

## Public Bill Committee

Tobacco and Vapes Bill

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### The Tobacco and Vapes Bill– consumer group comments

We are writing to submit comments on the Tobacco and Vapes Bill following the call for evidence from the House of Commons Public Bill Committee.

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 proposals on vaping products are flawed and will severely impact public health. 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

The Bill's anti-vaping measures will cause more harm than good to the critical group for public health: current adult smokers. It is arguable that they may increase youth smoking and merely shift youth vaping to the already widespread unregulated vaping market.

- **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 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 has been amended from its previous version to introduce a licensing scheme that would improve retaining behaviours in several ways. Arguably, this should be implemented first to ascertain if it can significantly reduce the issue of youths accessing vaping products which it is already illegal for them to buy.
  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. Instead of the incredibly blunt instruments of banning all advertising, implementing plain packaging, and banning many flavours (all of which will have a chilling effect on take up of vaping by current smokers, and weaken the capacity of vaping to prevent former smokers relapsing), the same concepts could be applied to branding, trademarks, and flavour descriptors.

## 2. Smokefree Generation proposal

**The negative impacts of including smoke-free tobacco products in the Smokefree Generation proposal are ignored.** 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.<sup>1</sup> At least one heated tobacco product has been designated “appropriate for the protection of public health” by the US FDA<sup>2</sup>, and these products have beneficially transformed the market in Japan.<sup>3</sup> 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 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.

**We are concerned that consensus positions of tobacco control and medical organisations reflect the measures they find agreeable, not necessarily what will work or be sufficient to meet the goal.** *We stress that the critical distinction in tobacco and nicotine policy is not between tobacco and non-tobacco products but between combustible and non-combustible products.* Rather than strengthening the ban on snus by making possession illegal, the government should lift the ban on public health grounds. The lowest smoking rate in Europe (5.3%) is in Sweden, where many nicotine users use snus, a form of smokeless tobacco. In Norway, daily smoking among young women (age 16-24) reached 1% in 2019 and remains at that level. This was a fall from 17% to 1% prevalence over just ten years as almost all nicotine use in this age group has migrated to snus. This is already a true “smoke-free generation”, and it has been achieved very quickly and by consent rather than by force. The most recent Global Burden of Disease (GBD) study found no excess mortality, oral cancer, ischemic heart disease or stroke risk for smokeless tobacco users in Sweden and Norway, and the 2016 GBD concluded: “for snus or snuff, we did not find sufficient evidence of an RR greater than one for any health outcomes”.

### 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

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<sup>1</sup> Ramström, L. (2024). Snus Has Saved Many Lives in Sweden – And Can Save Many More. *Qeios*. [\[link\]](#)

<sup>2</sup> Food and Drug Administration, Premarket Tobacco Product Marketing Granted Orders, accessed 3 April 2024. [\[link\]](#)

<sup>3</sup> 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. [\[link\]](#)

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 1018, negative impacts on adult smoking cessation are mentioned.

*1018. 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.<sup>4</sup>

*400. 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<sup>5</sup>, and the most recent report for the government in 2022 stated the following:<sup>4</sup>

*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-

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<sup>4</sup> 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. [\[link\]](#)

<sup>5</sup> 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. [\[link\]](#)

sponsored estimates from 2018 or 2022 or a similar estimate made by the Royal College of Physicians in 2016.<sup>6</sup> 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.<sup>7</sup> 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:

*1020. 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.*

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 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.

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<sup>6</sup> 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)

<sup>7</sup> The IA uses a value per Quality Adjusted Life Year (QALY) 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.

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

Yours sincerely



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