



Public Bill Committee
House of Commons
London
SW1A 0AA

29 April 2024

Committee Stage consideration of the Tobacco and Vapes Bill

Members of the Committee,

1. I write on behalf of Japan Tobacco International (JTI) to share our concerns about the Tobacco and Vapes Bill. JTI is the UK's leading tobacco company and sells some of the most well-known brands of cigarettes, cigars, hand rolling tobacco, heated tobacco, vaping products and nicotine pouches.

Executive Summary

2. Our concerns relate primarily to the proposed 'generational ban' on the sale of tobacco products, enacted in Section 1, Part 1 of the Tobacco and Vapes Bill. In summary, we note that:
 - the proposal **fails the test of proportionality**;
 - it is **deeply illiberal**;
 - it **would be impractical to implement**;
 - and it **would hand the UK's tobacco market to criminals**.

The proposed 'generational ban' fails the test of proportionality

3. There are less onerous regulatory options which would achieve the government's objectives with fewer negative side effects.
4. The rate of smoking amongst young adults in the UK is already low and falling fast. This is part of a long-term decline in smoking since at least the mid-1970s which has accelerated in recent years as alternative Reduced Risk Products ('RRPs' - products with the potential to reduce the health risks associated with smoking), such as e-cigarettes, have become more widely available.
5. According to the most recent report from the NHS Digital, "*Smoking, Drinking and Drug Use among Young People in England*", 88% of young people aged between 11-15 have never tried smoking a cigarette (compared to 60% in 2005), with only 1% claiming that they smoked regularly (compared to 9% in 2005), and another 2% responding that they had only ever tried smoking occasionally (compared to 6% in 2005). By contrast, according to recent World Health Organisation data, a third of 11-year-olds and more than half of 13-year-olds in England have drunk alcohol - putting it top out of 44 countries examined in a report by global health experts.

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6. The DHSC acknowledged in the ‘Stopping the Start’ command paper, published in October 2023, that “*The great majority of initiation of cigarette use continues to be in the teenage years. 83% of smokers start before the age of 20.*”
7. The Government’s own data, released as part of the consultation process for the Bill, shows that raising the age to 21 would have a similar effect on UK smoking rates without the need for a generational ban and the associated impracticalities as outlined below. Both policies would drive smoking prevalence to zero by 2050, according to the Government’s own modelling:

	2023	2030	2040	2050
Baseline	13.0%	9.0%	8.1%	8.1%
Increase to 21	13.0%	7.3%	1.3%	0.0%
Generational Prohibition	13.0%	6.1%	0.4%	0.0%

8. Data from Action on Smoking and Health (ASH) shows that 1 in 4 smokers have never tried e-cigarettes, the most popular RRP. That’s about 1.8 million smokers, and a further 2.9 million have tried vaping but have gone back to smoking. This is likely because fewer than 1 in 10 smokers correctly understand the relative risks of smoking and vaping, according to the ASH data.
9. The decision to include Heated Tobacco Products, an RRP, in the generational ban proposal is likely to further compound smokers’ misunderstanding about the relative harm of smoking vs using RRP. Instead of a generational ban the Government should work to urgently correct this misunderstanding so that smokers can make an informed choice.

The proposed generational ban is deeply illiberal

10. A generational prohibition on the sale of tobacco products would do nothing to protect children – instead it divides adult society in two, with different adults given different rights based on their date of birth.
11. For this reason, the Attorney General of Malaysia ruled that a similar proposal for a generational ban there was unconstitutional because it denied adult Malaysians equality before the law.
12. In an April 2024 article the Hansard Society have highlighted their concern that the wide-ranging use of delegated powers in the Tobacco and Vapes Bill represents a “*creeping effect in the legislative process and undermines parliamentary scrutiny of ministerial action*”. They urge that MPs should consider the granting of such broad delegated powers with caution. It is unclear why the Government could not have included greater clarity about the content of the Bill in their original consultation and Impact Assessment, so that Parliament could scrutinize properly the substantive details of the intended policy.

The proposed generational ban would be impractical to implement

13. A generational ban would increase the legal age of sale of tobacco products by one year, every year from 2027 onwards. This would eventually mean retailers would need to distinguish between a 47-year-old who can legally buy tobacco and a 46-year-old who cannot.
14. The burden of implementing this novel law will fall entirely upon retailers, who will face penalties if they inadvertently sell tobacco products to the wrong adults. A survey of 1,000 retailers carried out

by JTI in late 2023 found that 86% of convenience retailers believe the proposals will have a negative impact on their business and nearly two-thirds said the generational ban will be costly to their business in terms of implementation.

15. Health groups are already advocating that the implementation of a generational ban will necessitate the mandatory checking of all smokers' ID before selling tobacco. But Andrew Chevis, the Chief Executive of CitizenCard, the UK's largest provider of PASS accredited ID cards, has warned that this would undermine years of progress in preventing the underage sale of age restricted goods, including the widespread adoption of the 'Challenge 25' programme. He has called the idea impractical and called on the Government to reconsider.
16. The proposal comes at a time when crime against retailers, including violence, abuse and theft, is a major problem and a generational ban is certain to make the problem worse. The British Retail Consortium has identified that checking for proof of age is one of the biggest triggers for violence and abuse against UK retailers; their latest survey (14 February 2024) has revealed a 50% increase in levels of retail violence and abuse, with 1,300 incidents a day. The latest SGF Retail Crime Survey found that 93% of retailers report violence occurring at least once per week. Refusing a sale or asking for proof of age is the most common cause of this violence with 57% of respondents facing incidents of abuse on a daily basis when asking for ID.

The proposed generational ban would hand the UK's tobacco market to criminals

17. The inevitable conclusion of the policy over time, if implemented, would be the full prohibition of a product. The policy was a disaster in 1920's America with alcohol – it will be a disaster in the 2020's UK with tobacco.
18. HMRC estimates that 11% of cigarettes and 35% of hand-rolling tobacco consumption is already illegal in the UK – untaxed, unregulated, and often available for sale to children, with ASH Wales reporting in February 2023 that almost a third of underage smokers have been offered illegal tobacco.
19. The UK lost £2.8 billion of tax revenue in 2021/22, according to HMRC, through the black market in tobacco products, and over £54 billion since the turn of the century. Every year, a generational ban will hand more of the UK tobacco market to the organised criminal gangs who use the money to fund activities including terrorism and people smuggling.
20. HMRC and Border Force published a new strategy on illegal tobacco in January, entitled *Stubbing out the problem*, which admitted that “*no matter how much we strengthen our current strategy, supply will always find a way to enter the market where a demand for it exists*”. It also re-stated the clear link between illegal tobacco and serious organised crime groups.
21. The Government's impact assessment for the Bill made no effort to calculate the cost/impact of an increase in illegal trade, invalidating its objective of providing an evidence-based overview of salient issues. Commentary included in the recent HMRC/Border Force report clearly demonstrates the issues associated with illegal tobacco trade and its growth over the last 10 years.
22. History shows that prohibitions do not work. When the South African Government prohibited the sale of tobacco products as part of COVID lockdowns, illegal traders quickly stepped in and surveys published by the British Medical Journal show that 93% of smokers there continued to buy tobacco from illegal sources.

Conclusion

23. We urge the Committee to consider amending the Tobacco and Vapes Bill to produce a Bill which is more proportionate, more in line with the UK's liberal values, more practical to implement, and which won't hand the UK's tobacco market to criminals.
24. If it would be helpful to the Committee, I would be happy to answer any further questions in person at an oral evidence session.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Nicky Small', written in a cursive style.

Nicky Small
Corporate Affairs & Communications Director, UK