

Written evidence on the Tobacco and Vapes Bill, submitted by Dr Johannes Kniess, Senior Lecturer in Political Philosophy, Newcastle University; and Andreas Schmidt, Professor of Moral and Political Philosophy, University of Groningen in the Netherlands (TVB81)

Introduction.

Johannes Kniess is a Senior Lecturer in Political Philosophy at Newcastle University. Andreas Schmidt is Professor of Moral and Political Philosophy at the University of Groningen in the Netherlands. Our research addresses the normative dimensions of public policy, especially in the fields of healthcare and public health. We have both written on the ethics of tobacco control in general, and the idea of a generational tobacco ban in particular.

We welcome the introduction of the Tobacco and Vapes Bill as a significant step to improve population health and help reduce health inequalities. Our written evidence focuses exclusively on understanding and addressing ethical objections to the generational ban contained in the Tobacco and Vapes Bill. Due to the novelty of the proposal, there are doubts not only about its effective implementation, but about its desirability and compatibility with central political values such as liberty, respect and non-discrimination. We wish to explain why these latter worries are unfounded.

Summary

- The generational ban restricts future birth cohorts' narrow freedom to smoke but is justified by its benefits. It may also promote broader freedom over an individual's lifetime by enabling life options otherwise foreclosed by smoking. Removing the option to smoke can also enhance autonomy by preventing addiction.
- While the ban may seem paternalistic, it is largely motivated by societal costs rather than individual benefits. To the extent it is paternalistic, this can be justified if it corrects irrationality and misinformation about smoking and aims to promote widely accepted goods such as health and wealth.
- The ban's differential treatment by birth year does not violate norms of equality or non-discrimination.
- To ensure equality, government should maintain strong tobacco control efforts for current smokers, including cessation support, while safeguarding the health and autonomy benefits for future generations.

1. Liberty and Autonomy

1.1 The generational ban restricts the freedom of younger and future birth cohorts who will not have the opportunity to buy cigarettes. Regardless of how we define freedom, there is a general presumption in favour of not restricting people's options. However, the ban can be justified if a) its benefits outweigh any loss in freedom, or b) there is no loss of freedom in the first place. Both these conditions are plausibly met.

- 1.2 One interpretation of freedom focuses on autonomy, the capacity to be self-governing and act on one's authentic desires. The highly addictive nature of smoking can undermine autonomy. The vast majority of smokers regret starting, struggle to quit, and feel a lack of control over their habit. Thus, the generational ban can help preserve autonomy.
- 1.3 Another interpretation of freedom focuses on the life options an individual enjoys. While the ban removes one option (to smoke), it effectively protects many other options that would have been foreclosed by a habit of smoking. Because smoking lowers life expectancy and material prospects, an individual's life-time freedom can be increased by being prevented from smoking.
- 1.4 Even if these wider gains in freedom are set aside, it is reasonable to conclude that the narrow loss in freedom is outweighed by other benefits. Tobacco is uniquely lethal and smoking is the leading cause of preventable mortality. Given the magnitude of societal and individual harms, removing the option to smoke is justifiable.
- 1.5 This is particularly true if we examine the value of the option to smoke to affected parties. A key argument in favour of a generational phase-out of cigarettes (as opposed to a universal ban) is that it does not curtail the freedom of those who are already smokers and value the option to smoke highly. Those who have not yet begun may value this option less highly.

2. Paternalism and Disrespect

- 2.1 An important concern around withholding options from consumers is paternalism: an interference with a person for their own good against their will. It is often held that there should be a general presumption against government paternalism (the 'nanny state'). However, to the extent that the Bill can be justified not by the good of the individual affected, but by broader societal costs and harms, it is not exclusively or even primarily based on paternalistic reasoning.
- 2.2 The presumption against paternalism can be overridden depending on the nature of the intervention. We should welcome interventions that enable authentic choice by correcting misinformation, cognitive biases and irrationality. The decision to begin smoking often involves these features: the majority of smokers start when they are minors and thus under the age of legal consent; young people are even less informed about the risks of smoking, irrationally discount future risks, and are more vulnerable to addiction (their brains have greater plasticity and their pre-frontal cortex is not yet fully developed).
- 2.3 Interventions whose goal is to promote generic, widely accepted goods are more justifiable than those that promote specific, contentious goods. The generational ban aims to promote generic interests in health and wealth in precisely this way.
- 2.4 One prominent objection to paternalism is that it expresses a disrespectful view about the decision-making capabilities of the paternalized. However, the generational ban need not involve the judgment that those born after 2009 are any less competent

than those born before that year. Assuming equal decision-making capabilities, the generational is more justifiable to existing adult smokers than a universal ban.

3. Discrimination and Unequal Treatment

- 3.1 The generational ban will treat people differently based on their date of birth. This might be thought to violate important norms in of non-discrimination and moral and political equality. However, this concern is unfounded for the following reasons.
- 3.2 Discrimination typically involves unequal treatment based on membership in a socially salient group, like race or gender, which affects interactions across many contexts. While age is socially salient, the generational ban does not clearly target age because affected birth cohorts eventually age through all life stages. Belonging to a birth cohort does not track conventional dimensions of discrimination.
- 3.3 The birth cohorts born before 2009 are also not stigmatised by the ban. Stigma is typically attached to behaviour that departs from community norms, but the generational ban (if successful) will 'denormalise' smoking.
- 3.4 Unequal recognition of interests would arise if a policy arbitrarily disregarded the preferences of one group, such as those born before 2009. However, the generational ban reflects the different nature of interests: it withholds the option to smoke from those who have never developed a preference for it, rather than withdrawing it from those who already value it. While an abstract interest in smoking may exist even for someone who has never smoked, this is plausibly outweighed by the health, material, and autonomy benefits of restricting this option.
- 3.5 The generational ban therefore does not disadvantage those born after 2009. But if the benefits it confers are significant, it is important to consider whether it disadvantages those born before 2009 by withholding these benefits. It might do so if there if the government does not show equal concern for their health and wellbeing. Therefore, it is crucial to maintain and improve tobacco control efforts for existing adult smokers, including cessation support. It would be welcome to include the last Government's commitments in this regard.

The above arguments are developed in more detail in the following publications:

- Kniess, Johannes. 2020. "Tobacco and the Harms of Trade." *Journal of Political Philosophy* 28 (3): 296–306. <https://doi.org/10.1111/jopp.12172>.
- . 2024a. "Shaping People's Preferences: Liberal Neutrality, Means Paternalism and Tobacco Control." *Economics & Philosophy*, September, 1–19. <https://doi.org/10.1017/S0266267124000233>.
- . 2024b. "(Un)Equal Treatment in the 'Tobacco-Free Generation.'" *Journal of Medical Ethics*, October. <https://doi.org/10.1136/jme-2024-110209>.
- Schmidt, Andreas T. 2016. "Withdrawing Versus Withholding Freedoms: Nudging and the Case of Tobacco Control." *The American Journal of Bioethics* 16 (7): 3–14. <https://doi.org/10.1080/15265161.2016.1180442>.
- . 2020. "Is There a Human Right to Tobacco Control?" In *Human Rights and Tobacco Control*, edited by Marie Elske Gispen and Brigit Toebes. Elgar Studies in Health and Law. Cheltenham: Edward Elgar Publishing.

———. 2022. “Freedom of Choice and the Tobacco Endgame.” *Bioethics* 36 (1): 77–84.
<https://doi.org/10.1111/bioe.12967>.

January 2025