

Written evidence submitted by The Institute of Economic Affairs to The Tobacco and Vapes Public Bill Committee (TVB13).

I am an economist at a free market think tank and have written two books that are relevant to the work of the committee. *The Art of Suppression* (2011) is a history of various prohibitions since 1800. *Velvet Glove, Iron Fist* (2009) is a history of anti-smoking agitation since the 15th century and discusses numerous attempts by authoritarian rulers to eradicate tobacco use. None of these prohibitions was an unalloyed success, to put it gently. A generational tobacco ban, as proposed in the Tobacco and Vapes Bill, has never been tried before and would represent the first attempt to prohibit the sale of tobacco, albeit gradually, in a European country since the 17th century. It is a major policy decision and should not be carried through on a wave of good intentions and naive optimism. There are two particular issues I hope the committee will look at thoroughly.

1. The black market

The most obvious and infamous problem with prohibition (or any restrictive laws that focus on the supply side) is that it drives sales to the illicit trade which necessarily fuels criminal activity. Neither the current public health minister (Andrew Gwynne) nor the last public health minister (Neil O'Brien) has taken this threat seriously. Both have cited estimates from HMRC which suggest that the tobacco tax gap was 'only' £1.7 billion in 2022/23. There is no mention of the illicit trade in tobacco in the Impact Assessment.

This strikes me as an extraordinary omission. The reality is that there has been no serious attempt by the government to measure the size of the black market in tobacco for many years. The gold standard method is to study discarded cigarette packs and rolling tobacco pouches. Instead, HMRC relies on the following calculation:

$$(S \times C) - LS = IT$$

HMRC estimates how many smokers (S) there are in Britain and multiplies this by the number of cigarettes (C) they smoke per annum. This provides an estimate of the country's total annual tobacco consumption. Subtract from this the amount of tobacco sold legally (LS) and the figure that remains should be the total amount of illegal tobacco (IT) sold annually.

The mathematics is sound, but whilst we have reliable figures for the amount of legal tobacco sold (from tax receipts), we must rely on estimates from surveys for the total amount of tobacco consumed. This requires survey respondents to be honest when

asked if they are smokers and for smokers to give a reliable answer to the question of how many cigarettes they consume. It is well known that both measures are under-reported, partly due to social desirability bias.¹ Although HMRC attempts to control for under-reporting, this is essentially guesswork. Its estimates in recent years have become even less reliable because the Office for National Statistics 'Opinion and Lifestyle Survey stopped asking questions about tobacco consumption in 2020. By HMRC's own admission, its figures since 2020/21 have been no more than 'projections' based on estimates from previous years. Moreover, in June 2024, the ONS found that it has been under-estimating how many cigarettes smokers consume since 2018.²

According to HMRC's figures for 2022/23 (the most recent available at the time of writing), the share of rolling tobacco market that is non-duty paid is 33.3% and the share of the cigarette market that is non-duty paid is at an 18-year low at 6.9%. To anyone who smokes or who notices the language of the health warnings on packs of cigarettes smoked by other people, these estimates defy credibility. Three pieces of empirical evidence strongly suggest that the black market is much larger than this and has been growing rapidly in recent years.

Firstly, sales data show that the number of cigarettes sold legally between 2021/22 and 2023/24 fell from 23.5 billion to 16.3 billion, a decline of 31% in just two years. Legal rolling tobacco sales fell by 27% in the same period.³ This cannot be explained by the fall in smoking prevalence (which was around 10%) nor by smokers consuming fewer cigarettes (they didn't). **The bulk of the decline in legal tobacco sales must have been due to a substantial increase in illegal tobacco sales.**

Secondly, an empty pack survey conducted by KPMG found that 26% of cigarettes consumed in 2023 were counterfeit, contraband or bought abroad.⁴ The survey did not look at rolling tobacco, but even HMRC accepts that the figure is even higher for rolling tobacco.

Thirdly, the ONS's estimate of how much money is spent on tobacco in 2023 was £21 billion.⁵ This is roughly £6 billion more than the revenue produced from the sale of

¹ The tendency of survey respondents to give answers to questions that will be viewed favourably by others.

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<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/drugusealcoholandsmoking/methodologies/adultsmokinghabitsintheukaveragecigaretteconsumptionmethodology>

³ <https://www.gov.uk/government/statistics/tobacco-bulletin>

⁴ https://www.pmi.com/resources/docs/default-source/itp/illicit-cigarette-consumption-in-europe_2023-results_final.pdf

⁵ <https://www.ons.gov.uk/economy/nationalaccounts/satelliteaccounts/timeseries/adfn/ct>

tobacco products in the UK. **If the ONS figures are correct, the illicit trade makes up more than a quarter of the tobacco market.**

Two conclusions should be drawn from this. Firstly, the government should make a serious effort to measure the size of this black market by commissioning empty pack surveys. Secondly, the government should not be complacent about the illegal activities that are very likely to be fuelled in the medium and long-term by the Tobacco and Vapes Bill. In Australia, which has the world's highest tobacco taxes and has banned e-cigarettes completely, there have been over 200 arson attacks on tobacconists and vape shops in the last two years and there is no end in sight for the 'tobacco turf wars' that have been blighting the country. This is no laughing matter.

2. Vapes and other low-risk nicotine products

It is unlikely that the UK will see major problems resulting from the generational ban until the early 2030s. Although the ban kicks in for the first cohort of 18 year olds in January 2027, these adults will have few problems acquiring cigarettes from older friends. The scale of the problem with the illicit trade thereafter will depend on how much demand exists for tobacco products amongst each new cohort.

In the best case scenario, combustible tobacco will have fallen out of favour among young people by 2030 to such an extent that black market traders have few young customers and, therefore, illicit activity involving young adults will be minimal. It is certainly possible that smoking will become virtually obsolete in the coming years, especially among younger people. ONS figures show that the decline in smoking in recent years has been the steepest among 18 to 24 year olds, falling from 26% in 2011 to 10% in 2023. Most of that decline has occurred since 2016.⁶

This has not happened by magic. Young adults are more likely to vape than any other age group and are the most likely to use disposable vapes. Despite occasional scare-mongering in the media about vaping acting as a 'gateway' to smoking, this has clearly not happened in the UK. Not only has vaping been gateway *away* from smoking, but it has acted as a prophylactic against smoking for people who have never smoked. **Young people who would otherwise have smoked are vaping instead.**

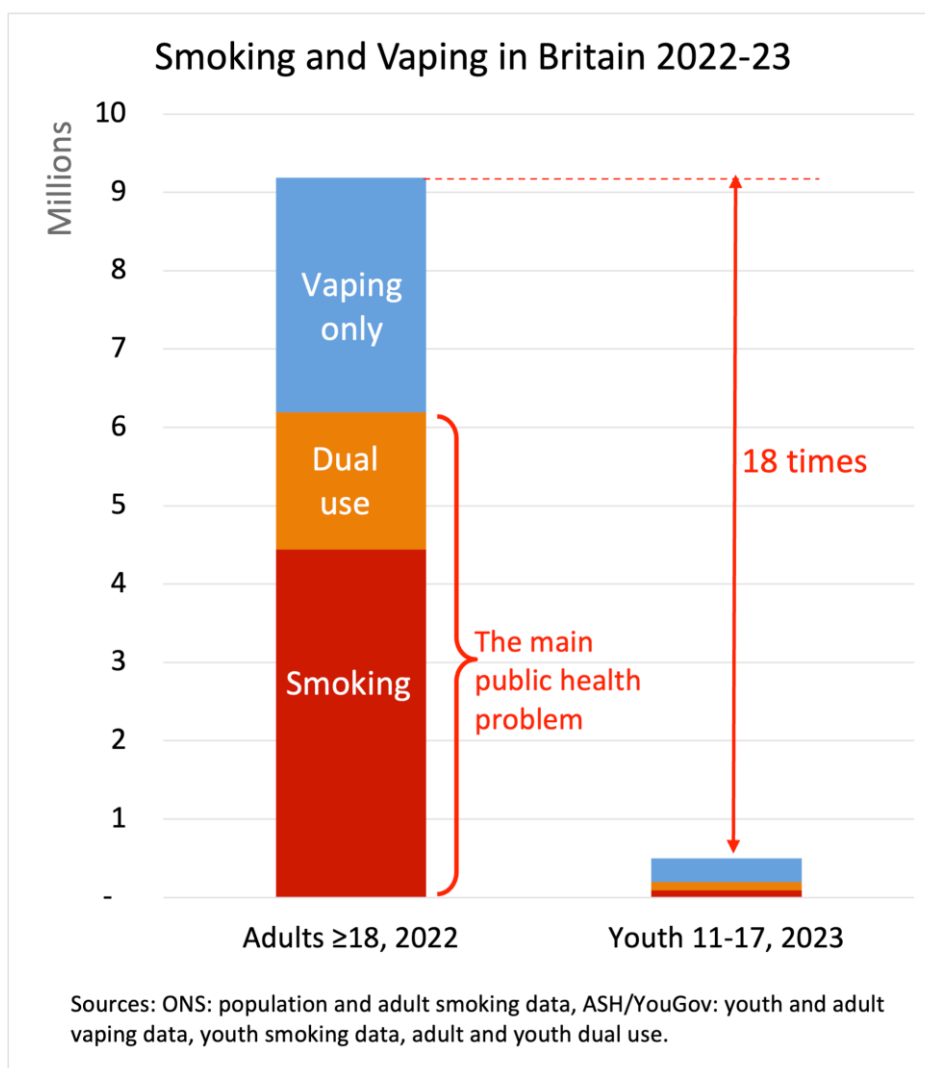
This public health success story deserves greater recognition than it has received. Instead, vaping has become the new villain and the Health Secretary has promised to

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<https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/bulletins/adultsmokinghabitsingreatbritain/latest>

“come down on the vaping industry like a ton of bricks”. This brings us to the Vapes part of the Tobacco and Vapes Bill. It aims to make vaping less appealing to minors, but many of the policies suggested would have the effect of making vaping less appealing to adult smokers. There is ample evidence in the economics literature showing that policies which deter people from vaping have the direct effect of increasing cigarette sales and increasing smoking rates.⁷

There is certainly more that could be done to stop minors vaping. Enforcing the law that was introduced in 2015 banning the sale of e-cigarettes to minors would be the best place to start. But in the panic about underage vaping, we should not throw the baby out with the bathwater. The real health issue is smoking, not vaping, as Clive Bates (former director of ASH) illustrates in the graphic below:⁸



Conclusion

⁷ For a brief summary, see <https://www.epicenternetwork.eu/blog/anti-vaping-policies-are-pro-tobacco-policies/>

⁸ Taken from <https://clivebates.com/uk-tobacco-and-vapes-bill-a-misfire-and-a-backfire/>

The government is clearly intent on passing the Tobacco and Vapes Bill and believes that the generational tobacco ban will make it a 'world leader' in tobacco control. It was voted for in overwhelming numbers after the second reading and it is politically futile to make the libertarian case against it. Nevertheless, there are thoughtful questions the committee could ask and useful amendments that could be proposed to avoid some of the unintended consequences. I will stop short of making specific proposals and will instead close by mentioning three areas where the government's thinking has been Panglossian and where the committee could bring some more sober thinking.

1. The black market. As shown above, this is much larger than the government believes and has become a serious problem in terms of both criminal activity and lost tax revenue (annual tobacco duty revenues are already £1.5 billion lower than they were two years ago).
2. 'Stopping the start'. When asked about the absurdity of people in their forties being asked for ID to buy cigarettes in the future, the Health Secretary dismissed the idea as ridiculous, saying 'the Bill will create a smokefree generation. Young people growing up in our country today will not be smokers, because we will have stopped the start.' This belief rests on the idea that if people are not old enough to buy a product, they will never do so. This is dangerously naive. In the UK, 15 per cent of 16-24 year olds smoke cannabis - more than smoke tobacco - despite cannabis having been illegal for nearly a century. Combustible tobacco may become obsolete one day, but it will not happen because of this bill.
3. Low-risk nicotine products. If combustible tobacco becomes obsolete it will be because of the availability of nicotine products which carry health risks that are comparatively low (heated tobacco), very low (vapes) or practically non-existent (nicotine pouches). It is naive to think that the sharp downturn in smoking rates in Britain in the last decade, especially among young people, was inevitable and was not the result of substitute nicotine products coming on the market. By including reduced-risk products such as heated tobacco in the generational ban and by legislating to make vaping less appealing and more expensive, the Tobacco and Vapes Bill is pulling in two different directions.

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