

Committee Stage consideration of the Tobacco and Vapes Bill

Dear Members of the Committee,

1. I write on behalf of Japan Tobacco International (JTI) to share our concerns about the Tobacco and Vapes Bill. JTI is the UK's leading tobacco company and sells some of the most well-known brands of cigarettes, cigars, hand rolling tobacco, heated tobacco, vaping products and nicotine pouches.

Executive Summary

2. Our concerns relate primarily to the proposed generational ban on the sale of tobacco products, enacted in Section 1, Part 1 of the Tobacco and Vapes Bill. We also have concerns about restrictions on various aspects on the sale and distribution of nicotine products. In summary, we note that:
 - This legislation sets a dangerous precedent by giving sweeping delegated powers to the Secretary of State leading to limited parliamentary scrutiny. We implore the Committee to thoroughly scrutinise the legislation.
 - The generational ban proposal fails the test of proportionality and there are better alternatives:
 - A generational ban would be impractical to implement and would gradually hand the UK's tobacco market to criminals.
 - A generational ban would also be incompatible with the Windsor Framework in Northern Ireland and drive division within the United Kingdom.
 - Sweden is the first country to achieve its smokefree target; not by over-regulation but by embracing reduced risk products (RRPs).
 - New Zealand abandoned their version of the generational ban and replaced it with a focused strategy on tobacco harm reduction and more effective enforcement of existing regulations.
 - Raising the minimum purchase age for tobacco products to 21 achieves the Government's health goals, removes the proposed burden on retailers, and importantly is much more straightforward to implement.
 - High quality and appropriately regulated nicotine products with accessible information can empower consumers to make informed choices.
 - Restrictions on point of sale material (POSM) for nicotine products will mean increased complexity for the retail trade and potential confusion for consumers who are used to clear information and signage, further compounding smokers' misunderstanding about the relative harm of smoking versus using RRP's.

JTI urges the Committee to carefully scrutinise and suggest amendments to the Tobacco and Vapes Bill to ensure the legislation is appropriately drafted, fit for purpose and enforceable.

Specifically, we suggest amendments focusing on increasing the minimum purchase age for tobacco products to 21 instead of a generational ban and reconsidering the sweeping powers this Bill currently provides to the Secretary of State.

The Bill grants excessive powers to the Secretary of State and limits parliamentary scrutiny

1. The Bill is a piece of primary legislation that gives sweeping powers to current and future Secretaries of State to amend the Bill through secondary legislation, thereby limiting parliamentary scrutiny and creating unnecessary future work for both Parliament and Government.
2. The Bill as currently drafted will grant the Secretary of State 63 delegated powers (double that of the last Tobacco and Vapes Bill) and 17 Henry VIII powers. The Henry VIII powers are clauses in a bill that enable ministers to amend or repeal provisions in an Act of Parliament using secondary

legislation, resulting in very little parliamentary scrutiny for the majority of nicotine and tobacco regulation in the future. In an April 2024 article the Hansard Society highlighted their concern that the wide-ranging use of delegated powers in the Tobacco and Vapes Bill represents a ‘creeping effect in the legislative process and undermines parliamentary scrutiny of ministerial action’.¹ They urged that MPs should consider the granting of such broad delegated powers with caution.

3. The Institute for Government have noted ‘Drafting legislation at speed inevitably means unforeseen consequences are more likely, and parliament is more likely to be asked to gift excessive regulation-making powers to ministers in lieu of being able to scrutinise detail on the face of the bill. This is a risk – for example – with the promised Employment Rights Bill, which is intended to provide new rights to workers.’²
4. This is reinforced by University College London’s Constitutional Unit: ‘Ministers must ensure that bills are in good shape before introduction, and (given government’s extensive control of the Commons agenda) allow sufficient time for debate. They also need to be willing to listen and respond to reasonable points made by parliamentarians. There have been recent concerns about bills being rushed, and about late government amendments.’³

New Zealand, and Sweden are focussed on harm reduction, as a better alternative to over regulation

5. In November 2024 Sweden achieved their smokefree target, reaching the milestone of a 4.5% smoking rate.⁴ This was achieved without a generational ban. Dr Anders Milton, a physician and former CEO of the Swedish Medical Association, commented: ‘Key to Sweden’s success is its pragmatic focus on harm reduction rather than prohibition. A wide range of safer nicotine products, with a variety of strengths and flavours, is legally available both online and in stores, supported by advertising, which raises awareness and encourages uptake.’⁵
6. In November 2024 New Zealand announced a new Tobacco Control Strategy. Following the abandonment of the generational ban by the new government in 2023, the new strategy deploys a suite of measures to reduce smoking rates. These include targeted messaging preventing youth smoking, incentive programmes for priority populations, using technology for connecting people to services, and improving and streamlining enforcement measures.

Malaysia ruled that a generational ban was unconstitutional

7. A generational prohibition on the sale of tobacco products would do nothing to protect minors – instead it divides adult society in two, with different adults given different rights based on their date of birth. For this reason, the Attorney General of Malaysia ruled in 2023 that a similar proposal for a generational ban was unconstitutional because it denied adult Malaysians equality before the law.

The proposed generational ban would be incompatible with the Windsor Framework in Northern Ireland

8. One of the provisions of EU law laid out in the Windsor Framework is the EU’s second Tobacco Products Directive⁶ (TPD2). TPD2 therefore continues to apply in Northern Ireland. 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. Those requirements concern matters such as their ingredients, emission levels and packaging. The general rule under TPD2 is that there is to be free

¹ M. England, *Creeping ministerial powers: the example of the Tobacco and Vapes Bill*, Hansard Society Blog, 15 April 2024.

² H. White, *Parliament returns: Will the government take scrutiny seriously?*, Blog, Institute for Government, 7 October 2024.

³ M. Russell and L. James *Parliamentary scrutiny: what is it, and why does it matter?*, The Constitutional Unit, 12 Sept 2023.

⁴ Business Wire, *Swedes First in World to Become Smoke Free – It’s a Lesson for the World Says Smoke Free Sweden*, November 13 2024.

⁵ Ibid.

⁶ 2014/40/EU

movement within the EU of products which satisfy those requirements. A generational smoking ban is therefore incompatible with TPD2 as it intends to introduce restrictions on the placing of tobacco products on the market.

9. 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. It stated in its press 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”.⁷
10. TPD2 does not prevent an increase in the age of sale to 21, as the Republic of Ireland has recently demonstrated. The age increase to 21 proposal would; help the UK Government deliver very similar health outcomes to a generational ban while removing the serious challenges pertaining to its legality in Northern Ireland, be consistent with the UK’s international obligations, and ensure a consistent approach between Northern Ireland and the Republic of Ireland. Similarly, introducing an increase in the age of sale to 21 in Great Britain would ensure a UK-wide approach, removing any ambiguity and confusion for those organisations who operate across Great Britain and Northern Ireland.

The proposed generational ban would be impractical to implement

11. A generational ban would increase the legal age of sale of tobacco products by one year, every year from 1st January 2027 onwards. This would eventually mean retailers having to distinguish between adults in their 30s, 40s, and 50s to sell them tobacco products.
12. The burden of implementing this impractical legislation will fall entirely upon retailers who will face penalties if they inadvertently sell tobacco products to the ‘wrong’ adults. The British Retail Consortium has identified that checking for proof of age is one of the biggest triggers for violence and abuse against UK retailers; the latest survey from February 2024 revealed a 50% year on year increase in levels of retail violence and abuse, with 1,300 incidents a day.⁸
13. Many retailers and trade bodies have suggested that raising the age of sale for tobacco products to 21 is a better alternative that is much simpler to enforce.⁹
14. Health groups are already advocating that the implementation of a generational ban will necessitate the mandatory checking of all smokers’ ID before selling them tobacco. However, Andrew Chevis, the Chief Executive of CitizenCard, the UK’s largest provider of PASS accredited ID cards, has warned that this would undermine years of progress in preventing the underage sale of age restricted goods, including the widespread adoption of the ‘Challenge 25’ programme. He has called the proposed generational ban impractical and called on the Government to reconsider.¹⁰
15. The proposal comes at a time when crime against retailers, including violence, abuse and theft, is a major problem and a generational ban is certain to make the problem worse. The latest Scottish Grocers’ Federation Retail Crime Survey found that 93% of retailers report violence occurring at least once per week. Refusing a sale or asking for proof of age is the most common cause of this violence with 57% of respondents facing incidents of abuse on a daily basis when asking for ID.¹¹

⁷ Northern Ireland Assembly, [Issue 151/28](#) May 2024.

⁸ British Retail Consortium, [Crime Survey](#) 2024.

⁹ Kiran Paul, ‘*Generational Tobacco ban will negatively impact business*’, Asian Trader, November 2023.

¹⁰ A, Chevis, [Smoking ban threatens to undo good work of ID schemes](#), Politics Home, 16 November 2023.

¹¹ SGF Crime Report & Safer Business Guide 2023/24.

The proposed generational ban would hand the UK's tobacco market to criminals

16. HMRC estimates that 7% of cigarettes and 33% of hand-rolling tobacco consumption is already illegal in the UK¹² – untaxed, unregulated, and often available for sale to minors.
17. The UK lost £2.2 billion of tax revenue in 2022/23, according to HMRC¹³, through the black market in tobacco products, and over £52 billion since the turn of the century. Every year from 2027 onwards a generational ban will hand more of the UK tobacco market to the serious organised criminal groups who will use the proceeds of illegal tobacco to fund activities including terrorism, weapons trading, the distribution of narcotics and people smuggling.
18. HMRC and Border Force published a new strategy on illegal tobacco in January 2024, entitled *Stubbing out the problem*, which admitted 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”. It also restated the clear and direct link between illegal tobacco and serious organised crime groups.
19. The Government’s impact assessment for the Bill made no effort to calculate the cost or impact of an increase in the illegal trade, invalidating its objective of providing an evidence-based overview of the most salient issues. Commentary included in the recent HMRC/Border Force report clearly demonstrates the issues associated with illegal tobacco trade and its substantial growth over the last 10 years.
20. The inevitable outcome of the generational ban over time, if implemented, would be the full prohibition of tobacco products. History shows that prohibitions do not work. When the South African Government prohibited the sale of tobacco products as part of COVID-19 lockdowns, illegal traders quickly stepped in and surveys published by the British Medical Journal show that 93% of smokers there continued to buy tobacco, but from illegal rather than legal sources.¹⁴

The proposed generational ban fails the test of proportionality

21. The rate of smoking amongst young adults in the UK is already low and falling fast. This is part of a long-term decline in smoking since the mid-1970s which has accelerated in recent years as alternative RRP¹⁵ such as e-cigarettes have become more widely available.
22. According to the most recent report from NHS Digital, “*Smoking, Drinking and Drug Use among Young People in England*”,¹⁶ 85% of young people aged between 11-15 have never tried smoking a cigarette (compared to 60% in 2005), with only 1% claiming that they smoked regularly (compared to 9% in 2005), and another 3% responding that they had only ever tried smoking occasionally (compared to 6% in 2005). By contrast, 1 in 4 have ever tried vaping, with current e-cigarette use at 9%. Of those that have tried vaping, only 5% reported smoking before using vapes.
23. In addition to this, according to recent World Health Organisation data, a third of 11-year-olds and more than half of 13-year-olds in England have drunk alcohol - putting it top out of 44 countries examined in a report by global health experts.¹⁷
24. The DHSC acknowledged in the ‘Stopping the Start’ command paper, published in October 2023, that “*The great majority of initiation of cigarette use continues to be in the teenage years. 83% of*

¹² HMRC, [Annual outputs for tackling illegal tobacco smuggling](#), September 2024.

¹³ HMRC, [Tax Gaps](#), June 2024.

¹⁴ D. Morris, D. Gillispie, M. Dockrell, M. Cook, M. Horton, J. Brown, T.E. Langley, Potential smoke-free dividend across local areas in England: a cross-sectional analysis, *British Medical Journal*, March 2024.

¹⁵ Reduced-Risk Products are products with the potential to reduce the risks associated with smoking.

¹⁶ NHS, [Smoking, Drinking and Drug Use Among Young People in England](#), October 2024.

¹⁷ <https://www.bbc.co.uk/news/health-68884005>

smokers start before the age of 20.”¹⁸

25. The Government’s own data, released as part of the consultation process for the Bill, shows that raising the age to 21 would have a similar effect on UK smoking rates without the need for a generational ban and the associated impracticalities as outlined above.
26. Both policies would drive smoking prevalence to zero by 2050, according to the Government’s own modelling:¹⁹

	2023	2030	2040	2050
Baseline	13.0%	9.0%	8.1%	8.1%
Increase to 21	13.0%	7.3%	1.3%	0.0%
Generational Prohibition	13.0%	6.1%	0.4%	0.0%

Point of sale material restrictions for nicotine products (RRPs)

27. Point of Sale Materials (POSM) typically include posters, banners, digital screens, shelf highlighters and signage.
28. Data from Action on Smoking and Health (ASH) shows that 1 in 4 smokers have never tried e-cigarettes, the most popular RRP. That is approximately about 1.8 million smokers, and a further 2.9 million have tried vaping but have gone back to smoking. This is likely because fewer than 1 in 10 smokers correctly understand the relative risks of smoking and vaping, according to the ASH data.²⁰
29. POSM have a key role to play in promoting product education, safety, and health. In the retail environment, POSM display information to consumers to help educate them on the potential benefits of RRP which include instructions on how to use products safely, warnings about potential hazards, and emergency procedures. POSM also allow for the advertising and differentiation of products.
30. Importantly, POSM allow for clear age restriction communication, further supporting the prevention of nicotine products being accessed by minors. POSM are also used to educate consumers about their rights, including return policies and warranty information.
31. Not having the ability to communicate product information at point of purchase will mean significantly increased complexity for the retail trade. Shifting the responsibility of educating consumers for multiple complex categories to retailers will add further unnecessary work and responsibility onto already burdened retail staff.
32. Retaining the ability to clearly communicate prior to a consumer making a purchase decision on the benefits and risks of a product as well as the broader information is vital to help prevent misuse and misinformation.

¹⁸ Department for Health and Social Care (DHSC), [Stopping the Start: our new plan to create a smokefree future](#), October 2023.

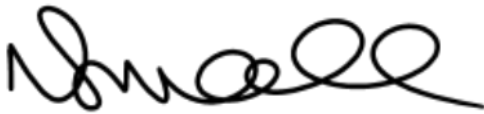
¹⁹ DHSC, [Modelling for the Smokefree Generation Policy](#), December 2023.

²⁰ Action on Smoking and Health, [Use of e-cigarettes among young people in Great Britain Survey](#), August 2024.

Conclusion

33. I urge the Committee to carefully scrutinise and suggest amendments to the Tobacco and Vapes Bill to ensure the legislation is appropriately drafted, fit for purpose and enforceable.
34. Specifically, we suggest amendments focusing on increasing the minimum purchase age for tobacco products to 21 instead of a generational ban and reconsidering the sweeping powers this Bill currently provides to the Secretary of State which will limit the scope and scrutiny Parliament will have in future on these important issues.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Nicky Small', written in a cursive style.

Nicky Small
Corporate Affairs & Communications Director
JTI UK