

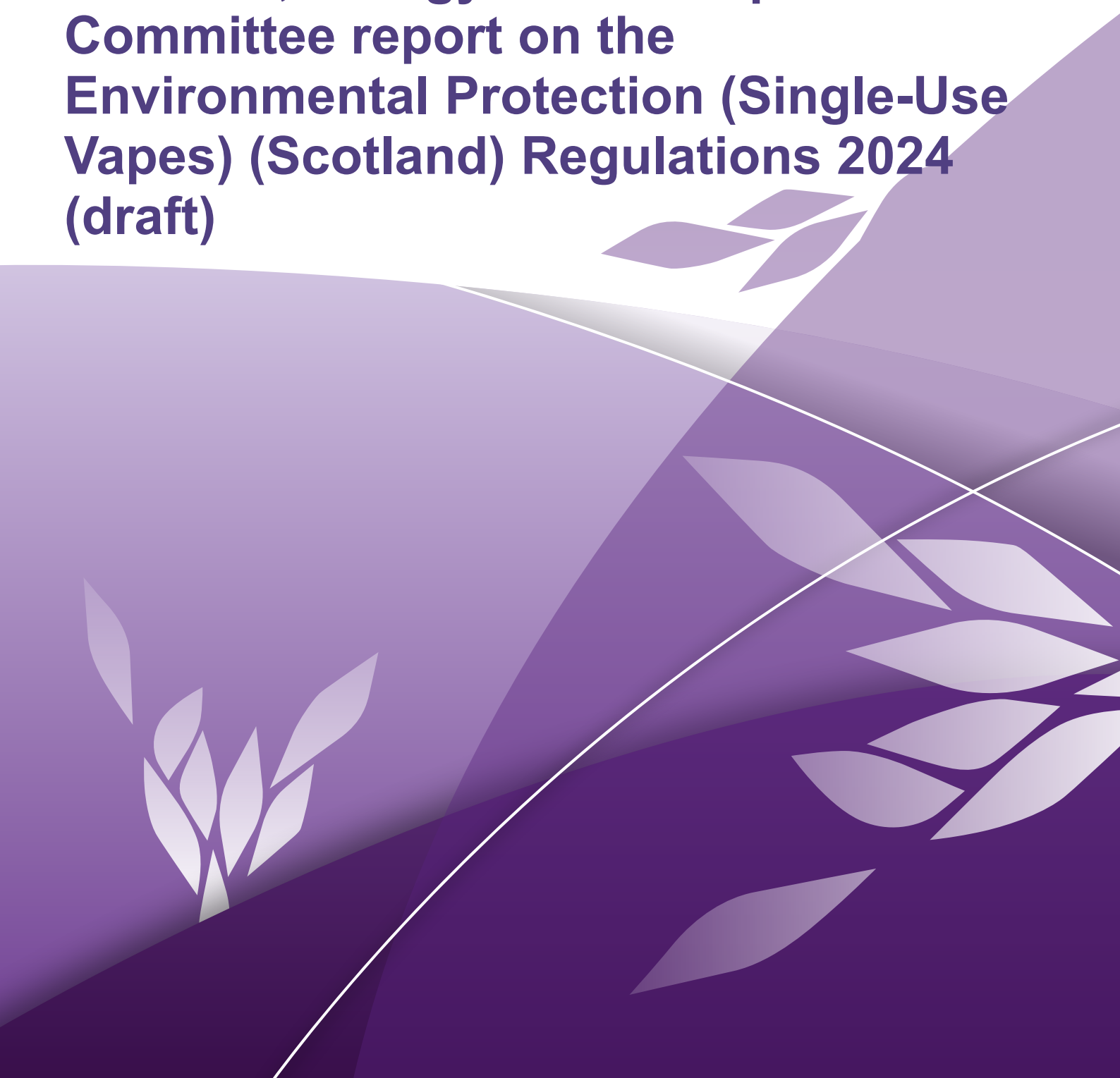


The Scottish Parliament
Pàrlamaid na h-Alba

Published 19 September 2024
SP Paper 648
10th Report, 2024 (Session 6)

Net Zero, Energy and Transport Committee

Net Zero, Energy and Transport Committee report on the Environmental Protection (Single-Use Vapes) (Scotland) Regulations 2024 (draft)



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:
<http://www.parliament.scot/abouttheparliament/91279.aspx>

For information on the Scottish Parliament contact Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

Contents

Introduction	1
Delegated Powers and Law Reform (DPLR) Committee consideration	2
Net Zero, Energy and Transport Committee consideration	3
Environmental Impacts of Single-Use Vapes	3
Definition of Single-Use Vapes and Avoiding Unintended Consequences	5
Financial Implications	7
Timeframe	9
UK wide and internal market context	9
Enforcement powers	11
Penalties for Non-Compliance	12
Enforcement capacity and resourcing	13
Wider (Complementary) Measures	15
Conclusion	18

Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Transport, the Cabinet Secretary for Wellbeing Economy, Net Zero and Energy, with the exception of matters relating to wellbeing economy, and just transition; and on matters relating to land reform, natural resources and peatland, Scottish Land Commission, Crown Estate Scotland, and Royal Botanic Garden within the responsibility of the Cabinet Secretary for Rural Affairs, Land Reform and Islands.



netzero.committee@parliament.scot



0131 348 6039

Committee Membership



Convener
Edward Mountain
Scottish Conservative
and Unionist Party



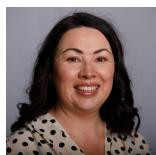
Deputy Convener
Ben Macpherson
Scottish National Party



Bob Doris
Scottish National Party



Jackie Dunbar
Scottish National Party



Monica Lennon
Scottish Labour



Douglas Lumsden
Scottish Conservative
and Unionist Party



Mark Ruskell
Scottish Green Party

Introduction

1. [The Environmental Protection \(Single-Use Vapes\) \(Scotland\) Regulations 2024 \(draft\)](#) was laid before the Scottish Parliament on 10 June 2024. The draft instrument was referred to the Net Zero, Energy and Transport Committee for consideration and is subject to the affirmative procedure, meaning it must be approved by the Scottish Parliament before it can come into force.
2. It is for the Net Zero, Energy and Transport Committee to recommend to the Scottish Parliament whether the draft Regulations should be approved. On 10 June 2024, Gillian Martin MSP, then Minister for Climate Action, lodged motion [S6M-13568](#), proposing that the Committee recommends the draft Regulations be approved.
3. These Regulations prohibit the supply, whether by sale or otherwise, in the course of business of single-use vapes and come into force on 1 April 2025.
4. The policy states that banning the supply of single-use vapes in the course of business will achieve the policy aims of:
 - accelerating a reduction in environmental harm by reducing the number of vapes being landfilled, incinerated, and littered, thereby increasing recycling and reuse rates, and
 - stimulating businesses and consumers to replace single-use vapes with reusable alternatives, thereby supporting a switch to less environmentally harmful products.

Delegated Powers and Law Reform (DPLR) Committee consideration

5. The DPLR Committee considered the instrument on 18 June 2024 and reported on it in its [14th Report, 2024](#). The report highlighted the potential for the operation of the instrument to be affected by the mutual recognition principle in the United Kingdom Internal Market Act (UKIMA) 2020. This is something that the Net Zero, Energy and Transport Committee explored further, see paragraphs 46 to 52.

Net Zero, Energy and Transport Committee consideration

6. On 28 June 2024, the Committee wrote to a range of stakeholders asking for their views on the Regulations. The Committee received 15 submissions, which are available on the following web page:

[Correspondence on the Environmental Protection \(Single-Use Vapes\) \(Scotland\) Regulations 2024](#)

7. At its meeting on 3 September 2024, the Committee took evidence on the draft Regulations from:

- Gillian Martin, Acting Cabinet Secretary for Net Zero and Energy
- David McPhee, Deputy Director, Circular Economy
- Mark Sweeney, Senior Policy Advisor - Product Stewardship
- Carolyn Boyd, Lawyer, Scottish Government

8. The evidence taken at the meeting can be read in the Official Report, which is available on the following web page:

[Read the Official Report - 3 September 2024](#)

Environmental Impacts of Single-Use Vapes

9. The policy aim of the regulations is to reduce the environmental harm caused by single-use vapes by decreasing the number of vapes that end up in landfills, incineration, and as litter, thereby promoting higher rates of recycling and reuse. By banning single-use vapes, the Scottish Government hopes to encourage the use of reusable alternatives which are less harmful to the environment.

10. In her opening remarks to the Committee, the Acting Cabinet Secretary for Net Zero and Energy (the Cabinet Secretary) outlined some of the environmental impacts of single-use vapes in Scotland, citing research commissioned by the Scottish Government which found that:

” up to 26 million disposable vapes are consumed in Scotland in just one year, and that consumption involves between 800 tonnes and 1,000 tonnes of packaging. It also found that, of those vapes, an estimated 10 per cent were littered and more than half were incorrectly disposed of. ¹

11. Scottish Government officials highlighted the exponential growth in disposable vapes over the past four years and the associated environmental impact, stating:

” They have gone from a very small base to large numbers, and the numbers could grow much higher. The point is that the increasing amount of disposable vapes means increasing demand on waste services. ²

12. A number of stakeholders shared these concerns, noting that the rapid growth of the single-use vape market has led to significant waste management challenges. For instance, Zero Waste Scotland said that “current, known challenges of disposable vapes are set to increase without policy intervention... In Scotland, it is estimated that the proportion of adults using vapes increased from 7% in 2019 to ~10% in 2022.” And “Specifically, the proportion of adults using single-use vapes has increased, growing from 0.1 % to 4.9 % between January 2021 to August 2023 across the UK”.³
13. Stakeholders outlined a range of environmental issues associated with the growing market for single-use vapes, including:
 - **Resource Depletion:** Single-use vapes contain valuable materials such as lithium, cobalt, aluminum, steel, and copper, which could be recycled but are currently being lost through improper disposal. Zero Waste Scotland and the Scottish Environment Protection Agency (SEPA) emphasised that these materials are critical for the transition to net zero, as they are essential for electric vehicles, energy generation, batteries, and IT equipment. Notably, lithium and cobalt are listed in the UK Critical Raw Materials Strategy. Laura Young also stressed the environmental impact of mining these resources.
 - **Hazardous Chemicals:** Keep Scotland Beautiful noted that discarded vapes could release harmful chemicals, including mercury, lead, battery acid, lithium, and nicotine, into the environment. Zero Waste Scotland added that these chemicals have the potential to contaminate waterways and soil and pose a toxic threat to wildlife.
 - **Recycling Challenges:** Single-use vapes are difficult to recycle due to a lack of recycling infrastructure. Zero Waste Scotland pointed out that even when recycled, single-use vapes represent an inefficient use of resources, especially given the high cost of recycling. Zero Waste Scotland cited estimates that suggest that only 1% of single-use vapes returned to shops or recycling centres in the UK are actually recycled due to limited capacity.
 - **Fire Risks:** Several stakeholders raised concerns about the fire risks associated with the disposal of lithium-ion batteries found in single-use vapes. These batteries pose dangers to waste management workers, public and private property, and public safety. SEPA reported that fires caused by lithium-ion batteries in bin lorries and waste sites in the UK have reached an all-time high, with the Environmental Services Association estimating an annual cost to the UK industry of £150 million. Several high-profile waste site fires in Scotland have been linked to these batteries, and SEPA described this issue as "pervasive" within the waste sector. Research cited by Zero Waste Scotland estimates that lithium-ion batteries are responsible for 48% (over 200) of waste fires in the UK each year.
 - **Littering:** Zero Waste Scotland reported that single-use vapes are often littered or discarded as general waste rather than being properly disposed of for recycling. Research by Material Focus in 2023 estimated that nearly 5 million single-use vapes were either littered or thrown away as general waste each week in the UK, nearly four times as many as the previous year. A review by Zero Waste Scotland estimated that between 21 and 26 million single-use vapes were consumed and discarded in Scotland between April 2022 and April

2023. SEPA and Zero Waste Scotland pointed out that the cost of managing this waste typically falls on Local Authorities. According to Keep Scotland Beautiful's 2023 Scottish Litter Survey, single-use vapes are the fastest-growing litter item, with those in less affluent neighbourhoods more likely to report them as litter. Laura Young noted that the Marine Conservation Society has also identified vapes as a source of marine and coastal pollution.

14. The Cabinet Secretary concluded her opening remarks by saying:

” From litter on our streets to the risk of fires at waste facilities, single-use vapes are increasingly an issue for our environment, local communities and young people. The draft instrument is a crucial step in tackling their environmental impact.”⁴

Definition of Single-Use Vapes and Avoiding Unintended Consequences

15. For the purposes of the Regulations, a single-use vape is a vape which is not designed or intended to be re-used, and includes any vape which is—

(a) not refillable,

(b) not rechargeable, or

(c) not refillable and not rechargeable.

16. While most respondents broadly agreed with this definition, some questioned whether the definition was sufficiently flexible to ensure it responds to product developments.

17. Evidence submitted by a trading standards officer from Aberdeen Council highlighted (in relation to the importance of future-proofing the definition), that the definition of ‘rechargeable’ in the Regulations refers specifically to the use of coils, stating that there are various types of heating elements in vapes and they are not all coils. They said that some newer vapes now use mesh and ceramic heating systems.

18. Other stakeholders raised more general concerns about the future-proofing to prevent new products emerging onto the market as replacements for single-use vapes that actually raise the same environmental issues. For example, Keep Scotland Beautiful considered it essential that the impact of these regulations are monitored closely, observing that from previous bans on single-use items that the results are not always as intended, stating: “the overall aim with these bans must be to change behaviours and limit consumption, instead what we see is an alternative option, which is not truly sustainable, brought into the supply chain and habits and behaviours do not change.”⁵

19. The Independent British Vape Trade Association (IBTVA) suggested that concerns about the inadequacy of the definition were unfounded, stating that “there has been some commentary and media attention wrongly accusing producers of brands of single use vapes who develop refillable and rechargeable products of somehow

“getting around a loophole in the regulations”.⁶

20. In response to these concerns, the Cabinet Secretary said that the regulations had been engineered by all four nations to “future proof” them. She argued that the “regulations are quite tight in identifying the type of products in the market today that we want to take out of the system, as well as what is not a disposable vape.”⁷
21. However, the Cabinet Secretary did concede that manufacturers could attempt to re-engineer these products in a manner which might circumvent the regulations but reassured the Committee that the Scottish Government was aware of this issue. She stated:

” as the four nations implement the ban, we will have to keep a keen eye on any innovations that in effect work around the regulations. We want to be able to respond to any risks that might arise, such as those resulting from innovation.”⁸
22. A key concern raised by stakeholders, was that vapes that are technically refillable and rechargeable but are sold cheaply, are difficult to refill, or are not perceived as durable may still be treated as single-use by consumers. The Committee wanted to ensure that “we do not just move to an intermediate stage at which people throw away something that meets the definition and is cheaper.”⁹
23. SEPA noted that whilst new products could be less detrimental if repeatedly refilled and recharged, “the price point for such products is often the same”¹⁰ as disposables so there is a risk that consumers treat them as single-use. It said that to be most effective, refilling and recharging needs to be cheaper than buying a new unit.
24. Similarly, the Association of Convenience Stores (ACS) said there will need to be guidance for “real world scenarios”, noting there will likely be innovations in design that “push the boundaries”, such as a refillable, rechargeable vape offered at a “price point that to consumers that is like a disposable vaping product”. It said that retailers should be able to defend themselves against accusations of non-compliance where they can demonstrate they have worked with a “reputable vape supplier that have advised them that the specifications of the vaping product meet those set out in the regulations”.¹¹
25. The Society of Chief Officers of Trading Standards in Scotland (SCOTSS) also said that “a potential loophole exists” if the supply of ‘consumables’ e.g. refills are not available at the same point of supply. It said that many major brands have already adapted their products to ‘pod-based devices’ to comply, but that “replacement pods are rarely sold alongside the original vape”.¹²
26. The Cabinet Secretary was of the view that “if you were going to invest in something of a certain price that was designed to be reusable, you would want it to last, so I think that consumer choice will come into play.” She did, however, note that it was “difficult to predict how consumers would react.”¹³
27. Scottish Government officials confirmed that they had “worked closely with people in trading standards and with other nations to ensure that the regulations are as tight as they can be.”¹⁴ However, they did concede that “with innovation, it is

almost impossible to completely future proof them." ¹⁵ On the issue of vapes that are technically refillable and rechargeable but are sold cheaply, Scottish Government officials stated:

” On the point about devices that could be charged more than once, you are right that there could be a cost model in which such a vape would be cheaper than one that could be reused for a long period, but it would still be more expensive than a disposable one. There is an argument about the cost per use. If you are going to reuse a vape many times, you get better value per use from a fully rechargeable one. ¹⁶

28. On the point raised by SCOTSS regarding the need for replacement pods to be sold alongside the original vape, Scottish Government officials stated that the “regulations say that the refills must be readily available.” ¹⁷ ⁱ

29. The Committee questioned whether there were sufficient safeguards in place to ensure that the price point of rechargeable and refillable vape products didn’t “perpetuate the current disposable culture” and asked whether a minimum price would discourage such behaviour.

30. The Cabinet Secretary said that although the Scottish Government had considered the option to taxing vaping devices, Zero Waste Scotland’s scoping report had concluded that, “although taxation might support the policy objectives, it would have a limited effect if it was not tied to waste management outcomes”. She also argued that “When it comes to the possible implementation of a duty on vapes, consideration would need to be given to the people who access them for smoking cessation and the equality impact that such a measure would have”. ¹⁸

31. The Cabinet Secretary didn’t rule out a duty on vaping products being introduced at a later stage on a UK-wide basis, stating that if “reusable vapes end up costing the same as disposable ones, with the result that people, rather than recharging them and reusing them, do not value or look after them, that will inform the conversations that we have on the potential imposition of a duty on reusable vape mechanisms in the future.” ¹⁹

32. She further noted that:

” the four nations thought that introducing regulations on single-use vapes would be the best first step, and that it would represent quite a large step in getting rid of the litter problem. However, that does not stop us looking at what might happen after 1 April and how consumer behaviour might change. ²⁰

Financial Implications

33. The Policy Note outlines the impact of the policy on businesses over 10 years, using Net Present Value (NPV) in millions of pounds (£) at 2023 prices and 2025

ⁱ Regulation 3 (Meaning of single-use vape) requires them to be "separately available" meaning "available for purchase by an individual user".

present value. The estimates are as follows:

- Worst case scenario: -£2,373.5 million
- Central scenario: -£1,624.5 million
- Best case scenario: -£707.1 million

34. It further notes that the loss of profits experienced along the supply chain as a result of the ban on single-use vapes is the primary reason the final NPV is negative. It goes on to explain that “as with any policy, there will be differential positive and negative financial effects on different businesses, organisations and local authorities as a result of its implementation”.
35. The UK Vaping Industry Association (UKVIA), ACS and the Scottish Grocers’ Federation (SGF) raised concerns about significant impacts on small and medium retailers. The SGF response stated “vaping products are one of the product categories that some customers enter the shop to purchase.”²¹ This suggests there is potential for loss of business beyond just the loss of disposable vape sales themselves, as the ban may reduce consumers’ use of small retailers that they visit for the primary purpose of buying vapes.
36. The Scottish Retail Consortium (SRC) said that the Scottish Government had engaged extensively on this issue with retailers but “there doesn’t appear to be a clear accounting of how the Scottish Government will fund the necessary spending on enforcement, policing, and communications”.²²
37. In response to these concerns, the Cabinet Secretary agreed that the regulations would have an impact on retailers but argued that the increase in demand and the associated environmental cost justified the ban. She argued that while retailers would no longer be able to sell single-use vapes, the ban would not come into force until 1 April 2025, allowing sufficient time for them to sell existing stock. She also suggested that retailers would also have the opportunity to sell reusable alternatives, alongside refills, stating:
- ” There is another stream of income in servicing the demand that might come from people who used to buy single-use vapes, legally, as their preferred model. There will be a market there, and it is for retailers to make that business decision.”²³
38. On the resource implications for local authorities, Scottish Government officials emphasised that dialogue was ongoing but noted that “many in local government have called for the ban because they know the impact that that will have not only on trading standards but on waste and litter, and we are trying to work positively with them.”²⁴
39. Scottish Government officials said that they expected to see “savings for local authorities, particularly in relation to waste management, due to the reduction in gate fees and in litter and cleansing costs”²⁵. Officials said “we estimate savings of £10.2 million over 10 years, made up of £7.4 million from a reduction in fires, £2.5 million from landfill and incineration fees and £300,000 from litter and cleansing. Those savings are expected.”²⁶

Timeframe

40. The Regulations, if passed, will come into force on 1 April 2025.
41. Stakeholders expressed a range of views regarding the amount of time needed for the ban to come into force.
42. SCOTSS said the proposed date provides sufficient time for businesses and consumers to adjust and also said it thought the changes it is recommending on enforcement powers (see below) could be made within this timeframe. Zero Waste Scotland said that businesses “will have had over a year’s notice to the regulations coming into force”²⁷ and businesses have already started planning for the change.
43. Conversely, the ACS, SGF and UKVIA raised concerns about the timescale for the ban. The ACS said regulations should not be introduced until 12 months after supporting guidance and an enforcement framework are in place. The IBVTA said that at the time the draft regulations were published in January 2024, the timescales “seemed to be reasonable”, however “given that considerable time has elapsed since then, the likelihood of reaching the 1 April 2025 deadline with everything required in place seems highly unlikely”.²⁸
44. In response to concerns about the amount of time retailers would have to prepare for the ban coming into force, the Cabinet Secretary stated that retailers would have been aware of the potential for a ban when the Scottish Government consulted on the regulations. She also outlined how the Scottish Government had engaged with retailers, stating:

” We contacted every vape retailer in Scotland. We identified those through the register of tobacco and nicotine vapour products retailers. Seven thousand retailers in Scotland are registered. We contacted them all and invited them to provide feedback on the draft regulations, as part of the development of the business and regulatory impact assessment. We conducted the Scottish firms impact test—the SIFT—and we interviewed 11 businesses that came forward. With them, we worked through some of the potential impacts on them.”²⁹

UK wide and internal market context

45. The BRIA states that it is not anticipated the Regulations will impact on intra-UK trade “as all nations have plans to impose a similar sale and supply ban”. And “In the event of there being any misalignment in the introduction of legislation, the four UK nations have agreed to work together through the Resources and Waste Common Framework process to minimise or mitigate any impact on the UK internal market. This could include joint consideration of an alternative coming into force date or taking steps to agree an exclusion to the United Kingdom Internal Market Act 2020 (IMA) through the agreed Common Frameworks process, to ensure the effect of Scottish legislation is not undermined by the IMA”.³⁰
46. As mentioned earlier in this report, the DPLR Committee considered the Regulations on 18 June 2024 and in its [report](#), drew the attention of the lead Committee to UKIMA implications if other UK nations do not go ahead with the April

2024 implementation as previously expected. The DPLR Committee said:

- ” if a ban is not put in place in the other parts of the UK by 1 April 2025, UKIMA will have the effect that single-use vapes which are produced/ imported into another part of the UK can in fact be sold and supplied in Scotland, notwithstanding the ban that this instrument provides for. Therefore, the instrument would not achieve the legal effect that, on the face of it, it appears to have.³¹
47. Stakeholders tended to agree that UK-wide alignment in this area would be (and has been) beneficial. A number of respondents also said that delays in other jurisdictions should not delay or prevent the ban from coming into force in Scotland.
 48. ASH Scotland for example said the Scottish Parliament should support the ban “irrespective of whether other places in the UK have progressed to be in the position to introduce their country-specific regulations”.³² Similarly, Keep Scotland Beautiful said that should alignment not be possible, “we welcome a ban in Scotland.”³³
 49. Zero Waste Scotland said a common coming-into-force date across the UK nations would “clarify expectations for industry and consumers, allowing for joint communications”³⁴ and limiting the chance of mixed messaging or confusing variations, or ‘leakage’ of products across borders.
 50. The ACS acknowledged the consistency across the UK Government and Scottish Government’s definition of a single use vape and said this consistency was crucial to provide assurance to businesses operating cross-border. The SGF said it was concerned about the potential for confusion if the date of a ban is staggered across the four nations and would support a delay to the ban to allow alignment.
 51. The Cabinet Secretary confirmed that at present, the ban would be adopted UK wide as of 1 April 2024 but accepted that, due to the recent UK general election, the new UK Government might adopt a different approach. She confirmed that she would be writing to the UK Government and devolved administrations to confirm their positions and update them on the laying of these regulations.
 52. In the event the UK Government changes its position with respect to a UK wide ban on the sale of single-use vapes, the Cabinet Secretary reiterated the options set out in the BRIA, and stated:

” As things stand, we are all going forward as one, and we want to go forward as one. Obviously, a new Government is in place, and I need to make sure that everything is still in train, so I am writing this week just to get confirmation of where the other nations are and to let them know that we have laid our regulations and started the process.

Should I get an answer that says, “Actually, no, we are not ready to go on 1 April,” a couple of options are open to us. If the period is quite short, we could decide to change our regulations to come in at a date along with everyone else’s. If it is only a couple more months, I do not think that there is any harm in that. However, if it is a couple more years, that is a different question altogether, and we would need to think about how we might go forward, because that would be a couple of years of those items still being on the streets, still in our bins and still causing the problems that they have caused.³⁵

Enforcement powers

53. Regulation 8 of the SSI enables local authorities to authorise enforcement officers and Regulation 9 sets out the detail of enforcement powers provided to those officers to carry out investigations to determine whether an offence has been committed. This includes powers “to enter at any reasonable time any premises (other than premises used wholly or mainly as a dwelling) which the enforcement officer has reason to believe it is necessary to enter for an authorised purpose”, and powers to make test purchases and to take samples of single-use vapes to be tested.
54. SCOTSS provided a detailed response on enforcement and an overall view that enforcement powers set out in the regulations “are restrictive and impractical”. It suggested that the Scottish Government should look to the [Fireworks and Pyrotechnic Articles \(Scotland\) Act 2022](#) and the [Consumer Rights Act 2015, Schedule 5](#) for “effective examples of regulatory powers”.³⁶
55. The response makes a number of detailed observations and recommendations for changes which it considers would enable the Regulations to be “enforced effectively”. These include:
 - Querying if enforcement officers will have the power to enter business premises to inspect vaping devices in a proactive way and not only when a complaint is received or there is another basis to suspect non-compliance.
 - Highlighting that trading standards officers are increasingly finding vapes being sold online or by people selling from home, and querying whether enforcement powers are sufficient to deal with these scenarios (under the regulations, enforcement officers’ powers to enter premises and make test purchases do not extend to private dwellings – Regulation 9(1)(a) and (j));
 - That the Regulations should enable enforcement officers to be accompanied by Environmental Health Officers when entering premises, or by a trainee officer.
 - That the Regulations should enable enforcement officers to obtain information from third parties as part of any investigation e.g. from a bank or a wholesaler,

in where that may be reasonably required as evidence.

56. SCOTSS also said that “enforcement of these regulations should be a statutory duty placed on local authorities to ensure consistent application across Scotland. If it is not, some councils may take the decision not to proactively enforce them”.³⁷ It said this could result in inconsistent approaches in different areas.
57. ASH Scotland supported views provided by SCOTSS and said they should be “fully taken on board ahead of the regulations being implemented”.³⁸ It said it agrees with the recommendations that the wording of this regulation should mirror terminology in the Fireworks and Pyrotechnics Articles (Scotland) Act 2022 to ensure that “any such persons may accompany an Authorised Officer entering premises, and the officer may take into the premises such equipment and personnel as they think is necessary”.³⁹ It also said that the powers available in Schedule 2 of the Fireworks and Pyrotechnics Articles (Scotland) Act 2002 should be adopted to empower trading standards teams to conduct proactive inspections.
58. Laura Young also raised the issue of how online retail (including sales and promotion through social media) would be dealt with.

Penalties for Non-Compliance

59. Regulation 4 provides that it is an offence for a person, in the course of business, to supply, offer to supply, or have in their possession for supply, single-use vapes. A person found guilty of an offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale and, on conviction on indictment, to a term of imprisonment not exceeding 2 years or a fine, or both.
60. Broadly, respondents considered the penalties to be appropriate. For example, Zero Waste Scotland said the penalties appear to be broadly in keeping with other powers using section 140 of the 1990 Environmental Protection Act. ACS said it supports the decision to introduce a level 5 fine, the maximum level which can be put forward against businesses engaging in illicit activity, to act as a strong deterrent.
61. However, a number of respondents queried whether there was also a need for a fixed penalty regime. The Policy Note does not indicate that Fixed Penalty Notices are (or will be made) available. However, section 16A of the Circular Economy Bill – when it comes into force – would enable Regulations made under section 140 of the Environmental Protection Act 1990 to provide for Fixed Penalty Notices.
62. Regarding fixed penalties, Zero Waste Scotland said “reflecting on learnings from the single-use plastics ban, it would perhaps have been useful to include an option for fixed penalty notices (FPNs). This would allow the relevant enforcement agency to issue fines at point of non-compliance if earlier enforcement activity was not heeded. This would also be beneficial in terms of providing an alternative to prosecution... particularly where the relevant enforcement agency considers offences to be minor in nature. We are aware the Circular Economy Bill included powers for local authorities to issue FPNs in relation to the supply of environmentally harmful items, which may be applicable to single-use vapes

offences in due course”.⁴⁰ ASH Scotland and SCOTSS also suggested fixed penalties be made available.

63. The SGF suggested there may be a need for a “period of pragmatic grace”⁴¹ when dealing with non-compliance issues initially, as after 1st April 2025 retailers may still be adjusting stock. The UKVIA raised concerns about the potential for prison sentences, stating “In our view, this is excessive and disproportionate...”⁴²
64. On the specific points raised by SCOTSS, Scottish Government officials confirmed that they had engaged with trading standards colleagues immediately after announcing the ban. These officials were closely involved in drafting the regulations and provided feedback throughout the process. The government also collaborated with the regulatory review group, which includes trading standards representatives, and continues to work with them to address any challenges related to the ban. They stated:
- ” We have regular and constructive dialogue with colleagues from trading standards about the impact on regulations and the demands that that will place on them. We recognise that there are competing demands caused by other regulations and that there are many pressures on the trading standards service and we are working with them and with other colleagues to understand those.”⁴³
65. On the use of fixed penalty notices, the Cabinet Secretary said that in addition to existing enforcement powers, the Circular Economy (Scotland) Act 2024 amended previous legislation to allow enforcement officers to issue fixed-penalty notices instead of pursuing prosecution. She stated:
- ” The shorter, sharper and more effective approach of fining—rather than prosecuting, using the whole court process—will be a lot more straightforward than some of the processes that we have had, and that might release a bit of capacity in the system.”⁴⁴
66. Scottish Government officials went on to say that “we are providing as many powers as possible and intend to bring in regulations for fixed-penalty notices.” And “as we move towards implementation, we will work with them to ensure that we have the right guidance and will engage with retailers to ensure understanding.”⁴⁵

Enforcement capacity and resourcing

67. With regards to the resourcing required to enforce the regulations, the BRIA states that the UK Government previously set out an intention as part of plans for the Tobacco and Vaping Bill to allocate £30 million of new funding a year. This was to be provided to bolster enforcement agencies, including Border Force and HM Revenue and Customs (HMRC), which would support enforcement in Scotland. However, the BRIA points out that the UK General Election has caused some uncertainty around funding for enforcement.
68. Table 4 of the BRIA sets out estimated enforcement costs for local authorities as £200,000 over 10 years.
69. The BRIA also highlights that “there may be the risk of the growth of an illicit market

- for single-use vapes. The illegal vape market already poses concern with issues such as banned ingredients, oversized tank sizes and exceeding legal nicotine strengths. It has been suggested that the illegal vape market could be comparable in size to the legal vape market”.⁴⁶
70. Most stakeholders agreed that properly resourced enforcement would be key, but some questioned whether the estimated costs for enforcement were adequate to meet the underlying policy objectives.
71. SCOTTS, for example, said that impact assessments “do not adequately address the resource implications for local authorities”.⁴⁷ A view that was shared with COSLA who said it is “concerned that councils will not be able to enforce these regulations”⁴⁸ and that the Scottish Government should provide Local Government with additional funding to meet costs. The SGF also highlighted that SCOTTS and Police Scotland resources are limited, and it had been informed that “no additional financial capacity to manage the ban has been made available”.⁴⁹ It called for a proactive approach to enforcement. Similarly, ACS said a survey it had carried out found “61% of Trading Standards officers did not feel they had sufficient resources to effectively enforce the vaping and tobacco market”.⁵⁰
72. A number of stakeholders also raised that there were already enforcement issues with regulations applying to the selling of vapes, such as underage sales. For example, Laura Young said, “a pitiful number of fines have been given out in comparison to the underage sales we know are happening across Scotland”.⁵¹
73. Related discussions regarding the ‘illicit trade’ of vapes in responses tended to cover two broad areas: first, the fact that there is existing, significant illicit trade in vapes that do not meet current standards, and second, that the ban on single-use vapes could spark a rise in illicit or ‘black market’ sales by rogue traders in person, in shops or online.
74. Zero Waste Scotland said it was difficult to predict the risk of increases in sales of illegal single-use vapes but said “we are aware the illegal vape market already poses concern with issues such as banned ingredients, oversized tank sizes and exceeding legal nicotine strengths”.⁵² The SGF said that “restrictions on disposable vapes will inevitably and significantly fuel illicit trade in cheap and unregulated products”.⁵³
75. SCOTSS said that there is already a substantial illegal market for disposable vapes, [citing 2023 estimates](#) that one-third of vapes sales are illegal, and this may increase in the face of a ban. To mitigate this risk, it said “the government must enhance cross-border coordination to prevent illegal product movement, in Scotland primarily through the Port of Cairnryan, where intelligence indicates that substantial quantities of vapes are entering unchecked via Northern Ireland and the EU from China”.⁵⁴ The UKVIA and IBVTA both raised that there needs to be a ban on the importation of single use vapes.
76. ASH Scotland said that whilst resourcing trading standards is vital for effective enforcement, “Claims about a rise in illicit are a well-worn tobacco industry opposition argument to health measures” and “research has demonstrated both that the prevalence of the illicit trade is consistently overstated by industry linked voices,

and that enforcement is the key to reducing it independent of health measures.”⁵⁵

77. The ACS said it had commissioned consumer polling to see how single-use vape users may respond to the ban, which indicated that: 24% will continue to source disposable vapes after the ban, 44% said they would switch to reusables, 20% said they would stop vaping and not use an alternative, 8% said they would switch to cigarettes and 4% said they would switch to a different nicotine product.

78. The Cabinet Secretary agreed that adequate enforcement of the regulations would be “absolutely crucial”.⁵⁶ The Cabinet Secretary emphasised the importance of clear communication with retailers about the implications of the ban. She further noted that:

” Twenty-nine of the 32 local authorities were supportive of the proposal. Their trading standards officers already have the powers to deal with any kind of illicit goods being sold, and these regulations add to that.

79. The Cabinet Secretary highlighted that there will likely be an initial period of increased enforcement activity following the ban, but this will taper off as single-use vapes are removed from circulation and retailers adjust. She also flagged that public reporting mechanisms will also be available to address any ongoing illegal sales.

80. Specifically on the matter of illicit sales online, the Cabinet Secretary clarified that online sales are subject to the same regulations as high street sales. If a UK-based business sells items online that are illegal, such as single-use vapes, it would be violating the law. This ensures that businesses within the UK must adhere to the same legal standards regardless of whether they operate online or in physical stores.

81. For online sales originating outside the UK, the Cabinet Secretary highlighted that the UK Government will provide additional funding to the Border Force and HMRC to address this issue. She stated that they anticipate that individuals may attempt to purchase single-use vapes from abroad, similar to how illegal goods such as dangerous weapons or pharmaceuticals are subject to customs searches. She said:

” Border Force and HMRC are alive to the fact that people might try to bring in single-use vapes from outwith the country by purchasing them online. Therefore, more resources will be put into those mechanisms at UK level.⁵⁷

Wider (Complementary) Measures

82. Several existing measures aim to ensure the responsible production and disposal of waste electrical and electronic items, including vapes. These include the Waste Electrical and Electronic Equipment Regulations 2013 (WEEE) and the Waste Batteries and Accumulators Regulations 2009.

83. The BRIA notes that only an estimated 17% of vape users across the UK correctly dispose of their single-use vapes. It states that in Scotland, about 12.8% of single-use vapes are returned to participating stores, and 8.3% are taken to household waste recycling centres. It also states that these figures may change as all vape

retailers have been required to provide in-store take-back from 1 January 2024. The BRIA also indicates that compliance with current WEEE regulations by vape producers is low, and the system does not ensure full cost recovery.

84. A number of stakeholders, particularly SEPA and Zero Waste Scotland said that wider measures were important to properly address the environmental impacts of all vapes. Key areas raised were the need for well enforced Extended Producer Responsibility (EPR) and increase of takeback schemes, better recycling infrastructure and investment in communications in support of the ban.
85. Zero Waste Scotland said that while the regulations, in combination with forthcoming WEEE EPR and packaging EPR reforms, should be sufficient in meeting the policy objectives, further consideration will be needed as part of a cohesive strategy, to ensure:
- Reusable vapes are genuinely reusable;
 - Sufficient take-back capacity is in place and that the correct infrastructure is established to manage refill accessory and packaging waste correctly.
 - Communications ahead of the ban make consumers aware of reusable and safe disposal options.
86. Similarly, SEPA said that wider measures needed to manage the environmental implications of vapes (including non-disposable vapes) in general include:
- Rapid growth in the number of accessible, visible vape recycling drop-off points.
 - Proper financing of genuine recycling to recover materials and manage fire risks.
 - Wider communication campaigns around vape recycling.
87. A number of stakeholders called for a communications campaign or plan, and for the regulatory framework around vapes to ensure that reusable or refillable elements were also safely disposed of and impacts managed.
88. The Scottish Youth Parliament also said that “young people should be involved in developing the communications to ensure they are effective at delivering key messages and accessible to young people”.⁵⁸ It also said:
- ” Existing communication around single-use disposable vapes has failed to effectively tackle the problem or minimise the environmental impact of them. For example, in the Single Use, Many Voices report 84% of young people who responded said they had not seen any information on where and how to recycle a single-use disposable vape.⁵⁹
89. A number of stakeholders raised that there was both insufficient takeback facilities for vapes and insufficient recycling capacity to deal with vapes. For example ASH Scotland said “Of the single-use vapes that are returned to a shop or recycling centre across the UK, it is estimated that only 1% are actually recycled due to limited recycling capacity.”⁶⁰

90. Zero Waste Scotland and SEPA both highlighted that plans to reform the producer responsibility system for WEEE have recently been consulted on by the UK Government. Proposals under review include creating a new separate categorisation for vapes to ensure producers fund disposal.
91. The ACS said that the convenience retail sector had been working to improve recycling infrastructure in stores so customers can return used vaping products, and that it had launched industry guidance on vape recycling.
92. On the interplay between these regulations and wider complementary measures like WEEE and EPR, Scottish Government officials noted that should the regulations be approved then the “interaction with the WEEE EPR falls away”⁶¹ as single-use vapes will be banned.
93. They did, however, note that EPR would still be relevant in the case of other vaping products and that the Scottish and UK Government had consulted on proposals to create a separate category for vaping products under EPR as they are more expensive to dispose of, and this may be subject to future regulatory reform.

Conclusion

94. Following the conclusion of evidence taking, the Cabinet Secretary moved motion [S6M-13568](#):

That the Net Zero, Energy and Transport Committee recommends that the Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024 [draft] be approved.

The motion was agreed to without debate or division.

The Net Zero, Energy and Transport Committee recommends that the Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024 [draft] be approved.

In recommending the instrument be approved, the committee acknowledges the compelling evidence of significant environmental challenges associated with the disposal of single-use vapes, which are incompatible with the Scottish Government's circular economy goals.

While the committee appreciates the efforts by both the Scottish and UK Governments to establish a suitable definition of single-use vapes, it emphasises stakeholder concerns that new product developments could undermine the ban if the 'disposability' culture is not addressed. Therefore, the committee concurs with the Scottish Government that this matter should be continuously reviewed as part of broader product stewardship policies.

The committee also agrees with stakeholders that ensuring the regulations are enforced is crucial, particularly to address the risks associated with online sales and non-retail environments.

Additionally, the committee stresses the importance of clear communication with the business and retail sectors. Recognising the potential benefits of aligning policies across the four nations, particularly to combat the illicit trade in single-use vapes, the committee requests regular updates from the Scottish Government on the progress of the UK-level ban, its timeline for introduction, and any potential impacts this might have on the ban being introduced in Scotland.

Net Zero, Energy and Transport Committee

Net Zero, Energy and Transport Committee report on the Environmental Protection (Single-Use Vapes) (Scotland) Regulations 2024 (draft), 10th Report, 2024 (Session 6)

- 1 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 22.](#)
- 2 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 25.](#)
- 3 [Zero Waste Scotland, written evidence, 16 August 2024](#)
- 4 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 23.](#)
- 5 [Keep Scotland Beautiful, written evidence, 16 August 2024](#)
- 6 [IBVTA, written evidence, 21 August 2024](#)
- 7 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 26.](#)
- 8 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 26.](#)
- 9 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 27.](#)
- 10 [SEPA, written evidence, 16 August 2024](#)
- 11 [Association of Convenience Stores, written evidence, 15 August 2024](#)
- 12 [Society of Chief Officers of Trading Standards in Scotland, 7 August 2024](#)
- 13 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 27.](#)
- 14 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 27.](#)
- 15 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 27.](#)
- 16 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 27.](#)
- 17 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 27.](#)
- 18 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 28.](#)
- 19 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 30.](#)
- 20 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 30.](#)
- 21 [Scottish Grocers' Federation, written evidence, 13 August 2024](#)

- 22 [Scottish Retail Consortium, written evidence, 20 August 2024](#)
- 23 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 31.](#)
- 24 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 35.](#)
- 25 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 35.](#)
- 26 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 36.](#)
- 27 [Zero Waste Scotland, written evidence, 16 August 2024](#)
- 28 [IBVTA, written evidence, 21 August 2024](#)
- 29 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 31.](#)
- 30 [Business and Regulatory Impact Assessment \(BRIA\) for the proposed prohibition on the sale and supply of single-use vapes in Scotland.](#)
- 31 [Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 18 June 2024](#)
- 32 [ASH Scotland, written evidence, 16 August 2024](#)
- 33 [Keep Scotland Beautiful, written evidence, 16 August 2024](#)
- 34 [Zero Waste Scotland, written evidence, 16 August 2024](#)
- 35 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 31.](#)
- 36 [Society of Chief Officers of Trading Standards in Scotland, 7 August 2024](#)
- 37 [Society of Chief Officers of Trading Standards in Scotland, 7 August 2024](#)
- 38 [ASH Scotland, written evidence, 16 August 2024](#)
- 39 [ASH Scotland, written evidence, 16 August 2024](#)
- 40 [Zero Waste Scotland, written evidence, 16 August 2024](#)
- 41 [Scottish Grocers' Federation, written evidence, 13 August 2024](#)
- 42 [UK Vaping Industry Association, written evidence, 23 August 2024](#)
- 43 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 35.](#)
- 44 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 31.](#)

Net Zero, Energy and Transport Committee

Net Zero, Energy and Transport Committee report on the Environmental Protection (Single-Use Vapes) (Scotland) Regulations 2024 (draft), 10th Report, 2024 (Session 6)

- 45 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 35.](#)
- 46 [Business and Regulatory Impact Assessment \(BRIA\) for the proposed prohibition on the sale and supply of single-use vapes in Scotland.](#)
- 47 [Society of Chief Officers of Trading Standards in Scotland, 7 August 2024](#)
- 48 [COSLA, written evidence, 16 August 2024](#)
- 49 [Society of Chief Officers of Trading Standards in Scotland, 7 August 2024](#)
- 50 [Association of Convenience Stores, written evidence, 15 August 2024](#)
- 51 [Laura Young, Less Waste Laura, written evidence, 19 August 2024](#)
- 52 [Zero Waste Scotland, written evidence, 16 August 2024](#)
- 53 [Scottish Grocers' Federation, written evidence, 13 August 2024](#)
- 54 [Society of Chief Officers of Trading Standards in Scotland, 7 August 2024](#)
- 55 [ASH Scotland, written evidence, 16 August 2024](#)
- 56 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 33.](#)
- 57 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 33.](#)
- 58 [Scottish Youth Parliament, written evidence, 16 August 2024](#)
- 59 [Scottish Youth Parliament, written evidence, 16 August 2024](#)
- 60 [ASH Scotland, written evidence, 16 August 2024](#)
- 61 [Net Zero, Energy and Transport Committee. Official Report, 3 September 2024, col 33.](#)

