



YB DATUK WAN SAIFUL BIN WAN JAN  
AHLI PARLIMEN TASEK GELUGOR

Our ref : Bil.(63)dIm.PKAPTG/2024

Date: 20 April 2024

Members of the Commons General Committee on the Tobacco and Vapes Bill 2024,  
House of Commons  
London SW1A 0AA  
United Kingdom

**(For attention of: Hon Victoria Atkins, MP for Louth and Horncastle)**

**(By email: [victoria@victoriaatkins.org.uk](mailto:victoria@victoriaatkins.org.uk))**

Dear Members of the Committee,

## **THE PROPOSED REGULATION ON THE SUPPLY OF TOBACCO, VAPES AND RELATED PRODUCTS**

I am writing to you as a Member of Parliament in Malaysia to express my opinion on the proposals contained in the Tobacco and Vapes Bill 2024, especially on the sections that will prohibit the sale of tobacco products to anyone born on or after 1 January 2029 (the “Generational End Game provisions”) and to share our experience with a similar legislation tabled in the Malaysian Parliament last year.

It is a well-known fact that the consumption of tobacco products is one of the leading causes of serious diseases around the world. Rightfully, governments of many countries around the world have introduced policies and regulations to reduce and control smoking. It is my belief that in doing so, we must be careful so that rule of law and good regulatory practices are always observed.

I humbly submit the following points for your consideration:

No 46-2, Jalan Sena Jaya, Taman Sena Jaya, 13200 Kepala Batas, Pulau Pinang  
Tel / Fax: +604 571 1252      Email: [parlimen@wansaiful.com](mailto:parlimen@wansaiful.com)

## **A. Rule of Law: Equality under the Federal Constitution**

The Government of Malaysia has recently passed the Control of Smoking Products for Public Health Act 2024.

The original version of the Malaysian Bill contained Section 13, a provision similar to your Generational End Game provision. In our draft Act, the proposed provision states:

***Prohibition of sale of tobacco product, etc., to person born on 1 January 2007 onwards***

- (1) *No person shall—*
- (a) *sell any tobacco product, smoking substance, substitute tobacco product or smoking device to any person who was born on 1 January 2007 onwards; or*
  - (b) *provide any services for smoking to any person who was born on 1 January 2007 onwards.*

However, this particular provision was removed from the final version of our Bill before the Malaysian Parliament gave its approval.

Central to the consideration was the opinion of the Malaysian Attorney-General that the provision is *ultra vires* to Article 8 of the Malaysian Federal Constitution which provides that “*all persons are equal before the law and entitled to equal protection of the law*”. This was confirmed by the Minister of Health in the Malaysian Parliament on 20 March 2024 when he stated that the removal of the offending provision was due to the position taken by the Malaysian Attorney General’s Chambers on the constitutionality of the proposed provisions.

The introduction of this provision in Malaysia would have created two classes of adults i.e. those born before the cut-off date and those born after the cut-off

date. This is discriminatory and was deemed as a breach of Article 8(1) of the Malaysian Federal Constitution. While I understand that the nature of all legislation naturally 'discriminates' one class of person against another (for example the minimum age to drive a motor vehicle), the Malaysian courts have held that such discrimination must not be arbitrary and must be proportionate to the public interests that are meant to be protected by that 'discrimination'.

Historically, the constitutional and administrative laws in Malaysia were derived from the principles of English law. Therefore, I believe it would be a grave error for the United Kingdom to depart from the finding that the said provisions will unjustly remove the constitutional and universal guarantee that all persons must be equal under the law.

## **B. Public Health Policies and Effectiveness:**

I am aware that there are many reports, studies and statistics that demonstrate the effectiveness of current smoking cessation measures in the United Kingdom. These studies include evaluations of various interventions such as tobacco taxation, smoke-free policies, public awareness campaigns, and access to cessation support services.

A report from NHS England (<https://digital.nhs.uk/data-and-information/publications/statistical/smoking-drinking-and-drug-use-among-young-people-in-england/2021#>) stated that in England there has been a decrease in the prevalence of smoking cigarettes, with 12% of pupils having ever smoked (16% in 2018), 3% being current smokers (5% in 2018), and 1% being regular smokers (2% in 2018). This is a good indication that current UK policy measures are heading in the right direction.

In Malaysia, we have learned that enacting a ban is too blunt a policy instrument, which drove activities underground. In the case of Malaysia, our earlier ban on electronic cigarettes led to the vaping industry growing to become

a £579 million unregulated industry. In recognition of this, the Government decided to legalise vaping liquids containing nicotine on 1 April 2024 and now plans to enact more suitable regulations instead.

The blunt banning of tobacco and tobacco related products is more likely to drive activities underground, while leaving the actual problem unresolved. Our Malaysian experience also tells us that it may lead to increased smuggling activities, as our incidence of illicit cigarettes grew to an all-time high of 63.8% of the market in 2020.

### **C. Public Opinion and Stakeholder Engagement:**

In Malaysia, a sizeable number of retailers coffee-shop operators are against the proposed measures. Their perspectives are important because these SMEs are an important engine for our economy. Similarly, in the United Kingdom, small businesses are key drivers of the economy. Introduction of regulations that may disrupt their operation will surely have a negative impact on them too. The Generational End Game proposal would require retailers to demand customers' identification documents in order to determine their age. This added responsibility is an added cost to them.

Malaysian consumers were also aghast at the proposal as it is not normal practice for shopkeepers to demand identification documents. It is unreasonable for shopkeepers to act as law enforcement officers.

### **D. Economic Impact Assessment:**

Small retailers play a significant role in Malaysia's economy, including in the distribution and sale of tobacco and tobacco-related products. These retailers have already been adversely affected by the COVID-19 pandemic and global economic slowdown. The proposed new regulation will be an added regulatory burden for them.

One retailer association, the Malaysia-Singapore Coffeeshop Proprietors' General Association (MSCSPGA) wrote a letter to the Malaysian Prime Minister urging the Government to address the illicit cigarette trade, instead of banning tobacco and vape products for the next generation as it would drive adult smokers to illegal cigarettes. The sale of legal cigarettes in coffee shops in Malaysia contributes to a significant amount of the association members' earnings.

In its letter to the Prime Minister, MSCSPGA said the implementation of smoking ban for next generation will not only reduce potential revenue for businesses, but also will come with a hefty price for its members. The Malaysian Government learnt the hard way when they failed to consult closely with retailers. It was only after their protest that the Government discovered that legal cigarettes contribute close to 30% of the monthly revenue of retailers.

#### **E. Alternative Strategies and Policy Recommendations:**

Malaysia's approach in tobacco control combines regulatory measures with public education and awareness campaigns. Based on Malaysia's experience, alternative strategies may include:

- strengthening tobacco control laws,
- enhancing enforcement efforts,
- expanding access to smoking cessation services,
- increasing public education,
- promoting healthier lifestyle choices through community-based interventions.
- leveraging existing tobacco control policies and programs
- investing in evidence-based interventions
- engaging with stakeholders
- fostering partnerships across sectors to address smoking prevalence and related health disparities
- fostering dialogues between policymakers, public health experts, and stakeholders from countries, including Malaysia.

In conclusion, while I share the common goal of promoting public health and reducing smoking prevalence, I urge your Committee to carefully reconsider the proposed Generational End Game provision.

Yours sincerely,

A handwritten signature in black ink, consisting of several fluid, overlapping loops and a long horizontal stroke extending to the right.

**Hon. Wan Saiful Wan Jan**

Member of Parliament for Tasek Gelugor, Malaysia