Written evidence submitted by ASH Scotland to the Tobacco and Vapes Bill Public Bill Committee (TVB38)

About Action on Smoking and Health Scotland

ASH Scotland (Action on Smoking and Health Scotland) is a registered Scottish charity. We work in and for Scotland at national, UK and international levels, taking action to reduce the harms caused by tobacco and related products and working to achieve a tobacco-free generation by 2034.

ASH Scotland is grant-funded by the Scottish Government, BHF and CRUK. We do not engage with nor take funding from the tobacco and related products industries or vested interests; and implement Article 5.3 of the World Health Organisation's Framework Convention on Tobacco Control (FCTC).

Executive summary – ASH Scotland's support for measures in the UK-wide Tobacco and Vapes Bill

- ASH Scotland supports the introduction of the measure preventing anyone born on or after 1 January 2009 from being legally sold tobacco.

- ASH Scotland advocates that e-cigarettes should be flavourless and for the standardisation of vaping device designs and packaging through preventing imagery, colours, descriptors and branding to reduce the attractiveness of products to children.

- ASH Scotland also advocates for other more impactful supporting measures not included in this Bill such as mandating only very low nicotine tobacco products, banning cigarette filters, substantially reducing the number of retailers permitted to sell tobacco, if we are to eradicate the damage that profit-centred multi-national tobacco corporations inflict on people's lives and achieve a tobacco-free/smoke-free generation. We believe the advertising and promotions of recreational e-cigarettes/nicotine products should be limited in line with the restrictions placed on tobacco.

ASH Scotland's support for the measure increasing the age of sale for tobacco

- ASH Scotland supports the introduction of the rising age of sale measure for anyone born on or after 1 January 2009; tobacco remains Scotland's main preventable cause of death, prematurely ending over 8,000 lives each year. This measure will progressively and incrementally clear retail spaces of tobacco. We believe the focus should be on product and industry.

- We welcome the Scottish Government's confirmation that, if the Bill is passed, existing age-of-sale legislation in Scotland will be amended (clause 37) to decriminalise under-age consumer purchase of tobacco in Scotland. ASH Scotland holds that the burden of criminalisation should fall on the producers and promoters of addictive health harming tobacco and related products, rather than on consumers.

- Around 75% of people who smoke started before age 18, and two-thirds of adult smokers in Scotland consistently state that they wish to quit.[i]

The following figures detail smoking prevalence amongst young people in Scotland:

- Schools Adolescent Lifestyle and Substance Use Survey (SALSUS)[ii] and Health and Wellbeing Census[iii]

  Regular smoking
  15-year-olds: 7% in 2018 down to 4.3% in 2021/22
  13-year-olds: 2% in 2018 down to 1.6% in 2021/22

- Health Behaviour in School-aged Children (HBSC) 2022[iv]

  Ever smoking
  15-year-olds: 20%
  13-year-olds: 6%
  11-year-olds: 1%

  Current smoking (smoked in the past 30 days)
  15-year-olds: 11%
  13-year-olds: 3%

- The Health Behaviour in School-aged Children indicated that the decline in smoking prevalence among young people in Scotland has stalled since around 2018.

- Although the Scottish Health Survey showed a smoking decline among all adults from 17% in 2019 to 15% in 2022, it, however, also showed smoking prevalence increased by 8% among young men (aged 16-24) from 14% to 22%. Smoking prevalence declined from 15% to 11% for young women (aged 16-24) in the same period.

- Around 28 young people aged between 18-24 start smoking per day, more than 10,000 a year in Scotland.[v]

ASH Scotland's support for measures reducing the appeal and availability of vapes to children

- E-cigarette brands, many owned by tobacco companies, depend on a new generation's uptake of addictive products to sustain the profitability of their businesses. Many marketing and promotional practices which are banned for tobacco are actively used to promote e-cigarettes, including sales displays, sports sponsorship, as well as the promotion of flavours, price, and attractive packaging. Legislative measures to reduce the visibility and availability of tobacco products has been critical in the decline of smoking prevalence among young people, and similar restrictions are needed for vapes to tackle the upsurge in youth vaping.

- ASH Scotland supports the measures allowing the Secretary of State to make regulations restricting the retail packaging (clause 61) and contents and flavouring of vaping and nicotine products (clause 62) across the UK.

- The University of Glasgow's research involving 11 to 16-year-olds in the central belt of Scotland in 2022 suggested youth vaping increases are driven by the popularity of cheap sweet flavoured, brightly coloured disposable e-cigarettes.[vi]

- A systematic review of 58 studies on the use of e-liquid flavours by young people concluded that flavours can drive e-cigarette uptake.[vii] 90% of 11-17-year-olds who use e-cigarettes consume flavoured vapes.

- E-cigarette flavours promote youth uptake and introduce unknown longer term health risks from chemicals untested for vapourisation and inhalation. As a result, flavours are regulated in several countries:

  - Flavours have been banned in China's internal market since 2022 on grounds of health and youth uptake but products are exported e.g. to UK.

- Seven European countries have introduced restrictions permitting only tobacco flavoured e-cigarettes: Finland (2016), Hungary (2020), Lithuania (June 2022), Ukraine (July 2023), Norway (January 2024), Netherlands (January 2024) and Latvia (January 2025).
- Three European countries permit only tobacco and mint flavoured e-cigarettes: Estonia (2020), Denmark (2022) and Slovenia (2024).
- Other European countries are currently consulting on restricting e-cigarette flavours, including Ireland and Spain.
- Only tobacco, mint and menthol flavoured e-cigarettes can be sold in Australia.
- Six of Canada's 13 provinces have banned flavours except tobacco, and flavoured e-cigarettes are only available in specialist vape stores in three other provinces.
- In New Zealand, flavoured e-cigarettes are only available in specialist vape stores. Only tobacco and menthol flavoured e-cigarettes can be sold in other stores.

ASH Scotland supports the WHO's recommendation that countries permitting the commercialisation of e-cigarettes should ban all flavourings. The UK has already banned tobacco flavourings including mint and menthol. ASH Scotland advocates that flavours should also be prohibited in e-cigarettes and all tobacco related products.

- Research shows that branded packaging increases appeal of vaping products among young people. A UK study found that young people (aged 11-18) were over a third more likely to report no interest in trying e-cigarettes presented in standardised packaging compared to e-cigarettes in branded packaging.[viii] These findings are similar to previous research that led to the adoption of plain packaging for tobacco.

- While the Bill would make it an offence to distribute free vaping products to under-18s in England and Wales (clause 9) and grant powers to Ministers in Scotland (clause 44) to introduce similar restrictions or prohibitions, ASH Scotland urges the Scottish Government additionally to introduce regulations already enabled by the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, to reduce the promotion and visibility of recreational e-cigarettes. Legislative provisions in Scotland enable restricting the advertising of e-cigarettes on billboards, leaflets and bus shelters; ending promotional activities such as give-aways, sponsorship and brand-sharing. The Scottish Government consulted on these 2016 measures in Spring 2022 and published the analysis of responses in September 2022.

- The DISPLAY study (Haw, Amos et al 2020) researching the impact of the point-of-sale tobacco display ban on young people in Scotland found young people recalled seeing e-cigarette displays in retail outlets, and this "prominent and ubiquitous" visibility was associated with increased risk of experimentation with the products[ix], echoing previous tobacco retail displays research.

- The Bill would enable the Secretary of State to make new regulations restricting the display of vaping or nicotine products in retail outlets in England and Wales (clause 11) and enable Ministers in Scotland (clause 45) to do the same. ASH Scotland welcomes this and calls for complementary restrictions to be introduced by the Scottish Government without delay by implementing the remaining provisions from the existing Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016.

- A CRUK report found that, between 2017 and 2019, young people noticed e-cigarette marketing on websites and social media more than adults (41.1% of young people versus 14% of adults in 2018).[x] Other research of user-generated content and influencer marketing related to e-cigarettes in the UK on YouTube and Instagram found that young people positively perceived e-cigarettes in 86.5% of Instagram posts and 66% of YouTube videos. Only 43.3% of YouTube videos and 20.2% of Instagram posts featured warnings about age restrictions. Health warnings were absent from most posts.[xi]

- ASH Scotland calls for effective enforcement on social media platforms to restrict promotions of e-cigarettes and other recreational tobacco related products to prevent children's/youth uptake.

- After years of relative stability in e-cigarette use prevalence by young people in Scotland, there has been an exponential increase in current and regular use, driven by disposable e-cigarettes.

    - Between the 2018 Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) and the 2021/22 Health and Wellbeing Census

      Regular e-cigarette use (once a week or more)
      15-year-olds (S4) tripled from 3% to 10%.
      13-year-olds (S2) doubled from 2% to 4.3%.

    - The Health Behaviour in School-aged Children (HBSC) survey data, Scotland 2022:

      Current e-cigarette use (used in last 30 days)
      15-year-olds: 25% (increased from 7% in 2018)
      13-year-olds: 10% in 2022
      11-year-olds: 3% in 2022

      Ever use (used at least once)
      15-year-olds: 36%
      13-year-olds: 16%
      11-year-olds: 4%

    - The 2022 Scottish Health Survey:

      Current e-cigarette use (used in last 30 days)
      Two and a half times higher in SIMD1 (most deprived) areas compared to SIMD5 (least deprived) areas: 14% vs 6%.

      Dual use of e-cigarettes and smoking tobacco
      Six times more common in the most deprived SIMD1 (most deprived) areas compared to SIMD5 (least deprived) areas: 5% vs 1%.[xii]

Health harms associated with e-cigarette use

- Recreational e-cigarettes have only been regularly used in the UK for around 15 years and globally for less than 20 years. Products vary greatly and are evolving rapidly. For tobacco and asbestos, it took 30-60 years post initiation for most serious health outcomes to manifest. Lack of evidence of harm does not equate to lack of harm and there are concerning reports of DNA changes in cells.

- Scottish respiratory paediatricians have expressed concerns about a “vaping epidemic in the adolescent population”, the impacts of e-cigarettes on developing lungs (acute lung disease) and brains (increased addiction, adverse behavioural and developmental outcomes).

- A global systematic evidence review (2023, ANU) found conclusive evidence that e-cigarettes can cause lung injury, burns, poisoning or lead to seizures.[xiii] It also found conclusive evidence of fine particulates in e-cigarette vapour, and air quality researchers have linked exposure to fine particulate (particulate matter) to long-term health risks. This was further confirmed by a published article (2024) by a European project, including researchers from the University of Stirling which showed that e-cigarettes can emit potentially health-harming levels of particulate matter.[xiv] The potential health-harming effect of particulate matter has also been discussed in a project on Smoke and Aerosol Free Environments (SAFE) as part of the EU funded research partnership Joint Action on Tobacco Control (JACT-2).[xv,xvi]

- In December 2023, the World Health Organisation (WHO) called on governments to act urgently to protect children from harms caused by vaping, following mounting evidence of adverse health impacts, and studies consistently showing that young people who use e-cigarettes are at up to three times greater risk of both nicotine addiction, and initiating tobacco use.

- E-cigarettes include toxic chemicals not safety tested for inhalation; WHO notes they 'emit carcinogens'. Over 30,000 variants are registered by the Medicines and Healthcare products Regulatory Agency (MHRA), few have been tested.

- There are obvious concerns about illicit good, but also non-compliant goods. Most e-cigarettes contain nicotine, which is highly addictive. Some legitimately sold e-cigarettes when tested contained higher nicotine levels than advertised, some alleged non-nicotine e-liquids were found to contain nicotine, and some over-the-counter e-cigarettes were over-filled with e-liquid beyond the permitted legal maximum. Sanctions are non-existent or ineffective.

- Nicotine variants exist – some research has found that nicotine salts can be absorbed three times as effectively as previous freebase nicotine, carrying addiction potential equivalent to that of a cigarette.[xvii,xviii] Nicotine salts are absorbed faster[xix], and reported as feeling less harsh to the throat. Nicotine salts are used in most pod/cartridge and disposable devices, predominantly used by children and young people.

- There has been a significant increase in use of e-cigarettes with the highest permitted nicotine concentration. According to Toolkit data, the percentage of e-cigarette users using the maximum concentration (20mg/ml or 2%) was stable at around 5% until 2020, but rose to 25% in 2022.[xx]

- Nicotine salts and technological advances have increased nicotine bio-availability and therefore addiction potential. This is especially concerning as disposables are the product of choice for most young people.

- A non-exhaustive list of potentially harmful substances in e-cigarette vapour are:[xxi,xxii]
    - Nitrosamines
    - Volatile organic compounds (VOC) e.g. toluene and benzene.
    - Carbonyl compounds e.g. Acrolein, formaldehyde and acetaldehyde.
    - Carbon monoxide
    - Carrying agents e.g. Propylene glycol and glycerol.
    - Metals e.g. chromium, copper, zinc, tin and lead.

  Some of these would not be expected to manifest health harms in the 'up to two years' timeframe considered in the Cochrane review.

E-cigarettes use for smoking cessation

- Some survey data, including HBSC Scotland survey and Smoking Toolkit survey, suggest that the decline in smoking prevalence has stalled during the last two to three years. There is no clear evidence that the increase in e-cigarette use has led to an increased decline in smoking among adults or children.

- The global systematic evidence review (2023, ANU) found that between two-thirds and three-quarters of people who quit smoking long-term do so unaided. This review and the WHO's call to action note available evidence and real-world practice do not support the use of e-cigarettes for smoking cessation as a population level strategy. Both recommend evidence-based medically licensed therapies.

- No e-cigarette is medicinally licensed either by MHRA or anywhere globally. Through Scotland's consensus approach, NHS Scotland's Quit your Way cessation services welcome people wishing to quit smoking, but only positively recommend medically licensed quit aids, which have the strongest evidence base for efficacy and are tested and monitored, quality-controlled and medicinally supervised and regulated.

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Enforcement – Scotland's Register of Tobacco and Nicotine Vapour Product Retailers

- In Scotland, it is already an offence to sell non-nicotine and nicotine vaping products to under-18s. From the 1 April 2017, it became illegal for retailers in Scotland to sell nicotine vapour products (NVPs/NNVPs), tobacco or both if they are not registered on Scotland's Register of Tobacco and Nicotine Vapour Product Retailers.

- The Tobacco and Primary Medical Services (Scotland) Act 2010 gives:
    - Power to trading standards officers to issue fixed penalty notices.
    - Courts the power to remove retailers from the register where they have repeatedly broken the law.

- Under The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016:
    - It is an offence to sell tobacco or a NVP/NNVP to under 18s.
    - It is an offence to fail to operate an age verification policy at premises offering tobacco or NVPs/NNVPs for sale.
    - It is an offence allowing tobacco products, cigarette papers or an NVP/NNVP to be sold by a person under 18, without authorisation.
    - It is an offence to sell NVP/NNVPs from a vending machine.
    - There is provision for a due diligence defence.
    - It is an offence for a person aged 18+ to buy NVPs/NNVPs for under 18s (proxy purchase).
    - It provides powers to make regulations prohibiting or restricting a sponsorship agreement which promotes NVPs/NNVPs and make related offences.

- Trading standards officers have powers to issue fixed penalty notices for the following offences:
    - Selling tobacco or NVP/NNVP products to under 18s.
    - Displaying tobacco or NVP/NNVP products not mentioned on the retailer's register entry.
    - Selling tobacco or NVP/NNVP products despite the retailer not being on the register.

- If retailers have been found in breach of the legislation three times within two years, local authorities can apply to the courts to have the retailer banned from selling tobacco and/or NVPs/NNVPs for up to 12 months. The ban would apply to the premises and a banning order notice must be displayed in a prominent position in the shop.

- In 2022/2023, test purchasing for tobacco (an attempted sale to a person under 18) by trading standards showed that around one in eight shops (12%) failed in Scotland. For nicotine vapour products, the failure rate was one in five (20%).[xxiii]

- As the Scottish Government's Register of Tobacco and Nicotine Vapour Product Retailers currently only requires a retailer to notify that they are selling a tobacco or NVP product, ASH Scotland advocates that the register be made conditional, with support provided for trading standards teams to ensure all shops selling vapes are informed and compliant. Conditions of registration should include completing staff training about the health harms caused by tobacco and e-cigarettes and could give local authorities powers to de-register retailers found persistently in breach of the law.

Proof of age to purchase tobacco and e-cigarettes in Scotland

The acceptable forms of proof of age identification in Scotland are:

- a passport
- a UK or EU photocard driving licence
- a defence identity card issued by the Ministry of Defence
- a photographic identity card with the national Proof of Age Standards Scheme (PASS) hologram
- a national identity card issued by an EU member state, Iceland, Liechtenstein, Norway or Switzerland
- a biometric immigration document.

Young Scot runs Scotland's national PASS accredited scheme offering free entitlement cards that provide discounts and benefits for 11-26 year olds.: https://young.scot.

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