New Nicotine Alliance UK

Registered charity in England and Wales – number 1160481

Public Bill Committee
Tobacco and Vapes Bill

By email: scrutiny@parliament.uk

29 April 2024

The Tobacco and Vapes Bill– consumer group comments

We wish to comment on the Tobacco and Vapes Bill[1] and related Impact Assessment[2] and contribute to the Committee's important work in scrutinising the Bill.

The New Nicotine Alliance is a registered charity and consumer association representing current and future consumers of low-risk alternatives to cigarettes, such as vaping products, nicotine pouches, snus and heated tobacco. We confirm no conflicts of interest concerning the tobacco, nicotine, or pharmaceutical industries. Many of us have experienced first-hand the benefits of vaping and other low-risk products to escape smoking. We also count public health experts among our board members, associates, and supporters.

We believe the Bill's fundamentals are flawed and that the Impact Assessment does not provide legislators with a reasonable or informative account of the legislation's costs and benefits, the vast majority of which arise from changes in consumer behaviour. Consumers are an often-overlooked stakeholder group, not least in the Committee's selection of interest groups to give oral evidence. Nevertheless, we wish to register our concerns.

1. Overview

In short, the Bill's flagship anti-smoking measure hits the wrong target group with an ineffective policy. The Bill's anti-vaping measures will cause more harm than good to the critical group for public health: current adult smokers. Neither measure will do much to reduce youth smoking or vaping.

- **The Smokefree generation targets a largely irrelevant population of smokers.** The Bill's flagship measure, the Smokefree Generation, addresses a problem already solved mainly by smoke-free alternatives, such as vapes and pouches. That is because youth smoking is already in steep decline, and younger adult smokers will migrate to vaping (etc.) well before they have been smoking long enough to suffer significant smoking-related disease. Without the measure, few people it affects are unlikely ever to suffer the main consequences of smoking because few people born after 2008 will still be smoking by 2050.
- **The critical at-risk population is the existing adult smokers.** The most important population from a public health point of view is the stock of 6.3 million adult smokers who are already over 18. This group is at far more imminent risk of serious harm. The Smokefree Generation does not

1 Tobacco and Vapes Bill. [link]

2 Department of Health and Social Care, Tobacco and Vapes Bill Impact assessment, 20 March 2024 [link]

affect them. Yet, for many in this group, it is the opportunity to switch from smoking to vaping or other smoke-free alternatives that will have the most significant impact on public health and health inequalities.

- **The anti-vaping measures will harm the main at-risk population**. The problem with the anti-vaping elements of the Bill and the government's tax policy is that it will negatively affect the critical at-risk population (principally middle-aged adult smokers in poorer communities) through the government's anti-vaping measures, which will make switching from smoking to vaping more expensive, more difficult, and less appealing.

- **The Bill's impact is extremely sensitive to unintended consequences arising from the anti-vaping measures.** The Bill's Impact Assessment did not attempt to quantify these adverse effects, so they do not appear in the headline claims for its cost-effectiveness. Yet a failure to quantify does not make them zero. However, the Bill's cost-benefit case is extremely sensitive to small increases in smoking arising from the anti-vaping measures. Using the methodology of the Impact Assessment, we estimate a slight change in adult smoking prevalence from 12.9% to 13.0% arising from anti-vaping measures would have a monetised health and welfare cost of £3.5 billion – enough to outweigh any conceivable benefits.

- **Youth anti-vaping measures are possible.** It is important to remember that the market for tobacco and nicotine products is dominated by adults compared to youth, in a ratio of approximately 16:1. Even in the market for disposable vapes, there are nine times as many adult users as youth, drawing on the most recent data available. **Nevertheless**, youth vaping is a politically emotive subject, even if the health risks to youth are low and distant. Three main strategies should be adopted to address youth vaping:

    1. **Lawful supply.** If the market does not meet the needs of *adult* consumers, it will become more saturated with illicit goods and workarounds. The criminal networks involved will supply a wide range of illegal products, engage young people in supply, and not observe any rules regarding age or responsible corporate behaviour. It is *essential* to design the legislation in a way that does not expand a lawless market. In our view, the Bill will likely expand illicit trade, and this risk should be a focus of the Committee's scrutiny.

    2. **Age-secure retailing**. It should be much harder for underage users to buy tobacco or vapes, and the consequences for retailers should be more serious. The Bill is a missed opportunity to introduce a licensing scheme that would improve retaining behaviours in several ways. A more measured approach to age restrictions would be to increase the age of sale for combustible tobacco products to twenty-one instead of creating age stratification among adults.

    3. **Responsible marketing**. Here, it is essential to balance the need to communicate with and engage smokers in switching to new and unfamiliar products with an effort to prevent marketing targeted at youth. The Committee on Advertising Practice has managed such a balancing act for advertising. The same concepts could be applied to branding, trademarks, and flavour descriptors.

2. Smokefree Generation proposal

In summary, the Smoke-free Generation tobacco proposal – the assessment overstates the benefits. The impact assessment severely overstates the benefits of the Smoke-free Generation measure. It makes unrealistic assumptions about future baseline smoking and related costs. It does not compare the proposed policy with the simpler and obvious alternative, which is to raise the age of sale from 18 to 21 for smoking products only. This measure is directed at the "flow" of potential new smokers. That flow is already dwindling to a trickle. The problem is the "stock" of existing ageing smokers who are now facing significant health risks as they pass through their forties or older. This measure does not address that critical at-risk population. In greater detail, the fundamental weaknesses in the analysis of the Smoke-free Generation proposal are as follows:

1. **The most obvious alternative policy – changing to age 21 - has been ignored**. The most reasonable alternative policy would be to limit sales of smoking products to people aged 21 and over instead of banning sales of all tobacco products to people born after 1 January 2009. This alternative measure would secure nearly all the gains attributable to the proposed Smokefree Generation policy without raising new issues of principle about extending the age of majority permanently into adult life or overreaching into non-smoking tobacco products. However, there is good evidence supporting this policy.[3] The option was not modelled as the government says it does not meet its policy objectives (neither will the Smokefree Generation). However, it is an appropriate *comparator* to the Smokefree Generation policy for scrutiny purposes. If done correctly, it would show far lower incremental benefits for the Smokefree Generation proposal than a comparison with "do nothing", and it would reduce concern expressed by many members about the Bill's extension of the age of majority indefinitely into adult life.

2. **A highly inflated baseline is used for the no-policy (do nothing) option.** The overclaim for the Smokefree Generation proposal is most overtly displayed in Figure 3 and Figure 7 of the Impact Assessment.

Figure 3: Modelled baseline prevalence for those aged 14 to 30 years old, 2023 to 2100

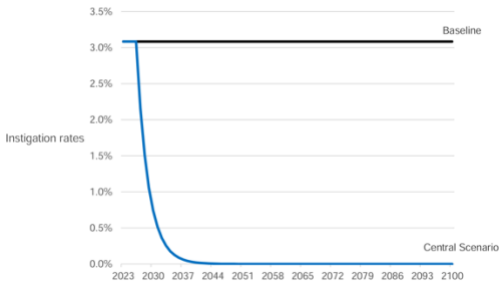
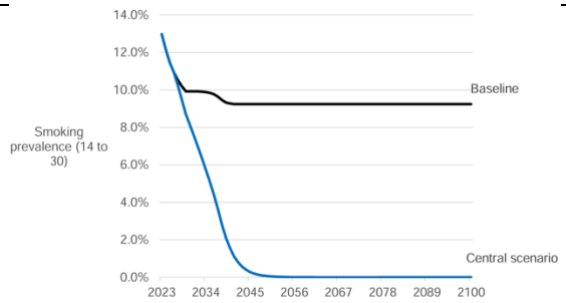


Figure 7: Modelled smoking prevalence (14 to 30 years old), baseline vs central scenario



Source: Tobacco and Vapes Bill Impact Assessment

These figures show that without the measure, youth smoking is assumed to be flat-lining for the rest of the century. At the same time, the Smokefree Generation somehow makes all this smoking vanish – both assumptions are wrong and implausible. The underlying trends in youth

[3] Pesko, M. F. (2022). Combustible tobacco age-of-sale laws: An opportunity? *Addiction*, *117*(3), 514–516. [link]

and young adult smoking have been sharply downwards over the past twenty years, and this trend is likely to continue as vapes and other non-combustible products displace smoking among young people without any further action from the authorities. It is likely that smoking will largely disappear within this age group within a decade. In 2021, only 3% of 15-year-olds were regular smokers, down from 5% in 2018 and from 30% in 1996.[4] In 18-21-year-olds, smoking prevalence fell from 34.7% to 17.2% between 2007 and 2024 and remains on a steady downward trend.[5] Why would this trend not continue as younger adolescents age into the young adult population? The proposed measure bears on a problem that is essentially already solved through product innovations such as vapes and pouches, yet it does not address the real public health problem and at-risk population – millions of committed smokers born before 2009.

3. **The implausibility of the modelled impact of the Smokefree Generation proposal on smoking prevalence**. Figure 7 in the impact assessment (see above) shows young adult smoking stabilising in the base case (a flawed assumption) but rapidly falling to zero in the policy case. Why would smoking fall to zero if the underlying demand remains? To the extent that young people still wish to smoke, age restrictions have rarely stopped them and are, at best, a frictional impediment rather than an insurmountable barrier. The impact assessment uses naïve assumptions about the efficacy of age restriction policies in reducing smoking, which means that the impact assessment overstates whatever benefits it claims. We already have an age restriction set at age 18, and yet smoking prevalence among 16-17-year-olds was 12.2% in 2023.[6] Underage users report a variety of ways to access age-restricted products,[7] and they are ultimately likely to be served by a well-organised illicit market that would sell cigarettes alongside other banned products or by age-stratified secondary trading.

4. **Ignoring the options offered by smoke-free products to smokers later in life.** Paragraph 178 in the impact assessment shows no policy benefits until 2044, followed by considerable benefits accruing to 2100. (emphasis added)

> *Due to the long-term nature of smoking and smoking related mortality,* ***no health benefits would be expected until 2044****. However, between 2044 and 2056 (30 years post-implementation), the cumulative number of deaths avoided in England rises sharply to 2,579 in the model. The effects continue to accumulate faster all the way up to 2100 as subsequent cohorts benefit from the policy, with a cumulative 154,593 avoided in England by 2100.*

The anti-smoking measures require 20 years before they show benefits. Given the rate at which vaping is already displacing smoking and the pace of innovation in nicotine products since 2010, it is implausible that many of those smoking as adolescents or young adults in the "no policy" case will still be smoking in 2050 or 2100 and there would be options for them to switch if they wish to. Why would they continue to smoke until they became ill rather than exercise a harm-reduction option? Without the SFG policy, those born after 1 January 2009 will have grown up with low-risk alternatives to smoking and will have likely tried them. It is quite possible that

---

4 NHS England Digital. Smoking, Drinking and Drug Use among Young People in England, 2021 *Part 1: Smoking prevalence and cigarette consumption* (2022). [link]

5 Smoking Toolkit Survey. Cigarette Smoking Prevalence in 18-21-year-olds 2007-2024. [link]

6 Smoking Toolkit Survey. Cigarette Smoking Prevalence in 16-17-year-olds 2007-2024. [link]

7 NHS England Digital. Smoking, Drinking and Drug Use among Young People in England, 2021 *Where pupils get cigarettes* (2022). [link]

smoking will be highly unusual in that age group and that anyone beginning to experience adverse health or welfare symptoms will exercise their option to switch to a safer product when they need to or wish to. Switching to these options later in life will substantially reduce any benefits from Smokefree Generation.

5. **The stated benefits are exaggerated**. The purported benefits of the policy arise from the difference between the baseline smoking prevalence trajectory for "do nothing" and the Smokefree Generation policy (see Figures 3 & 7 reproduced above). These benefits are exaggerated because of the pessimistic assumptions built into the baseline and optimistic assumptions made about the efficacy of the policy.

6. **The claims for productivity and other gains do not reflect the lags and non-linearity in the relationship between smoking prevalence and disease and mortality outcomes**. As discussed, the likely impact on smoking prevalence is exaggerated. However, the benefits that flow from lower smoking prevalence are delayed because ill-health lags smoking behaviour. Those who stop smoking by age 40 avoid nearly all the major disease risks and loss of life-years.[8] The full mortality penalty does not emerge until much later in life (for example, the famous British doctors' survey showed the median smoker losing ten years of life from age 73 to 83).[9] Those affected by the Smokefree Generation measure would not turn 40 until 2049 or later. In a 30-year evaluation, the health effects suffered by those born after 2009 are unlikely to be material, and they cannot be pro-rated from the harms experienced by the existing smoking population and counted in the benefits. The baseline modelling takes no account of people who smoke switching to vapes, pouches or other smoke-free products later in life (i.e. before they turn 40) to avoid serious disease risks. Previous generations did not have this "harm reduction" option and were urged to become abstinent.

7. **The negative impacts of including <u>smoke-free</u> tobacco products in the Smokefree Generation proposal are ignored**. Finally, a potential negative impact is associated with including *smoke-free tobacco* products in the scope of the generational ban. Such products might consist of smokeless tobacco, heated tobacco products, tobacco lozenges, or products arising from future innovation. Extensive data suggests that these products can be beneficial as low-risk substitutes for smoking, but no rationale has been provided for extending the policy to include these products. We have substantial evidence that snus has reduced smoking and related diseases in countries that allow it.[10] At least one heated tobacco product has been designated "appropriate for the protection of public health" by the US FDA[11], and these products have beneficially transformed the market in Japan.[12] The government's targets are rightly focused on reducing disease and death, but that means the policy focus should be on *smoking*. The "Smokefree Generation" measure should reflect what it says in the name and be confined to *smoking products*. Note that over-extended

---

8 Cho, E. R., Brill, I. K., Gram, I. T., Brown, P. E., & Jha, P. (2024). Smoking Cessation and Short- and Longer-Term Mortality. *NEJM Evidence*. [link]

9 Doll, R., Peto, R., Boreham, J., & Sutherland, I. (2004). Mortality in relation to smoking: 50 Years' observations on male British doctors. *British Medical Journal*, *328*(7455), 1519–1528. [link]

10 Ramström, L. (2024). Snus Has Saved Many Lives in Sweden – And Can Save Many More. *Qeios*. [link]

11 Food and Drug Administration, Premarket Tobacco Product Marketing Granted Orders, accessed 3 April 2024. [link]

12 Cummings, K. M., Nahhas, G. J., & Sweanor, D. T. (2020). What Is Accounting for the Rapid Decline in Cigarette Sales in Japan? *International Journal of Environmental Research and Public Health*, *17*(10), 3570. [link]

regulation can have adverse effects through needlessly curtailing consumer choice, sending misleading implicit risk communications, and causing adverse behaviour change, workarounds, or illicit supply for no justifiable reason.

3. The vaping measures

In summary, the restrictive policies on vaping products – the assessment conceals the likely large detriments. The main issue with the Bill's vaping policies is that unintended negative consequences have not been adequately defined and quantified or compared to intended benefits. The same fundamental problems apply to all the proposed vaping regulations, most of which will be done with minimal scrutiny via secondary legislation. In this case, poor relative risk estimates and a failure to use quantified estimates have meant the impact assessment conceals rather than reveals the likely scale of harm that would be done by placing significant restrictions on vaping products, given vapes function as low-risk alternatives to smoking. Small increases in smoking arising from vaping restrictions have a high cost using the methods used in this impact assessment. A 0.1 percentage point change (e.g. from 12.9% to 13.0%) in smoking prevalence creates a cost of £3.5 billion using the method adopted in the impact assessment.

1. **The centrality of assessing perverse consequences of vaping policies.** The assessment of vaping policies is primarily the assessment of unintended consequences. These are likely because cigarettes and vapes function as *economic substitutes*. It follows that regulatory restrictions or taxes on one may increase the demand for the other. Such plausible adverse effects are referred to in the text, for example, in paragraph 38.

   > *38. A possible unintended consequence of the vaping policies is that it could encourage more young people to try smoking. For example, a study from the US found that restricting flavours of vapes led to an additional 15 cigarettes sold for every 0.7mL vape pod not sold.*

   Also, in paragraph 417, negative impacts on adult smoking cessation are mentioned.

   > *417. The decision aid tool published by Bristol University mentioned above estimated that 4% of smokers quit because of vapes, and 33% of smokers stated that they would not quit and/or smoke more if flavours were not available. For ex-smokers, it was estimated that 13% of ex-smokers vape and 13% of these ex-smokers would relapse if flavours were not available.*

   The full range of potential unintended consequences is extensive and broadly comes under three main headings: adverse behaviour change (not quitting smoking, taking up smoking instead of vaping, relapse to smoking); access to illicitly made or imported products (as a buyer or potentially as a seller); and a range of risky workarounds (making and adding DIY flavours, using nicotine concentrates, etc.), some of which may be facilitated by manufacturers. The impact assessment does not address the full range of plausible unintended consequences.

2. **The use of an excessively high relative risk estimate for vaping compared to smoking**. The balance of intended benefits and unintended detriments is directly proportional to the relative risk comparator used, and the impact assessment used an exaggerated estimate of the risks of

vaping compared to smoking. The impact assessment accepts the view of UK experts that vaping is much safer than smoking.[13]

> *361. The latest evidence has found that, in the short and medium term, vaping poses a small fraction of the risks of smoking, because vapes do not contain tobacco.*

This comparison logically implies that *smoking poses a large multiple of the risks of vaping,* and, therefore, any assessment of costs and benefits would need to carefully reflect unintended increases in smoking arising from regulation. But later estimates made by the English government's own advisers put the risk at no more than 5% in 2018[14] , and the most recent report for the government in 2022 stated the following:13

> *Based on the reviewed evidence, we believe that the 'at* ***least 95% less harmful'*** *estimate remains broadly accurate, at least over short term and medium term periods. However, it might now be more appropriate and unifying to summarise our findings using our other firm statement: that vaping poses only a small fraction of the risks of smoking.* [emphasis added]

It is unclear why an unpublished 2017 Canadian assumption that vaping was equivalent to 20% of the risk of smoking from 2017 was used in preference to the published English government-sponsored estimates from 2018 or 2022 or a similar estimate made by the Royal College of Physicians in 2016.[15] The effect is to understate the likely cost of perverse consequences and overstate the benefits of avoided youth vaping, which would arise from slight hypothetical variations in mortality and morbidity many decades into the future.

3. **The failure to provide any quantification**. Small increases in smoking prevalence arising from unintended effects of vaping regulation or partial prohibitions would likely dominate a cost-benefit analysis. For example, each 0.1 percentage point increase in smoking prevalence would represent a cost of £3.5 billion million using the assumption built into the IA.[16] However, the impact assessment does not attempt quantification of these adverse effects, even though they would likely swamp any benefits from reduced youth vaping if the risk comparison between smoking and vaping is realistic. This omission is justified with reference to uncertainty:

> *419. Due to the uncertainty on the size of the impact that restricting vape flavours would have on the number of current smokers not quitting and ex-smokers that relapse, we have not quantified the health impacts of fewer people using vapes to quit smoking.*

---

13 McNeill, A., et al. (2022). *Nicotine vaping in England: An evidence update including health risks and perceptions. A report commissioned by the Office for Health Improvement and Disparities. London:* (p. 1468). Office for Health Improvement and Disparities. [link]

14 McNeill A, et al. (2018). *Evidence review of e-cigarettes and heated tobacco products 2018. A report commissioned by Public Health England.* Public Health England. [link]

15 Royal College of Physicians. (2016). *Nicotine without smoke: Tobacco harm reduction*. RCP London. [link] "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**." (original emphasis)

16 The IA uses a value per Quality Adjusted Life Year (QUALY) of £70,000 and assumes that each smoker who quits (and by implication reverts or does not quit) generates a cost or benefit of 1.0 QALY [see para. 413). The ONS estimates 6.4 million smokers and a smoking prevalence of 12.9% in the UK [source]. A 0.1 percentage point change in prevalence from 12.9% to 13.0% equates to an additional 49,612 smokers. Multiplying this by £70,000 gives £3,473 million. For each 0.1% change in the number of smokers (not a percentage points change of prevalence), the cost would be £448 million. These calculations are to illustrate the magnitude of costs associated with small changes in population smoking rates that might arise from vaping legislation.

However, there was no such reticence in quantifying the highly uncertain effects of the smoke-free generation measure. It is more likely that the result of even conservative assumptions for changes in smoking status would show considerable net harm arising from these vaping regulations because of the detrimental effects on adult smoking rates and youth smoking initiation.

4. **A lack of insight into youth vaping risks**. Ministers might wish to prioritise the risks of youth taking up vaping compared to the risks of adults or adolescents continuing to smoke. In that case, they would need to develop a measure other than QALYs to assess the balance of benefits and detriments to health and well-being. They would need to identify policies that do not cause unintended consequences to adults that far outweigh any conceivable benefits to youth over the longer term. Lastly, they would need to recognise that they have limited control over youth risk behaviours, especially in a market increasingly supplied by illicit trade.

4. Conclusion

The Tobacco and Vapes Bill reflects poor policy targeting and indifference to serious unintended consequences arising from the anti-vaping measures. In essence, the smoking policy misses the critical target population (middle-aged adult smokers), and the vaping policy compromises a vital harm reduction option with potentially high costs in net additional smoking. We hope scrutiny of the Bill will be undertaken with due scepticism and challenge to the government's casual and implausible assumptions about the Bill's impact.

If we may be of further assistance, please do contact us.

Yours sincerely

Louise Ross
Chair
New Nicotine Alliance

Clive Bates
Voluntary Public Health Adviser
New Nicotine Alliance

Sarah Jakes
Trustee
New Nicotine Alliance

Mary Stamp
Trustee
New Nicotine Alliance

Michelle Jones
Trustee
New Nicotine Alliance

Bernice Evans
Trustee
New Nicotine Alliance