter

Further, nicotine-containing e-liquid cannot contain vitamins, colorings, and/or additives that are currently prohibited in tobacco products and ingredients must be pure. Product information and labeling is also subject to requirements and products are not permitted to be advertised as less harmful.

#### ***Adult E-Cigarette Use<sup>17 18</sup>***

In 2017, 5.6 percent of adults used e-cigarettes at least once a month, or about 3 million users. The UK has the highest use of e-cigarettes in the European Union. In 2020, it was estimated that 3.5 million people are using e-cigarettes in the UK. In 2017, between 18 and 20 percent of current smokers in the UK also used e-cigarettes. Among adult e-cigarette users, in 2017, 42 percent reported using e-cigarettes to help stop smoking.

#### ***Youth E-Cigarette Use<sup>19</sup>***

In 2019, 76.9 percent of 11-18 years have never tried e-cigarettes and those that have used e-cigarettes do so out of curiosity. In 2019, 15.4 percent of youth aged between 11 and 18 years old had tried vaping, a decrease from 16 percent in 2018. Regular use is rare in never smokers – 93.8 percent of youth aged 11 to 18 years old that were never smokers had also never used e-cigarettes. Troubling, 61.9 percent of 11- to 18-year-olds reported buying e-cigarette, with internet being reported as the most common way to purchase e-cigarettes.

Regarding why youth use e-cigarettes, 52.4 percent of 11- to 18-year-olds reported “Just to give it a try,” with 70.6 percent of never smokers and 52.9 percent of former smokers reporting this. Only 14.4 percent of respondents reported using e-cigarettes because of flavors.

An increasing amount of youth incorrectly believe that e-cigarettes are just as harmful as combustible cigarettes.

#### ***Heat-Not-Burn Tobacco Products***

A novel tobacco harm reduction product are heat-not-burn (HNB) tobacco products. HNB technology is a unique tobacco harm reduction tool because it has the “ability to regulate and distill flavor and nicotine at lower temperatures.”<sup>20</sup> Several brands have been introduced and tested in various international markets.

HNB were first marketed in the UK in 2016 and according to Action on Smoking and Health, adult use is low.<sup>21</sup> As a novel tobacco product, many current cigarette users are unaware of the product. Nonetheless, HNB are still an important tobacco harm reduction tool and have been widely successful in other markets, specifically Japan. Indeed, around 3.1 million people in Japan currently use a specific-brand HNB product.<sup>22</sup>

Studies on various products have also found a reduced harm from selected HNB products.

A 2016 study published in *Toxicology in Vitro* provided a “comparative assessment of the biological impact of heated tobacco aerosol from the tobacco heating system ... and smoke from a combustible cigarette.”<sup>23</sup> The study examined bronchial epithelial cultures exposed to Philip Morris International’s iQOS vapor and found significant reductions in biological markers compared to when cigarette smoke is regularly inhaled.

A 2018 literature review of HNB studies found that “HNB delivered up to 83% of nicotine and reduced levels of harmful and potentially harmful toxicants by at least 62% and particulate matter by at least 75%.”<sup>24</sup>

### **The FCTC Does Not Acknowledge Tobacco Harm Reduction**

In 2016, Clive Bates remarked that “the FCTC is not a good forum for assessing the merits of new ideas, adopting innovation, trying novel regulatory approaches.”<sup>25</sup> This is overwhelmingly apparent in the FCTC’s approach to electronic cigarettes and vapor products.

The FCTC first requested a report emerging tobacco harm reduction products at the Conference of the Parties (COP) 3. At COP 6, a decision “invited Parties to take measures ... prevent initiation of [e-cigarettes and HNB] by non-smokers and youth; minimize potential health risks to its users and protect non-users; prevent unproven health claims from being made; and protect tobacco-control activities from all commercial and other vested interests related to [e-cigarettes and HNB], including interests of the tobacco industry.”<sup>26</sup>

At COP 7, a decision “invited Parties to apply regulatory measures ... to prohibit or restrict the manufacture, importation, distribution, sale and use of [e-cigarettes and HNB], as appropriate.”<sup>27</sup>

In 2019, the FCTC Secretariat called upon Parties “to remain vigilant towards” tobacco harm reduction products, including vapor products and HNB and erroneously claimed such products were “creating another layer of interference by the tobacco industry and related industries.”<sup>28</sup> Dr. Vera Luiza de Costa e Silva brazenly declared vaping to be “a treacherous and flavored

camouflage of a health disaster yet to happen if no action is taken now.” Indeed, the Secretariat remarked to “the importance of the need to prohibit or regulate” such products.

The FCTC’s lack of acknowledging the reduced harm such products provide for millions of smokers global is the true “treacherous” public health disaster. Numerous public health reports by agencies in the UK have not only recognized tobacco harm reduction provided by such products, but they have also promoted the use of such products to quit smoking.

Indeed, Public Health England, the Royal College of Physicians, the British Medical Association, and the House of Commons Science and Technology Committee have all concluded that e-cigarettes are significantly less harmful, but are not risk-free.

- **Public Health England:** In 2015, Public Health England, a leading health agency in the United Kingdom and similar to the FDA found “that using [e-cigarettes are] around 95% safer than smoking,” and that their use “could help reducing smoking related disease, death and health inequalities.”<sup>29</sup> In 2018, the agency reiterated their findings, finding vaping to be “at least 95% less harmful than smoking.”<sup>30</sup>
- **The Royal College of Physicians:** In 2016, the Royal College of Physicians found the use of e-cigarettes and vaping devices “unlikely to exceed 5% of the risk of harm from smoking tobacco.”<sup>31</sup> The Royal College of Physicians (RCP) is another United Kingdom-based public health organization, and the same public group the United States relied on for its 1964 Surgeon General’s report on smoking and health.
- **British Medical Association:** In 2017, the BMA noted that e-cigarette use is significantly less harmful than combustible cigarettes and that the “short-term risks associated with e-cigarette use appear minimal.”<sup>32</sup> Further, the agency reports that vapor products are the most popular device used in attempts to quit smoking.
- **House of Commons Science and Technology Committee:** “E-cigarettes present an opportunity to significantly accelerate already declining smoking rates, and thereby tackle one of the largest causes of death in the UK today. They are substantially less harmful—by around 95%—than conventional cigarettes. They lack the tar and carbon monoxide of conventional cigarettes—the most dangerous components.”<sup>33</sup>

### **Policy Recommendations**

It is imperative that the UK continue on with policies that promote the use of tobacco harm reduction products, including electronic cigarettes and heat-not-burn technologies. Such products have helped millions of smokers quit smoking and their use should be promoted and endorsed – not restricted. The UK should therefore reject any decision by the FCTC that would restrict adult use of such products. Moreover, the UK is in a unique position to present the evidence that such products have helped its own citizens quit smoking and present its findings to the Parties of the FCTC.

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- <sup>3</sup> Action on Smoking and Health, *Standardised Plain Packaging*, 2021, <https://ash.org.uk/category/information-and-resources/packaging-labelling-information-and-resources/standardised-plain-packaging/#:~:text=The%20UK%20is%20the%20second,the%20measure%20in%20December%202012>.
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