



appg

The All Party Parliamentary Group for E-Cigarettes

State of the Vaping Nation





Contents

3	Foreword
4	Introduction
5	Recommendations
6	The public health debate
8	Professor Peter Hajek, Queen Mary University
9	Louise Ross, Leicester City Council
10	Andrew Allison, Freedom Association
11	Professor Linda Bauld, University of Stirling and UK Centre for Tobacco and Alcohol Studies
12	The regulatory environment
13	Brandon Cook, Trading Standards
14	Brexit and the future
15	Doug Mutter, UK Vaping Industry Association
16	Ian Green, Independent British Vape Trade Association
17	Sarah Jakes, New Nicotine Alliance
18	About the APPG for e-cigarettes
19	References

Foreword



Amongst the headlines and public debate it is easy to forget that vaping products, or e-cigarettes as many were originally called, have been with us for less than a decade. Not long in the grand scheme of things - but long enough for approximately 2.9 million smokers and former-smokers in the UK to have taken up vaping.

Alongside these impressive growth statistics, we are seeing mounting evidence from respected and leading health organisations which show that vaping is significantly less harmful than smoking to our health – indeed at least as much as 95% according to Public Health England. Furthermore, recent Office of National Statistics data highlights that use of tobacco products continues to fall from 20.1% of UK adults in 2010 to 15.8% in 2016.

Whilst this is all good news, why do more people in the UK now believe that vaping is as harmful as smoking? Today, only just over 1 in 10 (13%) people understand the relative risk of vaping versus smoking compared to nearly 1 in 5 (21%) four years ago.

The positive public health message of vaping compared to smoking is clearly failing to get across to the seven million remaining smokers in the UK. This requires urgent attention. At the moment we run the risk of not fully exploiting the public health potential of vaping, which our leading health bodies and consumer groups have identified through their respective studies.

There is no doubt that the current mixed messages surrounding vaping are creating a confusing picture; not just for consumers, but also for policy makers and regulators who are supposed to find balance in the cacophony of competing views. Rightly, no one likes to take risks when it comes to people's health.

The Government's recently published new Tobacco Control Plan was a welcome intervention into this debate; containing commitments that Public Health England will include e-cigarettes as a switching tool within its stop smoking campaigns and to review some of the existing regulation around vaping. It is crucial that progress is made to deliver these commitments urgently. The recent 'Stoptober' campaign is a welcome start, but this type of action needs to happen throughout the year not just in one month.

This All Party Parliamentary Group was formed not only as a forum to inform parliamentarians on this fast moving area, but also to provide the vehicle to bring together different stakeholders, including public health bodies, the industry, the vaping community, and regulators.

By bringing these groups together, we hope to navigate a complex arena that could, if regulated correctly, help address one of our country's most intransigent health problems – smoking related illnesses. This is the first in a series of reports designed to educate and inform parliamentarians in an area of consumer policy that affects many thousands of people in the UK.

Mark Pawsey MP
Chairman of the APPG for e-cigarettes



Introduction

The All-Party Parliamentary Group (APPG for e-cigarettes) was formed to explore the most appropriate parliamentary and regulatory response to e-cigarettes (vaping products) and to increase understanding amongst policy makers regarding e-cigarettes and related public policy questions.

The APPG is leading a number of sessions as part of evidence gathering to build a picture of this fast moving policy area and consumer goods sector. Not only do these products, and the policies that surround them, directly impact the public but they also significantly affect our economy in terms of the jobs and investment they represent, as well as the potential health opportunity they present.

The UK vaping industry has been developing rapidly since the first products began entering the market in the late 2000s.¹ Whilst the early innovation was driven by entrepreneurial small and medium sized enterprises who responded very rapidly to the huge demand from smokers for less harmful alternatives to cigarettes, the market has rapidly grown into a sector which now includes major manufacturers, research and development scientists, ancillary service providers such as labelling or packaging and a nation-wide distribution network. Alongside the emergence of major vaping-only brands in the last ten years, the UK's four major cigarette companies together with the pharmaceutical sector have all invested considerably in the sector.

This growing sophistication of the marketplace is further reflected in the constant innovation of new products – from the early 'cigalike' models to second generation batteries and tanks, and now the latest products that enable self-assembly with a range of e-liquids, tanks, atomisers and batteries. Sales channels have evolved quickly too; from small racks on corner shop counters to supermarket aisles and specialist shops, as well as the rapidly developing online retail market.

Consequently in the UK, the sector has experienced meteoric growth with retail sales making vaping one of the fastest growing consumer goods sectors this century. A recent analysis suggested that the global market for vaping products could be as much as £25 billion by 2021.²

There is no doubt that vaping is working as a successful alternative to many smokers who would otherwise have given up or reduced their habit. There are now 2.9 million vapers with more than half describing themselves as former smokers.³ The value of the health gains associated with a single successful quit attempt is £74,000 according to the Medicines and Healthcare products Regulatory Agency (MHRA).⁴

The Department of Health has recently acknowledged the public health potential of vaping in the new Tobacco Control Plan, which made two relevant commitments:

- Public Health England will update their evidence report on e-cigarettes annually until the end of the current Parliament in 2022 and include messages about the relative safety of e-cigarettes within stop smoking campaigns.⁵
- The Department of Health will review where the UK's exit from the EU offers opportunities to review current regulations to identify where the UK can sensibly deregulate and will assess legislation including the Tobacco Products Directive as it applies to e-cigarettes.⁶

These are two very welcome commitments, and it is in this context that the report seeks to explore the policy landscape. It is crucial that policy makers can ensure that future regulatory frameworks are proportionate and evidence based, and not unnecessarily or inappropriately inhibitive to an industry that can play a real role in mitigating the harmful and costly effects of smoking. Equally the group has sought to highlight the real value in much of the existing regulation that provide a very sensible safeguard to the consumers using these devices.

Recommendations

The Group has made a number of recommendations to Government and will be taking these recommendations forward with the relevant departments and agencies.

1. The Government and public health bodies should immediately start a continuous programme to accurately communicate the positive public health message of vaping to the remaining seven million smokers in the UK.

The Tobacco Control Plan contains a welcome commitment that Public Health England will include messages about the relative safety of e-cigarettes within stop smoking campaigns. The 'Stoptober' campaign is a welcome start to the process, but this campaign must take place every month not just once a year. At the moment the public continue to receive mixed and confusing messages from the media, regulators, government bodies and other stakeholders on whether vaping is or is not less harmful for them than smoking, and on where they can and cannot vape.

4. Trading Standards must ensure that current vaping regulations, particularly the product standards of the Tobacco Products Directive, are consistently and rigorously enforced.

The vaping industry has invested over six million pounds to conform with the regulations. There is a real risk that inconsistent enforcement and compliance could lead to a perception that more draconian regulations are required. This would severely compromise the impact that vaping could have on the health of the nation.

2. The APPG calls upon the Government to urgently deliver the commitment in the Tobacco Control Plan to review vaping regulation, in particular the disproportionate aspects of Article 20 of the EU's Tobacco Products Directive that effectively put vaping in the same bracket as smoking.

There is a need for a new regulatory framework that better reflects the UK's public health priorities and takes into account the mounting scientific evidence base around vaping. For example, the Government should review advertising regulation in this area, as vaping products cannot currently cite health related claims such as Public Health England's 95% less harmful statistic.

5. The Government should review and consider the steps taken by devolved authorities in Scotland and Wales to develop the enforcement powers of regulators.

For example, the requirement that retailers selling vaping products sign up to a register and the power to impose a ban on retailers that fail to correctly register.

3. The APPG recommends that the Government adopts a wider collaborative approach to policy creation involving all stakeholders including the regulators, scientific and public health experts and the industry.

The Government recently tasked Cancer Research UK and the UK Centre for Tobacco and Alcohol Studies to set up a forum to discuss emerging evidence and research opportunities around vaping. This is welcome. However, it is crucial that the industry is also involved to ensure that all parties can understand their respective issues and concerns and act upon them. The Government's welcome commitment to reviewing Article 20 of the Tobacco Products Directive and exploring opportunities to sensible deregulate will only be effective if the industry input is sought throughout the process.

The public health debate

Our All-Party Group has taken evidence from a number of stakeholders from the public health community and vaping industry. In December 2016, we took evidence from Public Health England, Cancer Research UK, leading smoking cessation academic Professor Peter Hajek, as well as the Department of Health and the Medicines and Healthcare products Regulatory Authority (MHRA).

The evidence we have taken to date highlights a number of important issues in relation to vaping research, perception and the resulting policies:

1. In the first instance, there is a clear and alarming disconnect between the public statements of many in the health community that vaping is a positive intervention (e.g. 95% less harmful), and public perceptions that vaping is as bad as smoking.
2. There is also significant debate around the conclusions and quality of many recent pieces of scientific research into vaping products and their impact on public health.
3. Concerns around a perceived appeal of vaping products to the young and never-smokers, versus any actual evidence of their uptake.
4. There are also questions around the proportionality of regulations towards a product that many see as no more harmful than alcohol, caffeine or even many other licensed products.

“The hazard to health arising from long-term vapour inhalation from the e-cigarettes available today is unlikely to exceed 5% of the harm from smoking tobacco.”

In September 2015, thirteen organisations, including Public Health England and Cancer Research UK signed a joint statement on vaping.⁷ This statement advocated the public health opportunity presented by smokers moving to vaping products. This was again ratified in July 2016.⁸ In April 2016 the Royal College of Physicians published a report called Nicotine without smoke: Tobacco harm reduction. In that report they found that “the hazard to health arising from long-term vapour inhalation from the e-cigarettes available today is unlikely to exceed 5% of the harm from smoking tobacco.”⁹ In April 2017 the Royal Society for Public Health called for all local stop smoking services to become “e-cigarette friendly.”¹⁰

Yet despite these positive statements from our country’s leading health bodies, the public perception that vaping is as bad for health as smoking has actually increased. According to Action on Smoking and Health (ASH) between 2013 and 2017 the perception of harm from vaping products has increased. They state that the public and smokers are increasingly failing to recognise that vaping is less harmful than smoking – “Public perceptions of harm from e-cigarettes remain inaccurate with only 13% accurately understanding in 2017 that e-cigarettes are a lot less harmful than smoking.

Among smokers perceptions are also getting worse with only 20% accurately believing in 2017 that e-cigarettes are a lot less harmful than smoking compared with 31% in 2015.”¹¹

Our Group was told that this increasingly negative perception is in large part fuelled by the media headlines that often surround vaping products. In particular, our public health witnesses highlighted alarmist headlines often generated off the back of pieces of research with dubious credentials and a lack of scientific rigour. Professor Hajek was keen to highlight to us that many of the research pieces that made the headlines were often sensationalist, based on short-term data or unrealistic circumstances and in many cases did not compare vaping with smoking. He was concerned that these negative headlines were putting off smokers who could really benefit from a switch to vaping.

“Cancer Research UK, for example, described how there has been a traditionally hard to reach segment of smokers on which vaping products seem to have been uniquely effective.”

None of our public health witnesses were suggesting that non-smokers should be encouraged to use vaping products. They did however highlight that the UK was a leader in ‘harm-reduction’ health policy, and encouraging the switch to vaping products for smokers was a demonstration of the effectiveness of this policy. Cancer Research UK, for example, described how there has been a traditionally hard to reach segment of smokers on which vaping products seem to have been uniquely effective.

Indeed, not long after our Group met with Cancer Research UK, they released the findings of one of the first long-term clinical studies of the effects of vaping on people who had switched from smoking to vaping, or vaped whilst still smoking.¹² Their research found that levels of cancer-causing chemicals and other toxins were substantially reduced in vaping users compared to tobacco cigarette smokers and were comparable to the levels found in long-term users of nicotine replacement therapy products.¹³

Equally, the cross-party group heard from public health witnesses that there was no evidence of statistically significant uptake of vaping products from under-18s and non-smokers in the UK. This was despite several media stories reporting American research suggesting that vaping could have a ‘gateway’ effect on the young to either take up smoking or nicotine consumption (having not been smokers previously).¹⁴

Many smokers have so far displayed a huge vote of confidence in vaping; figures from the Office of National Statistics show that over 2.9 million people have now embraced vaping.¹⁵ In addition, research by ASH demonstrates that in 2017, for the first time, there are more ex-smokers (1.5 million) using vaping products than current smokers (1.3 million).¹⁶

However, recent research by Mintel indicated that the number of people using vaping as a tool for smoking cessation has started to decline.¹⁷ It is unsurprising that, in this climate of contradictory headlines, consumers have either opted to stick with 'better the devil you know' (smoking) or opt for potentially less effective methods of cessation such as 'cold turkey'.

“The value of the health gains associated with a single successful quit attempt is £74,000 according to the MHRA.¹⁹ Even applying simple arithmetic shows that the smokers who have switched to vaping, and no longer smoke, already represent savings to the UK of more than £111 billion.”

Smoking represents huge costs to our health and social services, estimated at £3.1 billion a year, in addition to further billions of projected costs to the economy.¹⁸ The value of the health gains associated with a single successful quit attempt is £74,000 according to the MHRA.¹⁹ Even applying simple arithmetic shows that the smokers who have switched to vaping, and no longer smoke, already represent savings to the UK of more than £111 billion.²⁰ This represents a massive public health opportunity.

This Group is concerned that the policy regime does not appropriately reflect the potential public health benefit, or at least has the potential to become detrimental in the near future if not dealt with effectively and urgently. This issue was borne out by evidence the Group received from The Freedom Association (TFA) that found that 87% of councils have the same policy on staff vaping as they do on smoking, and that 29% of councils require e-cigarette users to vape in designated smoking shelters.²¹ We also heard of inconsistent approaches to vaping from private establishments, such as pubs and restaurants, on whether vaping was allowed or not.

Advertising regulations in this area serve to demonstrate the complications for consumers and industry. For example, Nicotine Replacement Therapies (NRT) such as nicotine patches and inhalers can be advertised on television – vaping products cannot do so without a medical licence.²²

Former Public Health Minister, Nicola Blackwood, publicly recognised the potential public health intervention that vaping represents, stating in October 2016 “it is notable that one of the most significant disruptions to smoking in recent years has had nothing to do with Government intervention. We have seen considerable take-up of e-cigarettes in the UK, and we know that almost half of the 2.8 million current users are no longer smoking tobacco. We need to continue to embrace developments that have the potential to reduce the burden of disease caused by tobacco use.”²³

“87% of councils have the same policy on staff vaping as they do on smoking, and that 29% of councils require e-cigarette users to vape in designated smoking shelters.”

The support from the former Public Health Minister has been reflected in the Department of Health's Tobacco Control Plan, published in July 2017. The Plan acknowledges that “the evidence is increasingly clear that e-cigarettes are significantly less harmful to health than smoking tobacco” and contains two commitments to reflect this public health position:

- Public Health England will update their evidence report on e-cigarettes annually until the end of the current Parliament in 2022 and will include messages about the relative safety of e-cigarettes within stop smoking campaigns.²⁴ These messages have already started to feature in Public Health England's Stoptober campaign.
- The Department of Health will review where the UK's exit from the EU offers opportunities to review current regulations to identify where the UK can sensibly deregulate and assess legislation including the Tobacco Products Directive as it applies to e-cigarettes.²⁵

“The public are receiving mixed messages from the media, regulators, government bodies and other stakeholders on where they can and cannot vape, and whether it is or is not better for them than smoking.”

The evidence presented to the Group was clear that the public are receiving mixed messages from the media, regulators, government bodies and other stakeholders on where they can and cannot vape, and whether it is or is not better for them than smoking. This ambiguity in itself represents a significant missed public health opportunity. In addition to the commitments in the Tobacco Control Plan, the Group heard from Public Health England that they were now beginning a process of educating local councils on their current advice. This needs to happen as a matter of urgency.

It is clear that the regulations that surround vaping may be disproportionate when compared to the relative risk they pose and the relative benefit they present when compared to smoking. There is also a serious risk of unintended consequences. For example, as vapers are no longer able to purchase high nicotine strength liquids following the introduction of the Tobacco Products Directive they may return to smoking.

The evidence we have taken from industry representatives and health agencies clearly suggests that the UK's imminent departure from the EU represents an opportunity to re-examine the regulatory framework that underpins this sector – Article 20 of the EU Tobacco Product Directive.²⁶ The Group was pleased to see that this was acknowledged in the Tobacco Control Plan. This is an issue discussed later in the Report and that the APPG will be revisiting in the near future.

Public health perspectives



Professor Peter Hajek

“There is an urgent need to counteract the current wave of misinformation”

Peter Hajek is Professor of Clinical Psychology, Head of Psychology and Director of the Health and Lifestyle Research Unit at the Wolfson Institute of Preventative Medicine and Queen Mary University of London.

One of the problems the public health community is facing concerns the misleading portrayal of vaping by the media and by some anti-vaping activists.

Evidence is accumulating that vaping is unlikely to pose more than a small fraction of the risks of smoking, that it is helping large numbers of smokers to quit, that it holds no attraction for non-smokers who rarely progress beyond trying e-cigarettes once or twice, and that the prevalence of smoking, including the prevalence of smoking in young people, has been declining at an unprecedented rate.

At the same time, an increasing proportion of smokers believe that vaping is as dangerous as smoking, and misinformed health professionals and regulators continue to believe that e-cigarettes lure children to smoking.

The misinformation is based on several standard and repeated ‘tricks’. Some are elaborate and cannot be explained in a few sentences, but most are simple:

- Any presence of chemicals is interpreted as posing a danger even if the levels are negligible with no possible impact on human health.
- Results achieved with exposing cells and animals to large concentrations of potential toxins are presented as if this was relevant to human vaping, while comparisons to cigarette smoke, which is invariably much more toxic under the same conditions, are avoided.
- One-off trials of e-cigarettes by youths are presented as ‘regular use’; and the fact that the same types of adolescents try both e-cigarettes and conventional cigarettes is presented as a proof that vaping leads to smoking.

This type of ‘dirty campaigning’ has heavily influenced European regulators. The new EU Tobacco Products directive is hostile to vaping and regulates e-cigarettes much more strictly than conventional cigarettes. Even more alarmingly, the assertions on risks are also putting smokers off the switch to vaping.

There is an urgent need to counteract the current wave of misinformation. One possible approach could be an authoritative information campaign, including adverts in tabloids that are most often read by smokers, and that are most active in misinforming them.



Louise Ross

“I hope the UK continues to lead the world in sensible policy-making on e-cigarettes”

Louise Ross is the Stop Smoking Service Manager for Leicester City Council. She has worked in smoking cessation and tobacco control for ten years.

Leicester City Council was the first stop smoking service to go 'e-cigarette-friendly', and I have been pleased to share our experiences with this group.

We first began incorporating vaping into our usual offer (stop smoking medications combined with behavioural support) in March 2014. Since then we have seen consistently higher success rates with a combination of vaping and nicotine replacement therapy (NRT). Of the people who used NRT alone, around 45% quit at four weeks. However, of the people used e-cigarettes, with or without NRT, around 65% quit smoking after four weeks.

Our core team advisors are confident about giving advice about e-cigarettes to those who want to stop smoking, and they advise the use, not of ineffective cigalikes, but of better delivery second generation devices (vaporisers).

We have contributed to the National Centre for Smoking Cessation and Training (NCSCT) document that advises on e-cigarette use and we have spoken at many events and conferences to share lessons learned, in order to bring knowledge and confidence to others whose priority is to help people stop smoking.²⁷ We do not push people to stop using clean inhaled nicotine, believing that the continued use of a vaporiser can act as a protective factor against relapsing to smoking.

We are concerned that aspects of the Tobacco Products Directive work against helping people to stop smoking, by making life for vapers more difficult (sub-optimal strength nicotine, small bottles, small tanks) and by preventing positive messages being shared among those who have been frightened off vaping by a hostile propaganda war.

Our next step will be to start supplying a free starter kit to our service users as standard practice from selected community pharmacies. The aim of this is to increase our reach among low-income communities, particularly those with poor mental health, who smoke the most and die of smoking related diseases in far greater numbers than the general population.²⁸

I want to thank Mark Pawsey MP for his stewardship of this Group, and I hope the UK continues to lead the world in sensible policy-making on e-cigarettes.



Andrew Allison

“Advice from Public Health England is needed as councils are woefully ignorant of the latest research and facts”

Andrew Allison is Campaign Manager for the Freedom Association. The Freedom Association is a libertarian, non-partisan campaign group.

In the first report of its kind, last year The Freedom Association’s ‘Freedom to Vape’ campaign asked every council in the UK what its policies are on staff using e-cigarettes.²⁹ Using freedom of information requests, all UK councils (district, county, unitary, metropolitan, London boroughs, and the City of London Corporation) were asked if their policies on vaping differed from those on smoking; if they allowed vaping in the workplace; and if e-cigarette users were required to vape in designated smoking shelters.

The key findings of the report were that 112 councils (29% of those who responded) require vapers to use designated smoking areas in all or some circumstances. 335 councils (87% of those who responded) have the same (or effectively the same) policy on vaping as they do on smoking. Just one council - the London Borough of Enfield - allows vaping indoors and actively encourages staff to vape instead of smoking combustible tobacco, in line with recommendations from Public Health England (PHE) and the Royal College of Physicians. Three other councils (Belfast, Chiltern and South Bucks) allow vaping at desks; however, they do so because currently there isn’t a policy in place.

I met with Professor Kevin Fenton, of Public Health England, and urged him to encourage councils to become more vape friendly. He agreed that this should happen. As can be seen from the evidence above, advice from Public Health England is needed as councils are woefully ignorant of the latest research and facts.

We are calling on all councils to review their vaping policies in-line with the recommendations of Public Health England. Those councils who currently require vapers to vape in designated smoking areas should now immediately change their policies, and all councils should know some form of indoor vaping based on the current evidence that indoor vaping does not constitute a risk to public health.





Professor Linda Bauld

“We need to at least begin to answer some key questions in order to develop a proportionate and suitable policy framework for e-cigarettes that maximises benefits while reducing any risks”

Linda Bauld is Professor of Health Policy at the University of Stirling, and Deputy Director of the UK Centre for Tobacco and Alcohol Studies.

When developing new regulatory frameworks, policy makers often draw on research to guide them in developing effective policy. There is a large body of evidence around tobacco – we know the health harms, we know the impact of marketing, for example, and we know it is the biggest cause of cancer in the UK. Evidence-based tobacco control policy in the UK has directly contributed to declines in tobacco consumption over the past sixty years.

Much less is known about e-cigarettes. How do we regulate products that have been on the UK market for less than a decade, about which a substantial body of evidence does not exist? We need to at least begin to answer some key questions in order to develop a proportionate and suitable policy framework for e-cigarettes that maximises benefits while reducing any risks.

For example, are children and non-smokers using these products? Current statistics show people who use e-cigarettes regularly are almost entirely confined to smokers and ex-smokers, but regular monitoring is needed to track trends over time. Are they effective in helping people to stop smoking tobacco? Early evidence suggests yes, but we need more information, including what kinds of devices are the most effective. And what are the health implications? It is largely accepted by Public Health England, the Royal College of Physicians and the many in the research community that e-cigarettes are far safer than smoking, but research is needed on the long-term health impacts.

It is essential to coordinate a strategic approach to gathering this evidence. We must identify the questions, identify suitable research methods, assemble teams with appropriate expertise, and carry out the research in a swift and thorough manner. The UK E-Cigarette Research Forum (UKECRF) was set up as a partnership between Cancer Research UK, Public Health England and the UK Centre for Tobacco and Alcohol Studies. It brings together policy-makers, researchers, practitioners and the NGO community working in this field. The purpose is to discuss the emerging evidence, identify knowledge gaps, inform policy and practice, build capacity amongst early career researchers, and generate ideas for new studies. To date, this Forum has proved instrumental in developing evidence that will inform policy in the UK now and in the future.

The regulatory environment

Article 20 of the Tobacco Products Directive (“TPD”) is the first piece of EU legislation that includes specific regulations for vaping products, including e-cigarettes. Since 20 May 2017, all products sold to consumers in the UK must be fully compliant with the TPD.

The TPD specifies how vaping products can be sold, presented and manufactured. In particular, the TPD introduces new rules which set minimum standards for the safety and quality of all e-cigarettes and refill containers (otherwise known as e-liquids) and minimum requirements for information that should be provided to consumers. The regulations also introduce requirements for producers of vaping products and refill containers that apply to any manufacturer, importer, or branded seller of vaping products. Producers were required to submit information about their products to the Medicines & Healthcare Products Regulatory Agency (MHRA). Retailers are now only able to sell TPD compliant products following the 20 May 2017 deadline. Beryl Keeley, E-Cigarette Regulatory Lead at the MHRA confirmed that her agency received a huge 40,000 notifications of different vaping products before the deadline.

Trading Standards is responsible for ensuring compliance with the regulations. In March 2017, the All-Party Group met to discuss the impending enforcement date for the TPD regulations with industry experts and representatives from Trading Standards. The discussion focussed on the approach to enforcement of the new regulations, and whether those regulations are fit for purpose.

We heard from industry representatives (UK Vaping Industry Association [UKVIA]) about the significant investment that the vaping industry has made to meet the requirements of the TPD. What was clear was that the majority of the industry had been working hard to achieve compliance with these regulations and was looking for assurances that Trading Standards would work as hard as possible to keep non-compliant products out of the market.

Brandon Cook, a representative of the Chartered Institute of Trading Standards, set out to the Group the approach that Trading Standards will be adopting when enforcing the TPD:

- Trading Standards operatives are employed by local authorities for each local authority area.
- The compliance with regulations by the industry often depends on the type of outlet; for example, off-licenses are very familiar with Challenge 25 policy, whereas independent vape shops or small e-cigarette outlets may not be.
- Trading Standards want to work with retailers and the industry before taking any enforcement action. The initial approach to be taken was described as “softly, softly.”

“The professional vaping industry has gone to great lengths and great expense to ensure conformity with the new regulations.”

There was some concern expressed from industry groups regarding the use of a ‘softly, softly’ approach by Trading Standards. In particular, it was highlighted that the professional vaping industry has gone to great lengths and great expense

to ensure conformity with the new regulations. Therefore they were calling for assurances that those regulations will be enforced – and that those who do not play by the rules would be appropriately brought into line.

“To be effective, regulations must be enforced correctly and consistently across the country, or they risk being devalued entirely.”

The industry bodies explained that a lack of enforcement represented a potential waste of its money (in terms of achieving compliance with new stock), and could lead to further more draconian regulation in future.

The Group recognises these concerns. It is surely in the interest of the entire vaping community that there are regulations in place that ensure the quality of products and protect consumers – but to be effective, regulations must be enforced correctly and consistently across the country, or they risk being devalued entirely.

Trading Standards emphasised that officers would always seize products that they found to be not compliant with regulations. However, the number of prosecutions for noncompliance could vary between authorities as Trading Standards operate on a local approach. It was accepted that developing a constructive dialogue between industry and the regulators will ensure that the industry is as compliant as possible, and all pulling in the same direction.

Further to this, the Group welcomes the Former Public Health Minister’s announcement that Public Health England are partnering with “Cancer Research UK and the UK Centre for Tobacco and Alcohol Studies to develop a forum that brings together policy makers, researchers, practitioners and the non-governmental organisation representatives to discuss the emerging evidence, identify research priorities and generate ideas for new research projects, thereby enhancing collaboration between forum participants.”³⁰ However, on the initial information available, it appears this forum is going to be largely focussed on the health impact of vaping products, rather than addressing the regulatory environment and the enforcement and impact of existing regulations.

For example, the forum does not appear to be considering the impact of the TPD on smoking rates. We would urge the Government to consider either extending the scope of the forum into this policy area, or consider creating a similar forum between Trading Standards, MHRA and the vaping industry to discuss and review the enforcement and effectiveness of existing regulations.

In addition, our Group took evidence that, despite the introduction of the new regulations, Trading Standards do not have commensurate new powers to take enforcement action. For example, although Trading Standards have the power to take action against company directors, there is no ability to force a non-compliant company to stop trading. There was consensus that enhancing the enforcement powers of regulators could be a positive step in future. For example, in Scotland there is a register for retailers selling vaping products and regulators have the power to impose a ban on retailers that fail to correctly register.³¹ The Welsh Government has now passed legislation implementing a similar regime.³²

A regulator's perspective



Brandon Cook

“If in doubt any business involved in the supply chain should seek help from their local trading standards service who will be able to provide expert advice”

Brandon Cook is a Trading Standards Manager at Staffordshire County Council and the Trading Standards Lead Officer for age-restricted sales.

The new, European led legislation is now fully in force adding further regulation to control the sale and supply of vaping products. In brief the legislation stipulates:

- Child resistant/ tamper evident packaging is required for liquids and devices
- The device must be protected against breakage and leakage and capable of being refilled without leakage
- Devices must deliver a consistent dose of nicotine under normal conditions
- Tank and cartridge sizes must be no more than 2ml in volume and nicotine strengths of liquids must be no more than 20mg/ml.

In addition, packaging must bear warnings and there is still the age restriction for supply of 18.

Trading Standards Officers carry the responsibility for enforcing the regulation with the Medicines and Healthcare products Regulatory Agency dealing with higher strength products. Local authorities are governed by the Regulators Code which encourages business advice to ensure compliance and enforcement when the advice is not heeded.

Typically, the advice is targeted at manufacturers and importers with each local authority working with companies in its geographical area. Unsafe products are also intercepted at the ports of entry by teams of Border Force and Trading Standards Officers. At retail level, high street or virtual, there is a responsibility to comply with legislation, but clearly the retailer has no design or manufacturing control. Businesses are advised to source stock from reputable suppliers, keep all paperwork and invoices and keep abreast of changes in the law. It is a good idea to join a trade association to provide this support. Ignorance of legislation will never be a defence.

Officers coming across offending articles in the supply chain will have a number of choices and actions taken will be determined on a case by case basis according to the facts. For example, products could be seized with a view to investigation, perhaps after testing a sample for non compliance. Some non compliances may be obvious without testing and a possible solution could be signing infringing products over to the local authority for destruction. In instances where the issue could be rectified an officer may issue a suspension notice preventing further supply until resolved. If the issue is labelling then new packaging might be the answer.

If in doubt any business involved in the supply chain should seek help from their local trading standards service who will be able to provide expert advice.

Brexit and the future

The evidence our Group has taken from elements of the vaping industry, regulators who oversee it, and other health bodies, demonstrates a clear recognition of the positive role that vaping products can play in public health. There was also a consensus that the sector requires evidence based, effective regulation.

“The current regulations, in particular Article 20 of the TPD, do not reflect the positive public health potential of vaping and are inconsistent when compared with other similar products.”

However, what was also made clear to our Group is that the current regulations, in particular Article 20 of the TPD, do not reflect the positive public health potential of vaping and are inconsistent when compared with other similar products.

The Tobacco Control Plan published by the Government in July 2017 contains a commitment to review where the UK's departure from the European Union provides an opportunity review the Tobacco Products Directive as it applies to e-cigarettes and to identify areas in which the UK could sensibly deregulate.³⁴

This commitment is welcomed by the Group. The UK's pending departure from the EU is of course an opportunity for the UK to create its own bespoke regulatory framework that may better reflect our country's public health aims on smoking cessation. It should:

- Make a clear distinction between vaping and smoking
- Demonstrate policies based on evidence of harm to bystanders
- Show awareness about the need to manage risks of uptake by children and young people
- Support smokers to stop smoking and stay smokefree
- Advocate compliance with smokefree law and policies

“There is a need to ensure that the Government acts upon the commitment in the Tobacco Control Plan and remains fully engaged in creating a proportionate and evidence-based bespoke regulatory environment.”

There is a need to ensure that the Government acts upon the commitment in the Tobacco Control Plan and remains fully engaged in creating a proportionate and evidence-based bespoke regulatory environment that allows the vaping industry to continue to innovate.

A crucial part of a new regulatory regime will be creating a culture of collaboration both within the industry itself and between Government and other regulators that oversee it. To date that has not been happening effectively enough. Support in engaging a more nationally consistent framework would assist the industry in moving forward. The industry wants to engage with regulators and policy makers to get policies right and should be provided with forums to do so. This would increase consumer confidence in the category, which would in turn see more smokers use vaping as a means to give up smoking.

As the Government has acknowledged in the Tobacco Control Plan, the UK's exit from the EU is an opportunity to reshape many of the regulations that have previously been out of their control. This Group will be exploring ways to seize this moment for public health. A new regulatory framework would renew the UK's leadership in the vaping sector, drive an economically vibrant industry, and further this important public health intervention and our country's harm-reduction policies.

The Group will continue to engage with policy makers, the industry and research community, to explore what a new framework could look like, so that we can make appropriate recommendations to Government.



Industry perspectives



Doug Mutter

“Brexit could be the golden opportunity to do things better, and in our own way, reflecting our country’s health priorities”

Doug Mutter is the head of manufacturing & compliance at Vaporized, and a board member of the UK Vaping Industry Association (UKVIA). The UKVIA represents the largest market share of the vaping industry in the UK and is the Secretariat to the APPG for E-Cigarettes.

The Tobacco Products Directive (TPD) is an extensive piece of EU legislation, comprising reams of regulation on tobacco products. However, outside the industry, it is not widely understood that the Directive also impacts heavily on vaping products, despite the fact they do not contain tobacco.

The UK Vaping Industry Association (UKVIA) is not against regulation. We recognise there are some sensible measures in the TPD. For example, it provides clarity to vapers on quality and safety issues, and reassures them that they are purchasing high quality products that adhere to strict safety specifications. Manufacturers have invested over £40 million in their products to ensure compliance, which demonstrates our commitment to and ambitions for a market already estimated to be worth well over £900 million in sales.

But that does not mean we should shy away from calling out ill-conceived regulation when we see it. Smokers who want to switch to vaping should not be faced with unnecessary hurdles that may hinder their transition. For example, arbitrary restrictions on liquid strengths and e-liquid bottle sizes, and advertising bans akin to those for tobacco products make little or no sense from a public health perspective.

In meetings of the APPG for E-Cigarettes, we have been discussing the challenges faced by the industry with MPs, representatives from Trading Standards and industry colleagues. The industry has invested heavily in making sure all products comply with these new regulations, and we stand ready to support any part of the industry that is struggling. That’s why organisations, like my own, formed the UKVIA; so that the sector can work together and we will continue to do so. As for the second question, Trading Standards is a stretched organisation under pressure. It will be important that we work together so that consumers continue to have confidence and trust in our industry and all our products.

But why are we doing this, given that the UK is leaving the EU? Vaping is a responsible industry. The UK is still a member of the EU, and up to that point we are subject to the regulations that are in UK law. The industry is not calling for wholesale deregulation. We welcome and have embraced many of these regulations and standards. It was the industry itself that called for a ban on under-18 sales. We recognise our responsibilities; we don’t want to sell anything but quality products to adult vapers.

However, there are some changes required. For example, when our own esteemed health bodies already recognise vaping as being at least 95% less harmful than smoking, why are we preventing people from making the switch by banning advertising? Why do we have more strict packaging guidelines than those for bleach? None of this helps people stop smoking. All it does is prolong one of the UK’s most intransigent and expensive health problems – smoking-related illnesses.

Brexit could be the golden opportunity to do things better, and in our own way, reflecting our country’s health priorities. It is an opportunity we will work together as an industry to pursue. However, we need more government support. If we are to maximise the opportunities offered by the vaping category, we need a supportive regulatory framework and a government that’s on side, before the potential prize offered by vaping is lost.



Ian Green

“Regulations will make it harder for some smokers to switch to vaping”

Ian Green is the owner of the Southampton Vaping Centre and Chairman of the Independent British Vape Trade Association (IBVTA) Vendors Committee. The IBVTA is a not-for-profit, non-political trade association.

Vape products in the UK are regulated under the Tobacco and Related Products Regulations 2016 (TRPR) – the UK’s implementation of the EU Tobacco Products Directive. These regulations impose a number of restrictions. As a responsible trade association, the Independent British Vape Trade Association (IBVTA) and our members are not opposed to regulation. Some aspects of the TRPR, namely the testing and notification of e-liquids are sensible. However, restrictions on bottle and tank sizes, restrictions on nicotine strengths, and advertising bans, far from making vaping more attractive to smokers or even less harmful compared to smoking, instead make vaping less attractive, more expensive, and will have no impact on the limited harm associated with vaping.

Whilst we have grave reservations about much of the TRPR, our members have worked hard to devise and implement strategies to comply with these regulations. If “doing the right thing” is not to become a disincentive, as well as a competitive disadvantage, it is vital that these new regulations are policed and enforced. A failure to do so will mean that those companies that have not done the “right thing” will be allowed to continue selling (and in many cases continuing to manufacture and import) product that is not compliant with TRPR, yet will have borne none of the significant overheads that the responsible elements of the industry have accepted. This will not just be bad for the responsible industry, but also for the UK’s three million vapers.

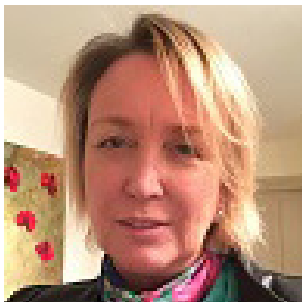
Despite these challenges, there is a thriving independent vape industry in the UK providing consumers with a wide range of quality vape products. According to one recent study, vaping is now the fastest growing industry in the UK and, after the United States, the UK is the second largest market for vape products in the world. At a local level, vape shops are one of the few areas of growth on our high streets.

Despite this success, some 7.2 million people in the UK still smoke and these regulations will make it harder for some smokers to switch to vaping. We therefore hope that the Government when negotiating the UK’s withdrawal from the European Union, will negotiate a deal that allows for revision of the TRPR at the earliest possible opportunity. If this can be achieved then the Government could implement a proportionate regulatory regime that would allow vaping to achieve its full potential.

The UK’s independent vape industry has a global reputation for quality and innovation. Combine this with the enlightened approach many in the public health field have taken towards vaping and the positive attitudes within Public Health England, the MHRA, and the Department of Health, then the UK really does have the potential to become a global leader in vaping.

This tremendous opportunity will only be realised if the regulatory and fiscal environment in which our industry operates is proportionate. Therefore, IBVTA will continue to press all relevant bodies both independently, and through our active participation at future APPG meetings.

Vapers' perspectives



Sarah Jakes

“Brexit offers a perfect opportunity to undo the harmful parts of the Tobacco and Related Products Regulations and replace them with product standards and regulations which support vaping as a consumer product and a harm reduction tool”

Sarah Jakes is Secretary of the New Nicotine Alliance, a group dedicated to improving public health through a greater understanding of new nicotine products and their uses.

Vapers are still incredibly angry about the implementation into UK law of those sections of the EU Tobacco Products Directive which relate to e-cigarettes; products which are estimated by both Public Health England and the Royal College of Physicians to be at least 95% less harmful than smoking. Without doubt, watching the way in which the EU steamrolled these harmful regulations through parliament was the catalyst for a great many vapers to vote for Brexit in the referendum.

Few people outside of the vaping community understand why vapers are so passionate about vaping and determined to protect it. For many vapers it is a route away from the inevitable ill health that one in two smokers will suffer according to various tobacco control organisations. For many more, vaping is a lifestyle and an identity which has replaced the pleasure they derived from smoking. The two approaches are not mutually exclusive - the latter facilitates the former.

Brexit offers a perfect opportunity to undo the harmful parts of the Tobacco and Related Products Regulations and to replace them with product standards and regulations which support vaping as a consumer product and a harm reduction tool rather than treat it as a threat. In particular, the limits on the volume of e-cigarette tanks (2ml) and refill bottles (10ml) are utterly pointless in terms of consumer protection and simply serve to make vaping less convenient. The restriction on concentration of e-liquid to 20mg/ml means that an estimated 174,000 current vapers will not be able to obtain the strength of liquid they require. It is likely that a much larger proportion of smokers who are yet to switch will be in a similar position.³³

Whilst organisations such as Public Health England, Action on Smoking and Health and Cancer Research UK are going to great lengths to correct the appalling public misconceptions about the relative risk of vaping compared to smoking, advertising restrictions imposed by the TPD prevent the vaping industry from disseminating this very important message to smokers who, armed with accurate information, might make the decision to switch.

Both the Tobacco Products Directive and the Tobacco and Related Products Regulations are harmful in that they discourage smokers from switching to products which may hugely benefit their health. It is time the UK extended the bold lead it has already taken in the field of tobacco harm reduction and rejects these regulations in favour of something more proportionate and appropriate. Lives depend on it.

About the APPG for E-Cigarettes

The All-Party Parliamentary Group (APPG for e-cigarettes) was formed to explore the most appropriate parliamentary and regulatory response to e-cigarettes (vaping products) and to raise education and literacy amongst policy makers regarding e-cigarettes and related public policy questions.

APPG Officers



Mark Pawsey MP
Chair



Glyn Davies MP
Secretary



Scott Mann MP
Treasurer



Viscount Ridley
Vice Chair



Kate Hoey MP
Vice Chair



Gareth Johnson MP
Vice Chair

Acknowledgements

We would like to thank all the groups and individuals who submitted written and oral evidence to the Group that was used to shape this report.

We would particularly like to thank Public Health England, Cancer Research UK, Professor Peter Hajek, Trading Standards and the Medicines and Healthcare products Regulatory Agency for their contributions to the Group.

We would also like to thank the United Kingdom Vaping Industry Association (UKVIA), which provides the secretariat for the group.

Contact

For further information about the inquiry or media requests, please contact the Chairman of the group;

Mark Pawsey MP
Rugby
01788 579499,
mark.pawsey.mp@parliament.uk

References:

- ¹ Parliamentary Office of Science and Technology, August 2016 <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/POST-PN-0533#fullreport>
- ² BIS Research, Global E-cigarette & Vaporizer Device & Aftermarket – Analysis and Forecast 2016 – 2025, <https://bisresearch.com/industry-report/global-e-cigarette-market-report-forecast.html>
- ³ ASH factsheet: Use of electronic cigarettes (vapourisers) among adults in Great Britain, May 2017 <http://ash.org.uk/information-and-resources/fact-sheets/use-of-electronic-cigarettes-vapourisers-among-adults-in-great-britain/>
- ⁴ All-Party Parliamentary Group on Smoking and Health, Burning Injustice Reducing tobacco-driven harm and inequality - Recommendations to the Government, local authorities and the NHS, page 8
- ⁵ Towards a smoke-free generation: tobacco control plan for England, Department of Health, 18 July 2017, page 15, <https://www.gov.uk/government/publications/towards-a-smoke-free-generation-tobacco-control-plan-for-england>
- ⁶ Towards a smoke-free generation: tobacco control plan for England, Department of Health, 18 July 2017, page 27, <https://www.gov.uk/government/publications/towards-a-smoke-free-generation-tobacco-control-plan-for-england>
- ⁷ E-Cigarettes: an emerging public health consensus, 15 September 2015, www.gov.uk/government/news/e-cigarettes-an-emerging-public-health-consensus
- ⁸ E-Cigarettes: an emerging public health consensus, July 2016, www.gov.uk/government/uploads/system/uploads/attachment_data/file/534708/E-cigarettes_joint_consensus_statement_2016.pdf
- ⁹ Tobacco Advisory Group of the Royal College of Physicians. Nicotine without smoke: tobacco harm reduction. Royal College of Physicians, 2016 www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0
- ¹⁰ Royal Society for Public Health, E-Cigarettes Position Paper, April 2017
- ¹¹ ASH factsheet: Use of electronic cigarettes (vapourisers) among adults in Great Britain, May 2017 <http://ash.org.uk/information-and-resources/fact-sheets/use-of-electronic-cigarettes-vapourisers-among-adults-in-great-britain/>
- ¹² www.cancerresearchuk.org/about-us/cancer-news/press-release/2017-02-06-e-cigarettes-safer-than-smoking-says-long-term-study
- ¹³ Shahab, L., et al., Nicotine, carcinogen, and toxin exposure in long-term e-cigarette and nicotine replacement therapy users: A cross-sectional study. *Annals of Internal Medicine*, 2017
- ¹⁴ For example see, E-cigarettes act as gateway to smoking for teens, scientists warn, *Daily Telegraph*, 7 February 2017, www.telegraph.co.uk/science/2017/02/07/e-cigarettes-act-gateway-smoking-teens-scientists-warn/
- ¹⁵ Office of National Statistics, Adult Smoking Habits in the UK: 2016, <https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/bulletins/adultsmokinghabitsingreatbritain/2016>
- ¹⁶ ASH factsheet: Use of electronic cigarettes (vapourisers) among adults in Great Britain, May 2017 <http://ash.org.uk/information-and-resources/fact-sheets/use-of-electronic-cigarettes-vapourisers-among-adults-in-great-britain/>
- ¹⁷ Mintel, Smoking Cessation and E-Cigarettes, January 2017
- ¹⁸ All-Party Parliamentary Group on Smoking and Health, Burning Injustice Reducing tobacco-driven harm and inequality - Recommendations to the Government, local authorities and the NHS, page 8
- ¹⁹ Parliamentary Office of Science and Technology, January 2014, www.researchbriefings.files.parliament.uk/documents/POST-PN-455/POST-PN-455.pdf
- ²⁰ Of the 2.9 million adults using vaping products, 1.5 million are ex-smokers. See ASH factsheet: Use of electronic cigarettes (vapourisers) among adults in Great Britain, May 2017 <http://ash.org.uk/information-and-resources/fact-sheets/use-of-electronic-cigarettes-vapourisers-among-adults-in-great-britain/>
- ²¹ The Freedom Association, Vaping Policies in UK Councils, November 2016, www.tfa.net/new-report-from-our-freedom-to-vape-campaign-87-per-cent-of-uk-councils-are-ignoring-advice-from-public-health-england/
- ²² Tobacco and Related Products Regulations 2016, see reference in Committees on Advertising Practice Code, www.asa.org.uk/asset/97E623E4-3A64-4215-81A5C4BD6D82D1E0.A1727AC1-C340-4B08-9820666C89AE18CB/
- ²³ House of Commons Debate, 13 October 2016, <https://hansard.parliament.uk/commons/2016-10-13/debates/5C5C7F0E-E811-4E1D-B170-E31220BB3E1F/TobaccoControlPlan>
- ²⁴ Towards a smoke-free generation: tobacco control plan for England, Department of Health, 18 July 2017, page 15, <https://www.gov.uk/government/publications/towards-a-smoke-free-generation-tobacco-control-plan-for-england>
- ²⁵ Towards a smoke-free generation: tobacco control plan for England, Department of Health, 18 July 2017, page 27, <https://www.gov.uk/government/publications/towards-a-smoke-free-generation-tobacco-control-plan-for-england>
- ²⁶ Towards a smoke-free generation: tobacco control plan for England, Department of Health, 18 July 2017, page 27, <https://www.gov.uk/government/publications/towards-a-smoke-free-generation-tobacco-control-plan-for-england>
- ²⁷ http://www.ncsct.co.uk/publication_electronic_cigarette_briefing.php
- ²⁸ ASH, The Stolen Years, <http://ash.org.uk/information-and-resources/reports-submissions/reports/the-stolen-years/>
- ²⁹ Vaping Policies in UK Councils, Freedom Association, August 2016 <https://d3n8a8pro7vnmx.cloudfront.net/freedomtovape/pages/59/attachments/original/1478270691/VapingPoliciesinUKcouncils.pdf?1478270691>
- ³⁰ HC Deb, 21 March 2017, cW
- ³¹ Health (Tobacco, Nicotine etc, and Care) Act 2016
- ³² Public Health (Wales) Bill 2016
- ³³ For more information, see the New Nicotine Alliance blog <https://nnalliance.org/blog/183-ash-survey-and-early-indication-of-the-harm-of-the-tpd>
- ³⁴ Towards a smoke-free generation: tobacco control plan for England, Department of Health, 18 July 2017, page 27, <https://www.gov.uk/government/publications/towards-a-smoke-free-generation-tobacco-control-plan-for-england>



appg

APPG sessions

APPG members taking part

Mark Pawsey MP, Chairman
Gareth Johnson MP, Vice-Chair
Scott Mann MP, Treasurer
Danny Kinahan MP
Stephen Metcalfe MP
Sir Kevin Barron MP
Tom Elliot MP
Lord Callanan
Earl Cathcart

December 2016 evidence session witnesses

Professor Kevin Fenton, Public Health England
Professor Peter Hajek, Wolfson Institute of Preventive Medicine, Queen Mary's University
George Butterworth, Tobacco Policy Manager, Cancer Research UK
Charles Hamshaw-Thomas, Board Member, UK Vaping Industry Association (UKVIA)
Ian Green, Board Member, Independent British Vaping Trade Association (IBVTA)
Sarah Jakes, New Nicotine Alliance
Andrew Allison, Head of Campaigns, The Freedom Association

March 2017 evidence session witnesses

Brandon Cook, Chartered Institute of Trading Standards
Doug Mutter, Board Member, UK Vaping Industry Association (UKVIA)
Tom Pruen, Electronic Cigarette Industry Trade Association (ECITA)
Ian Green, Independent British Vape Trade Association (IBVTA)
Louise Ross, Leicester City Stop Smoking Service
Sarah Jakes, New Nicotine Alliance

Written evidence received

Alette Addison, Tobacco Control (EU) Team Leader,
Healthier lives Division, Department of Health

Beryl Keeley, E-Cigarette Notification Scheme Lead,
Medicines and Healthcare products Regulatory Agency (MHRA)

Contact

For further information about the inquiry or media requests,
please contact the Chairman of the group;

Mark Pawsey MP
Rugby and Bulkington
01788 579499
mark.pawsey.mp@parliament.uk

Publish September 2017

www.appcgg.co.uk