

<b>Written evidence submission from the Tobacco Manufacturers' Association (TMA) to the Tobacco &amp; Vapes Public Bill Committee 'Call for Evidence' (TVB22)</b>
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## **Introduction**

The Tobacco Manufacturers' Association (TMA) is the trade body for the UK tobacco industry and represents British American Tobacco UK Ltd., Imperial Tobacco Ltd., and Gallaher Ltd. (a member of the Japan Tobacco Group of companies).

On behalf of my members, I would like to put on record that I have major reservations about the unintended consequences if a generational ban on the purchase of tobacco becomes law. I urge the Government and Parliament to reflect hard on the ramifications of this policy decision and the lasting impact that it will have on the UK.

In my view, it will have profound repercussions which will be felt by consumers, retailers and law enforcement agencies across the UK, because in due course, the entire UK tobacco market will be pushed underground and into the hands of criminals, fuelling the profits of the same organised crime groups (OCGs) that trade in illegal drugs, people trafficking, sexual exploitation and modern slavery, and who corrupt and manipulate local communities with violence and disorder, up and down the country.

## **Executive Summary**

1. The illegal tobacco market already costs the Government billions of pounds in lost taxes every year (at least £2.2 billion in fiscal year 2022/23 according to HMRC figures). A legal tightly-controlled, taxed and regulated industry which delivered over £11 billion in taxes in 2023 will be replaced by an ever-expanding illegal market, uncontrolled, untaxed and unregulated, trading in cheap unchecked, potentially contaminated products.
2. It will be a generational ban in name only. If the Government adopts the previous Conservative Government's policy timeline, from 1 January 2027, any adult born after 31 December 2008, will still be entitled to bring tobacco into the UK that they have purchased abroad or in Duty Free and consume it in the UK.
3. It will be left to retailers, and overwhelmingly small independent retailers, who will feel the full force of trying to enforce a generational ban, and at a time when retailers are facing unprecedented levels of theft, verbal abuse and physical violence. This additional responsibility will very likely overwhelm them.
4. If the Government is committed to further reducing smoking rates it should focus on stronger enforcement action against those criminals trading illegal tobacco, as well as clamping down on those rogue retailers that for years have been selling tobacco to minors.
5. The Government should prioritise more investment in targeted-education campaigns, youth access prevention and smoking support services, and campaigns to educate smokers on less harmful alternative nicotine products. By adopting a similar approach, in November

2024, [Sweden became the first country in the world to become 'Smokefree'](#)<sup>1</sup> with less than 5% of the population designated as smokers. Sweden's success is attributed to a combination of smart regulation, consumer choice, and an open attitude towards alternative nicotine products. The New Zealand government has now adopted a similar approach, recently publishing its ['Getting to Smokefree 2025'](#)<sup>2</sup> “refocusing on harm reduction and building on proven tools and approaches” including smoking cessation services, health promotion messaging and innovative reduced-harm products to help people quit smoking.

6. However, if the Government is determined to introduce further restrictions on buying tobacco products, at least consider implementing a policy which retailers and law enforcement agencies can enforce. Retailers consistently told the previous government that increasing the minimum age of purchase for tobacco from 18 to 21 would be more practical, manageable and straightforward to enforce than a generational ban which will be complicated, impractical, unworkable and unenforceable. Moreover, according to the Government's own modelling, increasing the age of purchase to 21 would result in exactly the same outcome as a generational ban in achieving 0% smoking rates among 14–30-year-olds by 2050<sup>3</sup>.
7. The previous government adopted the view that legislative prohibition would extinguish consumer demand. Historically, this approach has consistently failed, with the principal example being the prohibition of alcohol sales in the United States in the twentieth century. The most recent experience in South Africa which temporarily banned tobacco purchases during Covid-19 in 2021 (with criminals quickly filling the void and supplying the demands of 93% of South African smokers who switched to purchasing illegal tobacco through criminal channels) should give the Government reason to reconsider the impact that this policy will have on criminal activity and revenues.
8. Implementing a generational ban on buying tobacco is not a simple policy solution, it is complicated, unenforceable and unworkable. I urge the Bill Committee to reflect hard on the future repercussions of this policy, the lasting impact it would have on the UK and consider what more practical, workable and enforceable alternative policy solutions could be pursued.
9. The TMA urges the Bill Committee to consider amending the Tobacco & Vapes Bill to increase the minimum age of purchase for tobacco from 18 to 21 in replacement of a generational ban, and review and reconsider the far-reaching powers that the Bill presently provides to the Secretary of State, as they will limit the scope and scrutiny that Parliament will be able to discharge in the future when considering measures contained in this Bill.

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<sup>1</sup> [SMOKE FREE SWEDEN “Swedes first in world to become smoke free – it's a lesson for the world” \(13 November 2024\)](#)

<sup>2</sup> [Health New Zealand “Getting to Smokefree 2025: The final push to achieving the Smokefree 2025 goal” \(27 November 2024\)](#)

<sup>3</sup> [DHSC Research & Analysis: Modelling for the smokefree generation policy \(1 December 2023\)](#)

## A. The impact of a generational ban on retail crime

10. Independent retailers are angry and frustrated that the Government and Parliament persists in refusing to listen to their concerns. It was deeply disappointing when the previous iteration of the Tobacco & Vapes Bill was scrutinised at Committee Stage in April/May 2024, that out of the 33 witnesses invited to give oral testimony, only a solitary witness from a retail trade body (representing large retailers) was invited before the Bill Committee and no witnesses representing independent retailers, uniformed law enforcement, hospitality or industry. All groups that will be impacted by the Bill, if it is enacted as drafted, and all with legitimate concerns to express to the Bill Committee<sup>4</sup>.
11. There is no getting away from the fact that the weight of responsibility for enforcement will fall entirely on the shoulders of retailers, with no penalty proposed for consumers who try to break the law and buy tobacco when they are under the new legal age threshold, which will change each year, every year.
12. Every UK retail trade body is in unanimous agreement that retailers are already facing record numbers of incidents of criminal theft, verbal abuse and physical violence<sup>5678</sup>. According to the Association of Convenience Stores, there are 48,850 convenience stores in the UK, with 44% being owned by British Asians who are already subjected to unprecedented levels of abuse and intimidation on a daily basis<sup>9</sup> (the British Retail Consortium cites that 1,300 incidents against retail staff take place every day compared to 450 incidents a day in 2019-20) how can these independent shopkeepers be expected to enforce a policy which will only lead to them receiving even more abuse, violence and intimidation?
13. Retail staff will no longer be able to judge an adult by how they appear, but will require every customer who wishes to buy tobacco, whatever their age, to provide mandatory proof of age photo ID to be certain that they are not breaking the law, a situation which according to Andrew Chevis, CEO of CitizenCard<sup>10</sup> (the UK's largest supplier of Police-approved proof of age and identity cards) will be totally impractical.
14. Shopkeepers could not be clearer. The end result of the implementation of a generational ban is that they will close their businesses. Tobacco & vapes sales make up over 30% of their annual revenues and with the inevitable escalation of further violence and intimidation towards themselves and their staff, it simply doesn't make economic sense in the long-term to carry on.
15. The real tragedy of this flawed policy is that it will sound the death knell of many small family-run convenience stores across the UK, which will not return. Whole communities will

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<sup>4</sup> [TMA letter to the Clerk of the Tobacco & Vapes Bill Committee \(2 May 2024\)](#)

<sup>5</sup> [British Retail Consortium Crime Survey Report 2024](#)

<sup>6</sup> [Scottish Grocers Federation Annual Crime Report & Safer Business Guide 2024](#)

<sup>7</sup> [Retail Trust Survey 2023](#)

<sup>8</sup> [Talking Retail "Crime takes its toll / Big story: Crime impact survey \(April 2024\)](#)

<sup>9</sup> [Eastern Eye 'Epidemic of shoplifting' \(29 September 2023\)](#)

<sup>10</sup> ["Smoking ban plans threaten to undo good work of ID schemes, The House Live \(16 November 2023\)](#)

be left without convenience stores, and how far will consumers have to travel for their groceries, if their local convenience stores shut down?

### **Major concerns expressed by independent retailers**

***Rise in illicit trade:*** “Illegal tobacco is a growing problem, and the illicit market will be rubbing its hands in anticipation if this legislation is introduced.” **Sue Nithyanandan, Costcutter Epsom**

***Impossible to enforce:*** “It’s difficult to see how this proposed tobacco ban would be properly enforced. It’s a deeply impractical law, which means at some point retailers will be expected to distinguish between 36 and 37-year-olds, when deciding who to sell tobacco to.” **Atul Sodha, Owner of Londis Harefield, Uxbridge**

***Increasing crime and violence:*** “The proposed tobacco ban will hit convenience retailers the hardest. We know from our own experiences, that violence or abuse towards shopkeepers is on the rise, with ID checks or refusal of sale often a common cause of this. It’s fair to say that the proposed ban would highly likely exacerbate this issue and drive a further increase in threatening behaviour against retailers.” **Paul Cheema, Owner of Malcolm’s Convenience and Forecourt, Coventry**

### **B. The impact of a generational ban on the illegal tobacco market**

16. The Government should look very closely at events in Australia, and reported in the UK, where in response to ever tighter restrictions around the sale of tobacco, the illegal market will step in and capitalise on the opportunities presented: [The Guardian, 1 November 2024, “Burning out: how Australia’s bid to cut smoking rates exploded into suburban tobacco wars”](#).
17. According to Theo Foukkare, CEO of the Australian Association of Convenience Stores: “Retailers are being firebombed on a weekly basis. In Victoria alone, there have now been more than 50 fire bombings of retail stores in the last 12 months. They target any store that will not sell their black-market product. These groups make huge, tax-free money from selling black market products and the penalties they face are pretty minimal, so there is a lot to gain and very little consequence. It is quite scary how ruthless they are. The safety of entire communities is being put at risk. If the Australian experience is anything to go by, I would be extremely surprised if a black-market war did not explode across the UK”.
18. Appearing before the [Victoria Parliamentary Committee Inquiry into Vaping & Tobacco Controls](#) on 15 July 2024, the former Australian Border Force Det. Supt. Rohan Pike (who in 2018, created and led the Australian Border Force’s Tobacco Strike Team aimed at targeting, disrupting and dismantling serious actors and organised crime syndicates that deal in illicit tobacco) commented: “The policy of regularly raising tobacco excise was underpinned by a key assumption - that smokers would either quit or pay the higher tax. In the early 2000’s, the policy had some influence on smoking rates because those were the most accessible options available to a smoker. But context is everything. The operating environment has completely changed. The fact is that, since 2010, there has been an easily obtainable third option, illicit tobacco. It is an inconvenient truth for those who wish to stick with what they know. But those same policy settings in the current environment have fuelled a massive

*black-market industry run by organised crime, thereby defeating the original health and revenue objectives of getting smokers to quit or pay the higher excise.”*

19. Throughout history prohibition has never extinguished consumer demand. In fact, all too often, it has had the opposite effect, it has created new demand. Smoking rates have declined in the UK, year-on-year, because of years of targeted interventional education programmes, youth access prevention and smoking support services, as well as campaigns to educate smokers on less harmful alternative nicotine products, resulting in the UK now having, according to the World Health Organisation, the lowest number of smokers behind Iceland in Europe (11.9% of the UK adult population according to the ONS).
20. If the Government is determined to legislate, there is a more effective alternative policy. That is raising the age of purchase from 18 to 21. It would be much more practical, manageable and straightforward for retailers to enforce, than a generational ban, which would be complicated, impractical, unworkable and unenforceable. Furthermore, the Government’s own modelling in preparation for the last Tobacco & Vapes Bill showed raising the age to 21 would have an identical effect on UK smoking rates as the introduction of a generational ban.

### **C. Challenging the premise that the illegal tobacco trade is declining in the UK**

21. In response to an intervention about the growth of the ‘black market’ for illegal tobacco in the Second Reading of the Tobacco & Vapes Bill (26 November 2024), the Health Minister Andrew Gwynne MP responded: *“The hon. Member...mentioned the rise of the black market. This is a line that has been parroted by the tobacco industry for years, so we need to spell out the facts. Whenever Governments of any guise have introduced targeted tobacco control measures, the black market actually has not prospered. Consumption of illegal tobacco has gone from 15 billion cigarettes nearly 25 years ago to just one 10th of that amount last year”.*
22. It seems an unorthodox position for the Government to take that every time taxes on tobacco are increased, or any restrictions are introduced, the net result is that it has had no discernible impact on the consumption of illegal tobacco.
23. While it is true that the volume of illegal tobacco is down from the levels seen in the early to mid-2000s, it still represents a significant problem that undermines the Government’s objectives to secure revenue and reduce smoking.
24. Data from the Office for National Statistics (ONS) on consumer spending shows that £21 billion<sup>11</sup> was spent on tobacco products in 2023. This includes spending on legal and illegal tobacco products and the ONS do not publish the split between the two components. By subtracting the industry’s estimate of spending on legal tobacco products (£14.9 billion) from the ONS total, the implied spending on illegal tobacco products is £6.1 billion and this has increased from £4.5 billion in 2022. Incredibly this is more than twice the level the ONS estimates was spent on narcotics (£2.7 billion in 2023).

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<sup>11</sup> [ONS Consumer Trends data \(April to June 2024\) – 30 September 2024](#)

25. The HMRC/Border Force policy paper published in January 2024<sup>12</sup>, setting out a revised strategy to tackle the illegal tobacco market does not provide confidence as to how the illegal market will be addressed. Despite the promise of £100 million of additional funding over five years, the paper states that *“no matter how much we strengthen our current strategy, supply will always find a way to enter the market where a demand for it exists. The profit margins available in the global illicit tobacco trade mean OCGs will go to great lengths to maintain supply, are willing to constantly adapt to tight controls, and are able to quickly recover from setbacks.”*<sup>13</sup>
26. HMRC is just one of the bodies that points to the risks the illegal trade poses in giving children access to tobacco, noting in the same report that organised crime groups *“sell tobacco products to children who would otherwise be unable to legally purchase tobacco products and become smokers”*.
27. A generational ban will gift the UK’s tobacco market into the hands of criminals. The UK’s law enforcement agencies are inadequately resourced to face the enormity of this future challenge as organised criminals ramp up their operations to compete for their share.

### C) Impact of a generational ban on Northern Ireland

28. There is a distinct possibility that it may be legally incompatible to implement a generational ban in Northern Ireland. One of the provisions of EU law laid out in the Windsor Framework is the EU’s second Tobacco Products Directive (TPD2). As with all EU law, TPD2 continues to apply in Northern Ireland – therefore Northern Ireland will be treated differently to Great Britain.
29. The purpose of TPD2 is to lay down various requirements which must be satisfied for tobacco products and vapes if they are to be marketed within the EU. These requirements concern matters such as their ingredients, emission levels and packaging. The general rule under TPD2 is that there is to be free movement within the EU of products which satisfy those requirements. A generational smoking ban is therefore incompatible with TPD2, being a restriction on the placing of tobacco products on the market.
30. On 15 May 2024, the Department of Health of the Government of the Republic of Ireland announced that it would introduce legislation to raise the minimum age for sale of tobacco to 21<sup>14</sup>. The Irish Department of Health set out in its media release that *“preliminary legal advice suggests Ireland cannot pursue a ‘smokefree generation’ policy as has been suggested in other jurisdictions due to the EU’s Single Market rules and Tobacco Products Directive”*.
31. TPD2 does not prevent an increase in the age of sale to 21, as the Republic of Ireland intends to introduce in 2028.

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<sup>12</sup> [HMRC & Border Force “Stubbing out the problem: A new strategy to tackle illicit tobacco” – 1 January 2024](#)

<sup>13</sup> Ibid

<sup>14</sup> [Gov.IE: Ministers for Health announce government approval to raise the age of sale of tobacco to 21 \(15 May 2024\)](#)

## D) Scope and drafting of the Bill

32. The Bill is not well drafted with many of the powers poorly defined and which will be at the gift of the future discretion of the Secretary of State to introduce through secondary legislation. The Bill will grant 63 delegated powers to the Secretary of State and 17 “Henry VIII clause” powers enabling the Government to amend or repeal provisions using secondary legislation and thereby severely reducing the scope of Parliament to effectively scrutinise the content of the Bill.
33. This view is underlined by The Constitutional Unit, the independent research centre, part of University College London which in September 2023 set out: *“The biggest concern in recent years has been about the growing use of [delegated \(or ‘secondary’\) legislation](#), and increasing powers delegated to ministers in bills. This legislation receives very limited parliamentary scrutiny, raising clear accountability gaps if it implements major policy. Particular controversies emerged in this area [during the Covid-19 pandemic](#), but overuse of delegated legislation has [long been criticised](#), including by [parliamentary committees](#), and expert groups such as the [Hansard Society](#).”*<sup>15</sup>

## E) In conclusion

34. The TMA urges the Bill Committee to consider amending the Tobacco & Vapes Bill to increase the minimum age of purchase for tobacco from 18 to 21 in replacement of a generational ban. As previously referenced, an increase in the minimum legal purchase age has the same long-term impact as a generational smoking ban but has none of the associated impracticalities.
35. The TMA also urges the Bill Committee to review and reconsider the far-reaching powers that the Bill presently provides to the Secretary of State, as they will limit the scope and scrutiny that Parliament will be able to discharge in the future when considering measures contained in this Bill.

*Rupert Lewis, Director, TMA*  
*20 December 2024*

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<sup>15</sup> [UCL The Constitutional Unit “Parliamentary scrutiny: what is it, and why does it matter?” \(12 September 2023\)](#)