

Research Briefing

10 April 2024

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# Tobacco and Vapes Bill 2023-24



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## Summary

[The Tobacco and Vapes Bill 2023-24](#) fulfils a series of government proposals to create a ‘smokefree generation’ and reduce the appeal and availability of vapes to young people.

These proposals were set out in the government’s policy paper; [Stopping the start: our new plan to create a smokefree generation](#).

The Bill was introduced to the Commons on 20 March 2024, and is due to have its second reading on 16 April 2024.

This briefing examines the provisions in the Bill and what they would do, although it does not discuss clauses with only a minor or technical effect.

## Key features of the Bill

Some parts of the Bill apply to all four parts of the UK. Some parts apply at a national level, but the Bill largely provides for a consistent approach to tobacco and vaping control across the UK.

### Increasing the age of sale for tobacco

The Bill would make it an offence anywhere in the UK to sell tobacco products to anyone born on or after 1 January 2009. The current age-of-sale across the UK is 18-years.

It would do this directly for England and Wales (clause 1), and it would amend existing age-of-sale legislation in Scotland (clause 37) and Northern Ireland (clause 48) to the same effect.

### Reducing the appeal and availability of vapes to children

It is already an offence to sell nicotine vaping products to under-18s, in all four parts of the UK. The Bill would make further provisions to reduce youth vaping:

- The Bill would make it an offence to sell non-nicotine vaping products to under-18s, in England and Wales (clause 7). It would grant powers to Ministers in Northern Ireland to make regulations to do the same (clause 51). In Scotland, it is already an offence to sell non-nicotine vaping products to under-18s.

- The Bill would also allow the Secretary of State to make regulations restricting the retail packaging (clause 61), and contents and flavouring of vaping and nicotine products (clause 62). This measure would apply across the UK.
- The Bill would make it an offence to distribute free vaping products to under-18s in England and Wales (clause 9). It would grant powers to Ministers in Scotland (clause 44) and Northern Ireland (clause 53) to introduce similar restrictions or prohibitions.
- The Bill would enable the Secretary of State to make new regulations restricting the display of vaping or nicotine products in retail outlets in England and Wales (clause 11). It would enable Ministers in Scotland (clause 45) and Northern Ireland (clause 54) to do the same.

## **Strengthening enforcement around tobacco and vaping sales**

The Bill would enable enforcement authorities in England and Wales to issue on-the-spot fines (fixed penalty notices) for:

- Selling tobacco to anyone born on or after 1 January 2009 (clause 1) or selling vaping products to under-18s (clause 7).
- Purchasing tobacco and vaping products for someone underage (clauses 2 and 8).
- Distributing vaping products to under 18s for free (clause 9).

If a person or business or person persistently breached the relevant restrictions, enforcement authorities would be able to apply to the court to ban the business (through a restricted premises order, clause 12) or person (through a restricted supply order, clause 16) from selling tobacco and vaping products for up to a year.

## **Economic and financial impacts of the Bill**

The Government's impact assessment for the Bill says that raising the legal age of smoking will have an overall effect on society worth around £18.6 billion, mostly from productivity gains related to reducing levels of smoking. This does not include the cost to HMRC of reduced receipts from tobacco duty, but the assessment says that even if this were included the Bill's impact on society would still be positive.

## Response to the Bill

The Bill has received [support from the Smokefree Action Coalition](#), a group of over 300 health organisations and charities. It has welcomed the Bill's potential to stop the uptake of tobacco smoking among young people.

Campaign group [Action on Smoking and Health has expressed strong support](#) for the Bill and the opportunity it presents to “create a smokefree generation and end the premature death and disability caused by smoking”.

[The Independent British Vape Trade Association welcomed](#) the Bill's strengthened powers of enforcement against retailers who engage in illegal sales.

However, the industry has expressed concern about the powers the Bill provides Ministers to limit vape flavours.

The Department of Health and Social Care published an impact assessment, which, [the UK Vaping Industry Association \(UKVIA\) has noted](#), did not quantify many of the potential health impacts of some of the Bill's vaping measures including those on flavour, branding and packaging restrictions. The UKVIA suggested this would negatively affect people who have successfully used vaping to stop smoking and remove this opportunity for those yet to stop smoking.

A petition hosted on the UK Parliament website calls for the government “[to not ban flavoured e-liquids for e-cigarettes](#)”. At the time of publication, the petition had gained over 50,000 signatures.

[The Labour party has said it supports](#) measures to raise the age of sale for tobacco.

## New tobacco and vaping measures that are not part of the Bill

### Ban on the sale of disposable vapes

[Following consultation](#), the UK, Welsh and Scottish Governments announced in February 2024, [their intention to introduce legislation to ban the sale and supply of disposable vapes](#). Northern Ireland is expected to consider this proposal at a later date.

## **New duty on vaping products and increase on tobacco duty**

[In his Spring Budget statement](#) on 6 March 2024, Chancellor Jeremy Hunt announced that the Government had decided to introduce an excise duty on vaping products from October 2026. [The Government also plans to](#) “introduce a one-off increase in tobacco duty at the same time to maintain the financial incentive to choose vaping over smoking”.

# 1 Background

## 1.1 The smokefree 2030 ambition for England

In 2019, the [UK Government's set its Smokefree 2030 ambition for England](#), which is to achieve adult smoking prevalence of 5% or lower.

## 1.2 The Khan Review

In 2022, [the UK Government commissioned](#) a review into progress made towards achieving this target.<sup>1</sup> The resulting Khan Review: Making smoking obsolete, was published in June 2022.<sup>2</sup> The review found that “without further action, England will miss the smokefree 2030 target by at least 7 years, and the poorest areas in society will not meet it until 2044”.

The review set out several recommendations on tobacco and vaping policy, including:

- Increasing the age of sale for tobacco by one year, every year, until no one can buy a tobacco product.
- Raising tobacco duties on all tobacco products by more than 30%.
- Preventing children and young people from vaping, including by banning child-friendly packaging and descriptions.
- Promoting vaping as a smoking cessation tool.

The government did not publish a formal response to the review; however, [it committed to considering the review's recommendations](#).

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<sup>1</sup> Statement UIN HCWS591, [Health Update](#), 4 February 2022

<sup>2</sup> Office for Health Improvements and Disparities, [The Khan review: making smoking obsolete](#), published 9 June 2022



## 1.3

# UK Government proposals and consultations on tobacco and vaping

Following the Khan review, the government has put forward and consulted on a range of new proposals to reduce smoking. Its key proposals include:

- Increasing the age of sale for tobacco, so it would be an offence to sell tobacco products to anyone born on or after 1 January 2009.
- Making vape products less attractive to children, by introducing restrictions on vape flavours, product descriptions, packaging, promotions, shop displays and increasing the price of vapes.
- Restricting non-nicotine vape products, by introducing legislation to prohibit the sale of non-nicotine vapes to under-18s and exploring further restrictions on these products.
- Strengthening enforcement, by introducing new powers for local authorities to issue fixed penalty notices to enforce age-of-sale legislation of tobacco products and vapes.

For detailed information and background on the government consultations and proposals, see:

- Sections 4 and 5 of the Library briefing, [The smokefree ambition for England](#)
- Section 4 of the Library briefing, [Youth vaping in England](#)

## 1.4

# Smokefree policies in Wales, Scotland and Northern Ireland

Public health policy is a devolved matter in the UK and each of the devolved executives sets its own policy on smoking cessation.

The Welsh Government has also set a smokefree target for 2030, outlined in its [long-term Tobacco Control Strategy](#) (published July 2022).

The Scottish Government has set a target of 2034, with accompanying policy set out in its [Tobacco Control Action Plan 2018](#).

The Welsh and Scottish Governments have also used an adult smoking prevalence of 5% as a threshold for the smokefree target.

Northern Ireland's 10-year [Tobacco Control Strategy](#) was published in 2012 and does not set a smokefree target.

## 1.5 Structure of the Bill

The Bill has been divided up into parts, corresponding to their application across the UK.

Part 1 concerns arrangements in England and Wales; Part 2 concerns arrangements in Scotland; and Part 3 concerns arrangements in Northern Ireland.

The provisions in Parts 2 and 3 generally have the practical effect of amending Scottish and Northern Irish legislation in line with Part 1 of the Bill, to ensure consistency in tobacco and vaping regulation across the whole of the UK.

Part 4 of (on tobacco and vaping product requirements) and Part 5 (on notification requirements for vaping and nicotine products) apply across the UK

## 1.6 Terminology used in the Bill

The Bill includes numerous references to tobacco, nicotine and vaping products. The scope of products included in these definitions, varies across the different clauses.

Annex C to the Bill's explanatory notes provides a detailed list of products captured within the scope of each clause.

## 1.7 Further reading

### The Commons Library

All of the Library's research on tobacco and vaping is available via our [tobacco and vaping research hub](#):

- [Youth vaping in England](#)
- [Vaping and health](#)
- [Advertising, marketing and promotion of vaping products](#)
- [Shop displays of tobacco and vaping products](#)
- [The regulation of e-cigarettes](#)
- [The smokefree 2030 ambition for England](#)

- [Environmental impact of disposable vapes](#)
- [Statistics on smoking](#)

## Other material

- [Explanatory notes to the Bill](#)
- [Delegated Powers Memorandum from the Department of Health and Social Care](#)
- [Impact Assessment from the Department of Health & Social Care](#)

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## 2

# Clauses 1 to 6: Tobacco products in England and Wales

Clauses 1 to 6 would introduce new offences for selling tobacco products to those born on or after 1 January 2009 and for buying tobacco for someone of that age. They would also amend the notices shops must display regarding the age of sale for tobacco products and re-enacts some provisions from previous tobacco legislation.

### 2.1

## Clause 1: Increasing the age of sale for tobacco

In England and Wales, the current age of sale for tobacco is 18 years.<sup>3</sup>

**Clause 1** would make it an offence to sell tobacco products, herbal smoking products and cigarette papers to anybody born on or after 1 January 2009. An individual convicted under this offence could receive a fine of up to £2,500.

This provision would take effect on 1 January 2027.

**Clause 2** (discussed in more detail below) creates an offence related to the proxy purchase of tobacco.

Clause 1 effectively raises the legal smoking age each year.

People born on or after 1 January 2009 are in scope of clause 1. In the year the clause takes effect (2027), this cohort will be turning 18 years old. In line with clause 1, they will never be legally permitted to purchase tobacco. So, clause 1 effectively creates a generation of people who will never be permitted to purchase tobacco.

Clause 1 does not have any implications for people born on or before 31 December 2008. When the Bill takes effect in 2027, this cohort will be the last cohort legally permitted to purchase tobacco at 18 years old. In 2027, this cohort will turn 19-years old, in 2028 they will turn 20-years old, and so forth.

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<sup>3</sup> [The Children and Young Persons Act 1933](#) introduced a minimum age of sale (16-years) for tobacco products and cigarette papers in England and Wales. [The Children and Young Persons \(Sale of Tobacco etc\) Order 2007](#) amended the Act, increasing the minimum age to 18-years in England and Wales.

As we can see here, Clause 1 effectively raises the legal smoking age every year.

## Policy background

### The Khan Review

In 2019, the government announced an ambition for England to become ‘smokefree’ by 2030 – achieved when adult smoking prevalence falls to 5% or less.<sup>4</sup>

In February 2022, the government commissioned Javed Khan, former CEO of children’s charity Barnardo’s to carry out a review progress towards this ambition. Mr Khan published his independent review, the [Khan Review: making smoking obsolete](#), in June 2022.<sup>5</sup> It found that “without further action, England will miss the smokefree 2030 target by at least 7 years, and the poorest areas in society will not meet it until 2044”.<sup>6</sup>

The review put forward 15 recommendations. This included four “critical” recommendations, one of which was that the government should increase the age of sale of tobacco, by one year, every year, effectively phasing out tobacco smoking within a generation.

More detailed information on the Khan review, and the government’s response, is set out in a Library briefing [The smokefree 2030 ambition for England](#).

### Government proposals and consultation

In October 2023, the government announced its intention to introduce legislation making it an offence to sell tobacco products to anyone born on or after 1 January 2009.<sup>7</sup>

[The government consulted](#) on raising the age of sale and other tobacco proposals between October and December 2023.<sup>8</sup> [The government published](#)

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<sup>4</sup> Cabinet Office and Department of Health and Social Care, [Advancing our health: prevention in the 2020s- consultation document](#), 22 July 2019

<sup>5</sup> Office for Health Improvement and Disparities, [The Khan review: making smoking obsolete](#), published 9 June 2022

<sup>6</sup> Office for Health Improvement and Disparities, [The Khan review: making smoking obsolete](#), published 9 June 2022

<sup>7</sup> See; Prime Minister's Office, 10 Downing Street and The Rt Hon Rishi Sunak MP, [Prime Minister to create ‘smokefree generation’ by ending cigarette sales to those born on or after 1 January 2009](#), published 4 October 2023, and DHSC, [Stopping the start: our new plan to create a smokefree generation](#), published 4 October 2023

<sup>8</sup> Department of Health and Social Care, The Scottish Government, Welsh Government, and Department of Health (Northern Ireland), [Creating a smokefree generation and tackling youth vaping](#), published 12 October 2023

[its response](#) to the consultation on 29 January 2024.<sup>9</sup> It included an analysis of the almost 28,000 responses that were submitted.

One of the questions asked in the consultation was whether respondents agree or disagree that the age of sale for tobacco products should be changed so that anyone born on or after 1 January 2009 will never be legally sold tobacco products. Of those responding to this question:

- 63.2% agreed
- 32.3% disagreed
- 4.6% said they don't know.

## Response to the Bill

### Labour

Shadow Health Secretary, Wes Streeting, said that Labour would vote for the government's initial proposal to raise the smoking age, year on year.<sup>10</sup>

Following the Bill's introduction, Mary Kelly Foy (Labour), vice chair of the All-Party Parliamentary Group (APPG) on Smoking and Health, said that Labour would support the Bill.<sup>11</sup>

### Health organisations and campaign groups

The Smokefree Action Coalition (SFAC) is a group of over 300 organisations across the UK that are committed to ending smoking by 2030. Its membership includes Cancer Research, the Royal College of Physicians, the Royal College of General Practitioners, the Royal College of Paediatrics and Child Health, the Royal Society for Public Health and the King's Fund. SFAC is coordinated by Action on Smoking and Health.

[SFAC published a brief for MPs](#) expressing its own support for the Bill and asking MPs to do the same.<sup>12</sup> SFAC suggested raising the age of sale would reduce pressure on the NHS by improving health and wellbeing, highlighting the association between smoking and a range of physical and mental ill health issues.

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<sup>9</sup> Department of Health and Social Care, The Scottish Government, Welsh Government, and Department of Health (Northern Ireland), [Creating a smokefree generation and tackling youth vaping](#), published 12 October 2023

<sup>10</sup> The Pharmacist, [Labour pledges 'tough action' against junk food and vaping industries](#), 11 October 2023

<sup>11</sup> ASH, [Cross party support for raising the age of sale for tobacco from voters and Parliamentarians](#), 20 March 2024

<sup>12</sup> SFAC, [Brief for parliamentarians](#), not dated

The smoking cessation charity ASH has reported comments from individual health organisations, all expressing support for the increased age of sale for tobacco.<sup>13</sup>

Bob Blackman (Conservative), Chairman of the APPG on Smoking and Health, said the Bill was “welcomed by the APPG and by our fellow backbenchers across both houses of parliament committed to protecting future generations from the death and disease caused by smoking”.<sup>14</sup>

### Industry, trade and retail

John Herriman, Chief Executive of the Chartered Trading Standards Institute said there is “resounding support from the profession for the proposed Smokefree Generation Policy”. He further commented:

The eradication of smoking in the next generation will be an incredibly positive change to public health with smoking being the UK’s most preventable killer. Enforcing the new age restriction will present its own new challenges, but trading standards welcomes the increased protections it will provide.<sup>15</sup>

There has been some concern from small or independent retailers about how enforcement would be carried out. One retailer considered the Bill to be 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 products to”.<sup>16</sup> They also noted concern about the burden on retailers of increased ID checks.

Andrew Chevis, founder and CEO of CitizenCard (a provider of UK photo identification cards), suggested the annual change in the smoking age would threaten the success of other age verification campaigns:

25 years of working to prevent underage sales tells me that everything retailers, manufacturers and enforcement agencies have achieved in supporting and enforcing the ‘No ID, No Sale!’ and ‘Challenge 21’ messaging could be put at risk by this plan to annually move the age goalposts.<sup>17</sup>

### Advocates of freedom to smoke

Forest is a campaign group that seeks to protect the interests of adults who choose to smoke or consume tobacco.<sup>18</sup> Forest’s Director Simon Clark was concerned that the proposal would infringe on personal freedoms:

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<sup>13</sup> ASH, [Leading health organisations urge Parliament to put the Tobacco and Vapes Bill on the statute book before the general election](#), 20 March 2024

<sup>14</sup> ASH, [Cross party support for raising the age of sale for tobacco from voters and Parliamentarians](#), 20 March 2024

<sup>15</sup> Chartered Trading Standards Institute, [80% of Trading Standards professionals support the Smokefree Generation Policy](#), 20 March 2024

<sup>16</sup> Asian Trader, [Generational tobacco ban will negatively impact business, retailers say](#), 21 November 2023

<sup>17</sup> The House, [Smoking ban plans threaten to undo good work of ID schemes](#), 16 November 2023

<sup>18</sup> Forest, [News releases](#), accessed 27 March 2024

No-one wants children to smoke, but the idea that Government should take away people's freedom to choose long after they have grown up is absurd.

Instead of rushing this vanity project through Parliament, the Prime Minister should include the policy in the Tories' election manifesto and let the people decide.<sup>19</sup>

## 2.2 Clause 2: Proxy purchasing of tobacco

**Clause 2** of the Bill makes it an offence for a person aged 18 or over to buy or attempt to buy, tobacco products, herbal smoking products and cigarette papers for a person born on or after 1 January 2009. This is known as proxy purchasing.

This replaces an existing provision in the [Children and Families Act 2014](#) (section 91), which makes it an offence for someone aged 18 or over to conduct, or attempt to conduct, proxy purchasing for a person under 18 in England and Wales.

## 2.3 Clause 3: Tobacco vending machines

**Clause 3** consolidates existing law which makes it an offence to sell tobacco products from vending machines or to manage a premises where a tobacco vending machine is used for the sale of these products.

In England, both prohibitions are currently contained in the [Protection from Tobacco \(Sales from Vending Machines\) \(England\) Regulations 2010](#), introduced under section 3A of the [Children and Young Persons \(Protection from Tobacco\) Act 1991](#).

There is equivalent legislation in Wales: the [Protection from Tobacco \(Sales from Vending Machines\) \(Wales\) Regulations 2011](#).

## 2.4 Clause 4: Sale of unpackaged cigarettes

**Clause 4** re-enacts the existing prohibition against selling cigarettes when they are not in their original packaging.

Under section 3 of the [Children and Young Persons \(Protection from Tobacco\) Act 1991](#), it is already an offence for a person to sell cigarettes that are not in their original packaging.

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<sup>19</sup> Guardian-Series, [Bill banning next generation from buying cigarettes introduced to Commons](#), 20 March 2024



## 2.5

# Clauses 5 and 6: Age-of-sale notice at point of sale

Under section 4 of [the Children and Young Persons \(Protection from Tobacco\) Act 1991](#), retailers in England and Wales must display a notice that states ““It is illegal to sell tobacco products to anyone under the age of 18””.

**Clauses 5 and 6** effectively update this wording, to reflect the change in the age of sale. Notices will instead say “It is illegal to sell tobacco products to anyone born on or after 1 January 2009”. In Wales, notices must also contain a Welsh language translation of this phrase.

Clauses 5 and 6 also say that a notice must comply with regulations made by the Secretary of State, or Welsh Ministers, concerning the statement to be displayed on the notice, or any other aspect of the notice. The explanatory notes to the Bill state that requirements for the notice will be set in regulations before 1 January 2027.

## 3 Clauses 7 to 11: Vaping and nicotine products in England and Wales

Clauses 7 and 8 set out new offences on the sale of non-nicotine vaping products to under-18s and related proxy purchases. Clause 9 introduces a new ban on the free distribution of vaping products to under-18s.

Clause 10 ensures these provisions could be extended to other nicotine products, as the need arises. Clause 11 provides the Secretary of State and Welsh Ministers to make regulations concerning the display of nicotine and vaping products.

### 3.1 Clause 7: New ban on the sale of non-nicotine vaping products to under-18s

**Clause 7** would make it an offence to sell non-nicotine vaping products to a person under 18 years of age.

This would be in addition to an existing ban on the sale of nicotine-containing vapes to people under 18-years, set out in the [Nicotine Inhaling Products \(Age of Sale and Proxy Purchasing\) Regulations 2015](#) (which apply in England and Wales).

Non-nicotine vaping products are currently regulated under [the General Product Safety Regulations 2005](#), which do not impose a minimum age of sale for vaping products.

Clause 7 follows extensive concern about the prevalence of vaping among young people, and subsequent government proposals and consultations to introduce the ban. Further information is available in section 4 of the Library briefing, [Youth vaping in England](#).

A person convicted under clause 7 could receive a fine of up to £2,500. However, there would be a statutory defence if a person could demonstrate that they took “all reasonable steps to avoid committing the offence”.

Clauses 34 and 35 define vaping and nicotine products in relation to Part 1 of the Bill (on vaping and nicotine products).

## 3.2 Clause 8: Proxy purchasing of vaping products

**Clause 8** would prohibit the purchase of vaping products on behalf of someone who is under 18 years old.

Clause 8 would replace section 91 of the [Children and Families Act 2014](#), which made the proxy purchasing of nicotine vaping products for a person under 18-years of age an offence. It would effectively extend the effect of the 2014 Act by ensuring that both non-nicotine and nicotine products are subject to proxy purchasing restrictions.

Clause 8 would come into effect six months after the Bill is passed.

A conviction under clause 8 could result in a fine of up to £2,500. However, there would be a defence if a person charged with an offence under clause 8 could prove that they had no reason to suspect that the other person was under 18-years.

## 3.3 Clause 9: Prohibiting the free distribution of vaping products to under-18s

**Clause 9** makes it an offence to give away a vaping product, or a coupon for such, to a person under 18 years old.

### Policy background

Currently, there are no restrictions on giving away free samples of nicotine or non-nicotine vapes (for example, for marketing purposes) to children and young people (those under 18). By contrast, the free distribution of tobacco products is banned for all ages under the [Tobacco Advertising and Promotion Act 2002](#).

In May 2023, the Prime Minister, Rishi Sunak, said the Government would “close this legal loophole” at the next legislative opportunity.<sup>20</sup> The Chief Medical Officer, Professor Chris Whitty, argued that children should not be encouraged to start vaping:

There has been a particularly worrying rise in the number of children using vapes, with companies clearly marketing these products at children using colours, flavours and cheap disposable options. Closing the loophole that allows companies to give out free samples of vaping products to under 18s is a

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<sup>20</sup> [No more free vapes for kids](#) (online), press notice by the Department of Health and Social Care, The Rt Hon Rishi Sunak MP and Neil O'Brien MP, 30 May 2023, (accessed 27 March 2024)

very welcome step in tackling some of the harms caused by the vaping industry.<sup>21</sup>

The Bill would introduce a ban on the free distribution of vapes to under 18s in England and Wales. Specifically, under **clause 9(1)** of the Bill, a person commits an offence if, in the course of a business, they:

- give away a vaping product, or a coupon for a vaping product, to someone who is under the age of 18, or
- cause or permit that to happen in a business setting.

**Clause 9(4)** defines a “coupon for a vaping product” as anything (whether in physical or electronic form) which, by itself or not, could be redeemed for a vaping product. This definition of a coupon is adapted from the [Tobacco Advertising and Promotion Act 2002](#) but includes a reference to electronic forms (such as a QR code).

A person guilty of an offence under clause 9(1) would be liable on summary conviction to a fine not exceeding level 4 on the standard scale (up to £2,500). It would be a defence for a person charged with the offence to prove that they took all ‘reasonable’ steps to avoid the commission of the offence and that they had no reason to suspect that the other person was under the age of 18.

**Clause 9** would only restrict the free distribution of vaping products to children, not adults.

## 3.4

### Clause 10: Extending the Bill’s vaping provisions to other nicotine products

**Clause 10** enables the Secretary of State and Welsh Ministers to make regulations, extending some of the Bill’s measures to other nicotine products:

- the sale of vaping products to under-18s (clause 7);
- the proxy purchase of vaping products (clause 8);
- and the free distribution of vaping products to under-18s (clause 9)

The Bill’s explanatory notes say that this clause aims to “future proof” the Bill by ensuring that novel nicotine products can be added to the scope of age of sale, proxy purchasing and free distribution restrictions without new primary legislation.

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<sup>21</sup> As above

Clause 10 broadly ensures that restrictions on future nicotine products, not covered by a) existing restrictions, or b) restrictions proposed by the Bill, can be easily legislated for.

Clause 34 of the Bill explains that the definition of ‘nicotine products’ could include any of the following:

- a) a device which is intended to enable nicotine to be delivered into the human body,
- b) an item which is intended to form part of a device within paragraph (a),
- c) nicotine, or any substance containing nicotine, which is intended to be delivered into the human body, or
- d) an item containing anything within paragraph (c).

The explanatory notes say that while section 92 of the [Children and Families Act 2014](#) provides regulation-making powers to introduce age-of-sale restrictions on nicotine products, it does not provide regulation-making powers to prohibit them from being freely distributed.

## 3.5

### Clause 11: Display of vaping and nicotine products

Under **clauses 11(1) and (2)** of the Bill, the Secretary of State and the Welsh Ministers would be empowered to make regulations to impose prohibitions, requirements or limitations on how retailers display vaping and nicotine products. In addition to the products themselves, the regulations could cover the display of:

- anything that represents such a product and that is intended to be exchanged for the product at the point of sale. For example, an empty vape pack used for display purposes in a shop would be caught by new regulations.
- prices of vaping products or nicotine products.

Regulations made under **subsections (1) or (2)** could create offences for non-compliance. The regulations must provide for any offence to be triable summarily in a magistrates’ court or on indictment in the Crown Court and be punishable:

- on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both,
- on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

Finally, **clause 11(6)** stipulates new regulations made under clauses 11(1) or (2) must be subject to the affirmative procedure and must be actively approved by both Houses of Parliament.

## Policy background

Vaping products (nicotine and non-nicotine) are currently allowed to be displayed at the point of sale in shops. For example, they might be displayed prominently on countertops, at the till point in supermarkets, or in eye-catching displays on the shop floor.

Under current legislation, there are no restrictions on where vaping and other nicotine products, as well as their prices, can be displayed in shops. By contrast, the display of tobacco products in shops is strictly regulated: they must have plain packaging be held in a storage unit behind the counter out of sight.<sup>22</sup>

In its policy paper, *Stopping the start: our new plan to create a smokefree generation* (4 October 2023), the Government proposed legislation on point of sales displays of vaping products to protect children:

It is unacceptable that children can see and pick up vapes in retail outlets easily due to them being displayed within aisles, close to sweets and confectionary products and on accessible shelves.<sup>23</sup>

In explaining its policy rationale, the government drew on analysis from Imperial College London data collected in the annual ASH survey of youth vaping.<sup>24</sup> It noted that the proportion of children aged 11 to 18 years who had seen vapes on display in shops increased between 2018 and 2022. On the other hand, the proportion seeing cigarettes decreased.<sup>25</sup>

## 3.6

## General concerns about the evidence underpinning the Bill's vaping provisions

The UK Vaping Industry Association (UKVIA) has called for an “immediate halt to the [...] Tobacco and Vapes Bill amid fears it could spark a public health disaster”.<sup>26</sup> The UKVIA has expressed concern about what it considers to be a lack of evidence supporting the Bill's restrictions on vaping.

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<sup>22</sup> Further information is provided in a separate briefing, [Shop displays of tobacco and vaping products](#) (PDF) (CBP 5537), House of Commons Library, 26 October 2023, (accessed 27 March 2024)

<sup>23</sup> Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-I, 4 October 2023 (last updated 12 October 2023)

<sup>24</sup> Parnham JC, Vrinten C, Cheeseman H, and others, [Changing awareness and sources of tobacco and e-cigarettes among children and adolescents in Great Britain](#), Tobacco Control, 30 July 2023

<sup>25</sup> As above

<sup>26</sup> UKVIA, [UK Vaping Industry Association calls for immediate pause in Tobacco and Vapes Bill amid serious health evidence concerns](#), accessed 3 April 2024

The UKVIA refers to the DHSC's own [impact assessment](#), which provides an overview of the potential implications of the Bill, particularly in relation to public health and the economy.<sup>27</sup> In the impact assessment, the Department for Health and Social Care (DHSC) cites uncertainty or lack of available evidence as a reason for not having quantified the impact of some of the Bill's provisions. For example, the DHSC did not quantify the health impact of fewer people using vapes to quit smoking if vapes flavours and sales promotions are restricted.

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<sup>27</sup> DHSC, [Tobacco and Vapes Bill: impact assessment](#), 20 March 2024

## 4 Clauses 12 to 18: Restricted premises and sale orders, and offences by bodies, in England and Wales

Clauses 12 to 17 provide for premises, and individuals, to be prohibited from selling tobacco and vaping products where there is a repeated breach of age-of-sale legislation.

Clause 18 would make a relevant person potentially liable for offences carried out by a body.

### 4.1 Clause 12: Restricted premises orders

**Clause 12** is based on [section 12A of the Children and Young Persons Act 1933](#). The Act introduced restricted premises orders, where a specific premises found to have persistently breached age-of-sale legislation is banned from selling tobacco and nicotine products. If enacted, clause 12 would replace section 12A of the 1933 Act.

**Clause 12(1)** would provide that if a person convicted of a ‘relevant offence’ is a ‘persistent offender’, the enforcement authority could apply to the magistrates’ court for a restricted premises order.

A ‘restricted premises order’ is defined by **clause 12(3)** as an order prohibiting the sale on the relevant premises of any one or more of the following:

- tobacco products,
- herbal smoking products,
- cigarette papers,
- vaping products, and
- any nicotine products the sale of which to people aged under 18 is prohibited by clause 7 (including new products added by regulations under clause 10).

The prohibition imposed by a restricted premises order would apply to sales made by any person (not just the offender) or machine at the premises.

**Clause 12(5)** stipulates that a restricted premises order could not apply for more than one year.



Under **clause 12(8)**, ‘Relevant offences’ include an offence under any of the following provisions of Part 1 of the Bill:

- Clause 1 (sale of tobacco to people born on or after 1 January 2009).
- Clause 3 (tobacco vending machines).
- Clause 7 (sale of vaping products to under 18s).

It would also include the existing offences up until the point they are repealed by the Bill:

- [Section 7 of the Children and Young Persons Act 1933](#) (sale of tobacco products to under-18s).
- [Section 3A of the Children and Young Persons \(Protection from Tobacco\) Act 1991](#) (tobacco vending machines).
- [Section 92 of the Children and Families Act 2014](#) (sale of nicotine products to under-18s).

A ‘persistent’ offender is a person who has committed three relevant offences in a two-year period (Clause 12(7)).

Under **clause 12(6)**, a restricted premises order would be a local land charge, meaning it would bind a buyer of the premises.<sup>28</sup>

## 4.2

### Clause 13: Restricted premises orders and interested persons

**Clause 13** of the Bill says that enforcement authorities must, when applying for a restricted premises order, notify ‘interested persons’.<sup>29</sup> For the purposes of clause 13, an interested person could mean the occupier of the premises or any other person who has an interest in the premises where tobacco or vaping products are sold.<sup>30</sup> For example, the manager or owner of the business.

Under **clause 13(2)** an interested person would be able to make representations to the court as to why the order should not be made.

Under **clause 13(3)**, if a restricted premises order is made without an interested person having been given a notice under **clause 13(1)**, and without

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<sup>28</sup> A local land charge is a restriction or obligations that affects a property, often limiting its use (such as listed buildings or environmental health notices). Local authorities maintain local land charges registers and there is a legal obligation to register them.

<sup>29</sup> Clause 13 of the Bill is based on the approach outlined in [section 12A of the Children and Young Persons Act 1933](#) for restricted premises orders for breaches of the tobacco legislation

<sup>30</sup> Clause 13(5)

them having made representations to the court, the person may apply to vary or discharge the order. It would be for the court to decide whether to do so.

## 4.3 Clause 14: Breach of restricted premises orders

**Clause 14** of the Bill is concerned with a breach of a restricted premises order.<sup>31</sup> Under **clause 14(1)**, a person would commit an offence if the person:

- sells anything on premises in breach of a restricted premises order, and
- knows, or ought reasonably to know, that the sale is in breach of the order.

Under **clause 14(2)**, a person guilty of an offence under this section would be liable on summary conviction to a fine (no maximum amount is specified).

## 4.4 Clause 15: Power to extend restricted premises orders

**Clauses 15(1)** and **15(2)** of the Bill would enable the Secretary of State and Welsh Ministers to amend clause 12 by regulations to add an offence to the definition of “relevant offences” for which a restricted premises order could be issued.<sup>32</sup> However, **clause 15(3)** makes it clear that any additional offences must relate to restrictions around tobacco products, herbal smoking products, cigarette papers, vaping products or nicotine products.

Regulations made under clause 15 would be subject to the affirmative procedure in Parliament.

## 4.5 Clause 16: Restricted sale orders

**Clause 16** is based on [section 12B of the Children and Young Persons Act 1933](#). The Act introduced restricted sale orders, which prevent an individual from selling tobacco or nicotine products if they were found to have repeatedly breached age-of-sale legislation. If enacted, clause 16 would replace section 12B of the 1933 Act.

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<sup>31</sup> Clause 14 of the Bill is based on [section 12C of the Children and Young Persons Act 1933](#), which introduced fines for a breach of a restricted premises order

<sup>32</sup> As outlined in the [Explanatory Notes](#) to the Bill, this would be a new power for the Secretary of the State; Welsh Ministers already have this power in [section 51 of the Public Health \(Wales\) Act 2017](#)

A restricted sale order would apply to a named individual regardless of where they are employed. They are different to restricted premises orders, which are applied to business premises.

A restricted sale order would prohibit the named person from selling tobacco, vape, and nicotine products (as listed in clause 16 2(a)). It would also prohibit them from having any management functions related to the sale of such products (whether by a person or a machine).

**Clause 16(3)** stipulates that a restricted sale order cannot apply for more than one year.

Clause 16 contains key definitions on what is meant by a ‘a persistent offender’ and a ‘relevant offence’. Both are the same as in clause 12.

## Clause 17: Breach of restricted sale orders

**Clause 17(1)** of the Bill would make it an offence to not comply with a restricted sale order where it has been issued.<sup>33</sup> A person guilty of an offence under this clause would be liable on summary conviction to a fine (no maximum amount is specified).<sup>34</sup>

It would, however, be a defence under **clause 17(2)** for someone charged with the offence to prove that they took all ‘reasonable’ steps to avoid committing the offence.

### 4.6

## Clause 18: Liability of others for certain offences committed by bodies

As outlined above, under clause 14(1), a person would commit an offence if they:

- sell anything on premises in breach of a restricted premises order, and
- know, or ought reasonably to know, that the sale is in breach of the order.

**Clause 18(1)** would make a ‘relevant person’ potentially liable for an offence committed by an organisation. A ‘relevant person’ might be anyone who has management responsibilities for the organisation, such as the director, manager or partner in a company, as set out in **clause 18(3)**.

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<sup>33</sup> Clause 17(1) of the Bill is based on [section 12C of the Children and Young Persons Act 1933](#) which introduced fines for a breach of a restricted sale order

<sup>34</sup> Clause 17(3)

The relevant person would only be liable where the offence has been committed with their consent, connivance, or neglect. This applies to clause 14 (breach of restricted premises order) or any other offence under Part 1 of the Bill or any regulations made under clause 11 (displays of vaping and nicotine products).

## 5 Clauses 19 to 26: Enforcement and fixed penalties in England and Wales

Clauses 19 to 26 set out the obligations of local Trading Standards with regard to enforcing the Bill's restrictions on the sale, distribution and display of tobacco, nicotine and vaping products. They set out how fixed penalties may be imposed where these restrictions are breached.

These clauses also set out the circumstances in which the Secretary of State or Welsh Minister can take over enforcement proceedings.

### 5.1 Clause 19: Enforcement by local weights and measures authorities

**Clause 19** of the Bill would require local Trading Standards (referred to as weights and measures authorities in the Bill) to enforce the provisions of Part 1 of the Bill and any regulations made under clause 11 with regard to displays of vaping and nicotine products.

Trading Standards would have access to the investigatory powers in [Schedule 5 of the Consumer Rights Act 2015 for the purpose of enforcement](#). The generic set of investigatory powers provided by Schedule 5 include:

- the power to purchase products and observe the activities of a business.
- the power to issue statutory notices to request information, require the production of documents or to seize documents required as evidence.
- the power to gather evidence on business premises. In effect, the power to enter premises with or without warrant, inspect products, seize and detain goods (including breaking open a container), and if necessary to require assistance from persons on the premises.

### 5.2 Clause 20: Programme of enforcement in England

Under **clause 20(1)**, each local Trading Standards in England would be required, at least once a year, to consider:

- whether it is appropriate to carry out an ‘enforcement programme’ of action in its area, and
- if so, what that programme should involve.

The aim of the provision is to ensure that Trading Standards in England regularly considers whether it is enforcing offences effectively.

For the purposes of **clause 20(1)**, a programme of enforcement action would be a programme involving one or more of the following:

- investigating complaints in respect of an alleged offence under Part 1 or any regulations under clause 11
- bringing prosecutions in respect of such an offence
- taking other measures intended to reduce the incidence of such offences

## 5.3

### Clause 21: Programme of enforcement in Wales

**Clause 21** is almost identical to clause 20, requiring enforcement authorities in Wales to consider carrying out an ‘enforcement programme’ in its area. In addition to offences under Part 1 of the Bill and associated regulation, the enforcement programme could cover offence under either of the following provisions of the [Public Health \(Wales\) Act 2017](#):

- [section 51A](#), the offence of handing over tobacco or nicotine products to people born on or after 1 January 2009
- [section 52](#), the offence of handing over vaping or nicotine products to under-18s.

## 5.4

### Clause 22 and 23: Power of Ministers to take over enforcement functions and proceedings

**Clauses 22(1) and 22(2)** would empower the Secretary of State and the Welsh Ministers, respectively, to take over the enforcement duty (imposed by clause 19(1)) from a local Trading Standards for certain cases at their discretion.

**Clauses 23(1) and 23(2)** would empower the Secretary of State and the Welsh Ministers, respectively, to take over the conduct of any proceedings from a local Trading Standards in England or Wales in respect of an offence committed under Part 1 or any regulations made under clause 11.

Taken together, clauses 22 and 23 of the Bill would enable a national authority (instead of local authority Trading Standards) to undertake enforcement action and, if necessary, court proceedings relating to any offence that has been committed under Part 1 of the Bill or regulations made under clause 11. The Bill's explanatory notes say that this could happen if a local enforcement authority was unable or unwilling to undertake the legal proceedings in a certain case.<sup>35</sup>

## 5.5

### Clause 24: Fixed penalty notices

**Clause 24** of the Bill would introduce a fixed penalty notice regime in England and Wales. This would give authorities the option to issue an immediate fine to someone suspected of an offence on the spot, rather than having to try them in court.

**Clause 24(1)** would enable a local Trading Standards in England and Wales that has reason to believe that a person has committed an offence under any of the following provisions of Part 1 of the Bill, to give the person a fixed penalty notice in respect of the offence:

- Age-of-sale provisions, specifically, clause 1 (sale of tobacco to people born on or after 1 January 2009) and clause 7 (sale of vaping products to under 18s).
- Proxy purchasing of tobacco and vaping products, clause 2 (purchase of tobacco on behalf of others) and clause 8 (purchase of vaping products on behalf of under 18s).<sup>36</sup>
- Free distribution of vaping products to under 18s, clause 9.

In effect, a Trading Standards officer would have the option of issuing on-the-spot fines for specified breaches of Part 1 as an alternative to taking enforcement action through the courts. For underage sales, the business or the retail worker could be liable to receive the fixed penalty notice; the decision would be made by the Trading Standards officer who issues the notice. For proxy purchases, the person who bought, or attempted to buy, a tobacco or vaping product on behalf of someone else under the age of sale would be liable to receive a fixed penalty notice.<sup>37</sup>

A fixed penalty notice offers the person the opportunity to avoid prosecution for the offence if they make a specific payment within 'the relevant period'.

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<sup>35</sup> Explanatory Notes, [Bill 189-EN](#)

<sup>36</sup> The [Children and Families Act 2014](#) introduced fixed penalty notices for the proxy purchasing of tobacco and vaping products. The aim is to replace the relevant provisions with the fixed penalty notice regime in the Bill

<sup>37</sup> See footnote 46

**Clause 24(4)** defines ‘the relevant period’ as the period of 28 days beginning with the day on which the notice is given.

**Clause 24(3)** sets the amount of the fixed penalty notice at £100. This would be reduced by 50% if paid within 14 days. The Government has explained the policy rationale for setting the penalty at this amount:

Setting the fine at £100 aligns with the UK government’s approach to limit any new burdens to businesses, while allowing for appropriate enforcement action to be taken. Local Trading Standards must comply with the Regulators’ Code and take a proportionate approach to enforcement action on underage sales that reflects the level of offence committed.<sup>38</sup>

In addition, the Government said a £100 penalty would be at a similar level to the current fixed penalties for other offences, including selling alcohol to those who are underage and theft from a shop (where goods are under £200 in value) which are both £90.<sup>39</sup>

**Clause 24(5)** stipulates that the fixed penalty notice must explain:

- that the local Trading Standards giving the notice is satisfied that the person has committed the offence, and why,
- the effect of clause 24(6), and
- when and how payment may be made.

**Clause 24(6)** would provide that where a fixed penalty notice has been given to a person (and has not been withdrawn), no legal proceedings could be initiated before the end of the 28-day period.

**Clause 24(7)** provides that where the fine has not been paid, the 6-month time limit for bringing proceedings in the magistrates’ court would begin after the 28-day payment window.<sup>40</sup>

Finally, **clause 24(8)** would allow the local authority Trading Standards Services to withdraw a fixed penalty notice at any time before a payment is made.

This new power to issue fixed penalty notices would be in addition to existing powers Trading Standards have to enforce age-of-sale legislation. Currently, Trading Standards can issue increasing penalties, starting with a warning through to a court imposed maximum fine of £2,500.

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<sup>38</sup> As above

<sup>39</sup> Department of Health & Social Care, [Policy paper: Tobacco and Vapes Bill: enforcement factsheet](#), 20 March 2024, (accessed 27 March 2024)

<sup>40</sup> The time limit is specified in [section 127\(1\) of the Magistrates’ Court Act 1980](#)



## 5.6 Clause 25: Use of proceeds from fixed penalties

**Clause 25** of the Bill would provide that any sums received by a local Trading Standards as a result of a fixed penalty notice given under clause 24 must be ring-fenced and used for the enforcement of tobacco and vaping controls under:

- this Act (that is, the Bill if enacted),
- the [Tobacco Advertising and Promotion Act 2002](#),
- Part 1 of the [Health Act 2006](#) (smoke-free premises),
- the [Tobacco and Related Products Regulations 2016](#).<sup>41</sup>

## 5.7 Clause 26: Power to change amount of fixed penalties

**Clauses 26(1)** and **26(2)** of the Bill would provide the Secretary of State and the Welsh Ministers, respectively, with a power to change the amount of the fixed penalty notice and the percentage discount for early payment. Regulations under this section would be subject to the affirmative procedure in Parliament.

According to the Bill's explanatory notes, this would ensure there is flexibility within the new fixed penalty notice regimes to adapt to changing economic and social circumstances (such as inflation).<sup>42</sup>

## 5.8 Policy background on enforcement

In its policy paper, [Stopping the start: our new plan to create a smokefree generation](#) (4 October 2023), the UK Government estimated that tobacco smuggling cost the UK over £2.8 billion in lost tax and duty revenue each year.<sup>43</sup>

The government's factsheet on the Bill states that it is particularly concerned about the sale of illicit vapes, which "frequently targets children and young

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<sup>41</sup> SI 2016 No.507

<sup>42</sup> Bill 189-EN

<sup>43</sup> Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-I, 4 October 2023 (last updated 8 November 2023)

people in disadvantaged communities, widening health disparities”.<sup>44</sup> National Trading Standards, which seized 2.1 million illicit vapes across England in 2022 to 2023, said that illicit vapes “often contain unknown ingredients, higher levels of nicotine and are often made easily available through markets that target children”.<sup>45</sup>

Of 78 councils who undertook test purchasing between 2019 and 2020, [50% reported that cigarettes or tobacco products were sold to people who were underage in at least one premises](#) (PDF).<sup>46</sup> The Government has also highlighted National Trading Standards data for 2022 to 2023, which found that 27% of the 1,000 retail test purchases for vapes had resulted in an illegal sale.<sup>47</sup>

The Government believes a strong approach is necessary to enforce its youth tobacco and vaping policy.<sup>48</sup> On 11 April 2023, during a speech at the Policy Exchange think tank, Neil O’Brien, then Health Minister, announced a new “illicit vapes enforcement squad” led by National Trading Standards to prevent the sale of illicit vapes and underage sales.<sup>49</sup>

The enforcement squad would have powers to undertake specific projects (such as test purchasing in convenience stores and vape shops) and remove illegal products from shops and at borders. It would also be expected to produce guidance on regulatory compliance.

## Current enforcement powers

Currently, local authority Trading Standards in England can bring a prosecution under [section 7 of the Children and Young Persons Act 1933](#) for the underage sale of a tobacco product or cigarette papers.<sup>50</sup> The magistrates court can impose a fine of up to £2,500 upon conviction. Where a business or individual has persistently breached tobacco or nicotine product restrictions, Trading Standards can also use powers under the 1933 Act to apply to the court for a restricted premises order or restricted sale order, to prohibit the business or a named individual from selling these products for up to 12 months.<sup>51</sup>

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<sup>44</sup> Department of Health & Social Care, [Policy paper: Tobacco and Vapes Bill: enforcement factsheet](#), 20 March 2024, (accessed 27 March 2024)

<sup>45</sup> Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-1, 4 October 2023 (last updated 8 November 2023)

<sup>46</sup> [Tobacco Control Survey 2019/20](#) (PDF), Chartered Trading standards Institute, undated, (accessed 27 March 2024)

<sup>47</sup> Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-1, 4 October 2023 (last updated 8 November 2023)

<sup>48</sup> As above

<sup>49</sup> [Crackdown on illegal sale of vapes – Bold new measures to combat rising levels of youth vaping expected to be announced](#) (online), Department of Health & Social Care and Neil O’Brien MP press notice, 9 April 2023, (accessed 27 March 2024)

<sup>50</sup> Under the [Children and Families Act 2014](#), Trading Standards can also bring prosecutions for the underage sale of nicotine products

<sup>51</sup> Under [Section 12A and Section 12B](#) of the Children and Young Persons Act 1933

However, the current penalty regime requires Trading Standards to bring a prosecution and to secure a conviction in the magistrates' court. According to Trading Standards officers, "this time-consuming court procedure limits their ability to issue fines and is a significant gap in their operational capabilities".<sup>52</sup>

Fixed penalty notices allow Trading Standards to act without involving the courts: they give an individual the opportunity to avoid prosecution for an alleged criminal offence in exchange for a fine. Individuals can choose not to pay the fine and instead challenge the prosecution in court. In England and Wales, Trading Standards have only limited powers to use fixed penalty notices to enforce restrictions on the purchase of tobacco, cigarette papers or a relevant nicotine product.

Under the [Proxy Purchasing of Tobacco, Nicotine Products etc. \(Fixed Penalty Notice\) \(England\) Regulations 2015](#), Trading Standards officers can issue a fixed penalty notice of £90 to individuals for purchasing, or attempting to purchase, tobacco and nicotine products for someone under 18.<sup>53</sup> It is the adult making or attempting the purchase on who commits the offence, not the retailer.<sup>54</sup>

On 12 October 2023, the government published a consultation on [Creating a smokefree generation and tackling youth vaping](#).<sup>55</sup> The government sought views on whether it should introduce fixed penalty notices for breaches of age of sale legislation for tobacco products and vapes.<sup>56</sup> In its formal response, the government said that 83% of respondents who answered this question agreed that fixed penalty notices should be introduced.<sup>57</sup> The government announced its intention to strengthen enforcement activity in England and Wales.<sup>58</sup>

## Enforcement in different parts of the UK

If enacted, the Bill <https://bills.parliament.uk/bills/3703> would permit Trading Standards officers across England and Wales to issue an fixed penalty notice of £100 for breaches of the age-of-sale legislation for tobacco products and vapes as well as breaches of proxy-purchase restrictions and the free distribution of vapes. In effect, the Bill would provide a single fixed penalty

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<sup>52</sup> Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-1, 4 October 2023 (last updated 8 November 2023)

<sup>53</sup> Section 91(1) of the Children and Families Act 2014

<sup>54</sup> The [Health Act 2006](#) also introduced fixed penalty notices for breaches of the smoke-free premises legislation and the requirement to display 'no-smoking' signs in smoke-free premises in England and Wales

<sup>55</sup> Department of Health and Social Care, [Creating a smokefree generation and tackling youth vaping: your views](#), 12 October 2023

<sup>56</sup> The question was only open to respondents in England and Wales since Scotland and Northern Ireland have already introduced FPNs for underage tobacco and vape sales

<sup>57</sup> Department of Health and Social Care, [Creating a smokefree generation and tackling youth vaping: Government response](#), 12 February 2024

<sup>58</sup> As above

notice regime across these offences to create a “consistent approach for enforcement officers and businesses in England and Wales”.<sup>59</sup>

The position is different in Scotland and Northern Ireland, where enforcement authorities already have powers to issue fixed penalty notices to retailers and individuals for the age-of-sale and proxy-purchasing offences relating to the sale of tobacco products, cigarette papers and vapes. They were introduced by the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) and the [Tobacco Retailers Act \(Northern Ireland\) 2014](#).

Statistics cited in the Bill’s [Explanatory Notes](#) (PDF) show that fixed penalty notices are regularly used in Scotland to enforce age-of-sale legislation; over 500 notices for underage tobacco sales were issued from 2015/16 to 2022/23 and nearly 200 notices for underage vape sales were issued from 2017/18 to 2022/23.<sup>60</sup> In Northern Ireland, three notices were issued for underage tobacco sales and 34 for underage vape sales in the six months from 1 April to 40 September 2023.<sup>61</sup> The Bill would not affect the fixed penalty notice regimes in Scotland and Northern Ireland.

## Additional funding for enforcement agencies

On 4 October 2023, the government announced it would provide £30 million additional funding each year (from April 2024) to support enforcement agencies.<sup>62</sup> Of this funding, the government has committed over £100 million over 5 years to support [HMRC and Border Force’s new illicit tobacco strategy](#), published on 29 January 2024.<sup>63</sup> It said it was “working closely with Trading Standards” to consider how the new funding could “best support their programmes of local-level enforcement”.<sup>64</sup> The government said that this additional funding will complement the measures in the Bill.<sup>65</sup>

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<sup>59</sup> [Explanatory Notes](#), Bill 189-EN

<sup>60</sup> As above, para 33

<sup>61</sup> As above

<sup>62</sup> Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-I, 4 October 2023 (last updated 8 November 2023)

<sup>63</sup> HM Revenue and Customs and Border Force, [Stubbing out the problem: A new strategy to tackle illicit trade](#), 29 January 2024, (accessed 27 March 2024)

<sup>64</sup> Department of Health & Social Care, [Policy paper: Tobacco and Vapes Bill: enforcement factsheet](#), 20 March 2024, (accessed 27 March 2024)

<sup>65</sup> As above

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## 6 Clauses 27 to 33: Various provisions in England and Wales

Clauses 27 to 33 make provision concerning the handing over of tobacco to underage people in Wales, technical details on the enforcement of old offences and crown application.

### 6.1 Clause 27: Handing over tobacco to underage people in Wales

Clause **27** introduces Schedule 1 of the Bill, which provides for a technical amendment to Chapter 4, Part 3 of the [Public Health \(Wales\) Act 2017](#).

The 2017 Act makes it an offence for a person to give tobacco and related products to a person younger than 18. Schedule 1 of the Bill would insert an amendment in the 2017 Act, so that this offence corresponds with the new age-of-sale restrictions.

### 6.2 Clause 30: Application of programme of enforcement to old offences

**Clause 30** of the Bill ensures that the programme of enforcement for England and Wales set out in clauses 20 and 21 would apply to existing tobacco and vaping product control measures, and then to the new measures in the Bill as these come into force.

### 6.3 Clause 31: Application of fixed penalty regime to old offences

**Clause 31** of the Bill is to ensure that the new fixed penalty notice regime (created under clause 24) would apply to existing offences to sell tobacco and vaping products, or purchase those products on behalf of, someone underage.

## 6.4

### Clause 33: Crown application

**Clause 33** stipulates that Part 1 of the Bill and any regulations made under Part 1 would apply to the Crown.

**Clause 33(2)** makes it clear that nothing in Part 1 or any regulations made under it would make the Crown criminally liable. In other words, the Crown itself could not be prosecuted for an offence under Part 1. However, this exemption would not affect the criminal liability of persons in the service of the Crown (such as civil servants, police, and prison employees).

Under **clause 33(3)**, the High Court would also be able to declare unlawful any act or omission for which the Crown would be criminally liable if it were not for **clause 33(2)**.

## 7

# Clauses 37 to 42: Sale and distribution of tobacco products in Scotland

Clauses 37 to 42 would make various provisions for tobacco products in Scotland, some of which would align Scotland with other parts of the UK.

Existing age-of-sale legislation in Scotland would be amended to reflect the ban on the sale of tobacco products to people born on or after 1 January 2009. It would be an offence to sell unpackaged cigarettes, and it would no longer be an offence for a person under the age of 18-years to buy, or attempt to buy, tobacco products or cigarette papers. The police would no longer be permitted to confiscate tobacco products or cigarette papers from a person under the age of 18 in a public place. Herbal smoking products would be brought into the scope of legislation on tobacco products.

### 7.1

## Clause 37: Amending existing tobacco legislation to reflect the new age of sale

**Clause 37** would amend existing Scottish tobacco legislation to align with the new age-of-sale requirements proposed by the Bill.

### Legislative background

The [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) sets out restrictions on the sale of tobacco products in Scotland.

Under the 2010 Act, it is an offence to sell tobacco products and cigarette papers to people under 18 years old.

Clause 37 updates provisions in the 2010 Act, changing references to anyone “under the age of 18”, to anyone “born on or after 1 January 2009”. The relevant provisions in the 2010 Act concern:

- The offence of selling tobacco and related products to under-18s (section 1)
- Proxy purchasing (section 6)
- Display of warning statements (section 8)

Clause 41 further amends sections 1 and 6 of the 2010 Act, updating references to “tobacco products” to include “herbal smoking products” in line with the Bill’s provisions.

Section 4B(3) of the 2010 Act requires a person running a tobacco or nicotine vapour business to operate an age verification policy. Under this policy, a person is required to take steps to verify the age of anybody appearing under the age of 25 (or older if specified by their own policy), if they attempt to buy tobacco, cigarette papers or nicotine vapour products. Clause 37 would amend this, so that the policy would be applied to anybody appearing to have been born on or after 1 January 2009.

Clause 37 also extends the scope of the age verification policy so that it includes herbal smoking products.

The age verification requirement would apply until the end of 2033 (when those born on or before 1 January 2009 will be at least 24 years old).

## 7.2

### Clause 38: Prohibiting the sale of unpacked cigarettes

**Clause 38** would amend the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) to add an offence of selling cigarettes that are not in their original packaging.

## 7.3

### Clause 39: Repealing the offence of purchasing tobacco products by under-18s

Under section 5 of the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#), it is an offence for a person under the age of 18 years to buy or attempt to buy a tobacco product or cigarette papers.

**Clause 39** would repeal section 5, so this action would no longer be an offence.

The explanatory notes to the Bill explain that this is to ensure alignment with England and Wales, where age-of-sale offences apply to the seller rather than the purchaser.



## 7.4 Clause 40: Repeal of power to confiscate tobacco products from person under 18

**Clause 40** would omit [section 7 of the Tobacco and Primary Medical Services \(Scotland\) Act 2010](#). Currently, section 7 empowers the police to confiscate a tobacco product or cigarette papers from a person under 18 who is in possession of them in a public place.

This power is not available to police in England and Wales. Omitting section 7 would bring the law in Scotland into line with the position in England and Wales. According to the Bill's explanatory notes, the aim is to make the law consistent across the UK and therefore easier to interpret and enforce.

## 7.5 Clause 41: Extension of tobacco legislation to herbal smoking products

Herbal smoking products are not currently within the scope of the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#).

**Clause 41** would amend the 2010 Act to add herbal smoking products to the Act's restrictions on sales.

This would align Scotland with England and Wales.

## 7.6 Clause 42: Power to make provision about warning statements

**Clause 42** would amend section 8 of the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#), to re-enact with some modification, the existing power for Scottish Ministers to make provision about warning statements that are displayed in businesses. The statement must advise of the age-of-sale restriction for tobacco products.

It would provide powers for Scottish Ministers to make provision about the size or appearance of the warning statement, and enable alignment with arrangements in England and Wales.

## 8 Clauses 43 to 45: Vaping and nicotine products in Scotland

Clauses 43 to 45 would grant Scottish Ministers new powers to apply legislation on nicotine vapour products to a broader range of products. Scottish Ministers would also be able to introduce new regulations to prohibit the free distribution of nicotine vapour products and new regulations about the display of vaping and nicotine products.

### 8.1 Clause 43: Power to regulate nicotine products

The [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) set out restrictions and requirements for ‘nicotine vapour products’ (the definition for which includes both nicotine and non-nicotine vapes).

**Clause 43** would provide Scottish Ministers with powers to amend the 2010 Act, allowing sections that refer to nicotine vapour products to apply to a broader range of nicotine products, such as nicotine pouches.

Clause 43 provides that the definition of ‘nicotine product’ is the same as the definition outlined in clause 34. This ensures that Scotland aligns with arrangements for England and Wales, as set out in clause 10 of the Bill.

### 8.2 Clause 44: Free distribution of nicotine products

The [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016](#) introduced a power that allows the Scottish Ministers to make regulations to prohibit or restrict the free distribution of nicotine vapour products.

**Clause 44** of the Bill would amend this power to enable regulations to encompass the free distribution of other nicotine products, such as nicotine pouches.

## 8.3

## Clause 45: Displays of vaping and nicotine products

**Clause 45** would amend the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) by inserting new section 3A . It would empower Scottish Ministers to introduce regulations around the display of vaping and nicotine products, representations of them (such as empty packaging), and prices in a place where they are sold. It would give Scottish Ministers an equivalent power to that of the Secretary of State and the Welsh Ministers under clause 11.

**Clause 3A(3)** makes it clear that a website would not fall within the meaning of ‘place’, meaning Scottish Ministers could not use this provision to regulate the display of nicotine vapour products and nicotine products online. According to the Bill’s [explanatory notes](#) (PDF),<sup>66</sup> subsection (3) was added to new clause 3A to maintain consistency with section 3 of the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#).

Contravention of regulations made under new section 3A would be an offence. It would be punishable on summary conviction with a fine not exceeding level 4 on the standard scale (£2,500).<sup>67</sup>

Regulations made under new clause 3A(1) would be subject to the affirmative procedure in Parliament (provided for by clause 40(4)).

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<sup>66</sup> Bill 189-EN

<sup>67</sup> Clause 3A(5)

## 9 Clauses 48 to 50: Sale and distribution of tobacco products in Northern Ireland

Clauses 48 to 50 would amend existing tobacco age-of-sale legislation in Northern Ireland, to correspond with the Bill's new prohibition on sales to those born on or after 1 January 2009.

The Department of Health would be able to introduce regulations to exclude business-to-business sales from offences relating to tobacco sales, and to make regulations about the warning notice used to display the age-of sale restrictions.

### 9.1 Clause 48: Age of sale for tobacco products

**Clause 48** amends existing Northern Irish tobacco legislation, so that it aligns with the Bill's new age-of-sale restrictions.

#### Legislative background

Section 3 of the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#) prohibits the sale of tobacco and cigarette papers to individuals under 18 years old.

Section 4A added a proxy-purchasing offence for anybody who buys or attempts to buy tobacco, cigarette papers or relevant nicotine products on behalf of individuals under 18-years.

**Clause 48** would amend these sections so that the prohibitions on sale and proxy purchasing would instead apply to individuals born on or after 1 January 2009.

Under the 1978 Order, herbal smoking products are included in the definition of tobacco products, and so would be captured by the Bill's age-of-sale restrictions.

## 9.2 Clause 49: Power to restrict tobacco offences to sale by retailer

**Clause 49** would empower the Department of Health in Northern Ireland to introduce regulations to amend the definition of “sale” in Article 7, Part 2 of the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#) to mean “sale by retail”. The new definition would mean that business-to-business sales would not be caught by the tobacco offences.

Regulations under this Article would have to be approved by a resolution of the Northern Ireland Assembly.<sup>68</sup>

## 9.3 Clause 50: Power to make provision about warning statements

**Clause 50** would amend [Article 5 of the Children and Young Persons \(Protection from Tobacco\) \(Northern Ireland\) Order 1991](#), which covers the display of warning statements.<sup>69</sup> Specifically, current paragraph 3 in Article 5 would be substituted by a new paragraph allowing the Department of Health in Northern Ireland to make provision, by regulations, about the size or appearance of the warning statement (for example the colour of the notice). Regulations would be subject to negative resolution in the Assembly.

The [Protection from Tobacco \(Display of Warning Statements\) Regulations \(Northern Ireland\) 1993](#)<sup>70</sup> were made using powers in Article 5 of the 1991 Order. The Bill’s explanatory notes say that since the Bill would re-enact those powers, the Regulations would remain in force (as provided for under [section 17\(2\)\(b\)](#) and [section 24](#) of the Interpretation Act 1978).

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<sup>68</sup> According to the [Explanatory Notes](#) to the Bill, the approach taken in clause 49 is similar to the existing approach in the Health and Personal Social Services (Northern Ireland) Order 1978 that includes an explicit exemption for persons employed in trade and this change achieves this by amending the 1978 Order.

<sup>69</sup> S.I. 1991/2872 (N.I.25)

<sup>70</sup> S.I 1993 No.35

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## 10 Clauses 51 to 56: Regulation of vaping and nicotine products, and enforcement in Northern Ireland

Clauses 51 to 56 would provide for the further regulation of non-nicotine vapes, the distribution and display of vaping and nicotine products, and the exclusion of business-to-business sales from age-of-sale restrictions for nicotine products.

### 10.1 Clause 51: Enabling the Department of Health to regulate non-nicotine vapes

**Clause 51** would provide the Department of Health in Northern Ireland with powers to regulate non-nicotine vapes.

Section 1 of the [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016](#) prohibits the sale of nicotine products to individuals under 18 years old. Nicotine-containing vapes and vaping products are included in the Act's definition of 'nicotine product' (section 7).

Clause 51 would extend this ban to the sale of non-nicotine vaping products. The explanatory notes to the Bill explain this would align arrangements in Northern Ireland with those of England and Wales.

### 10.2 Clause 52: Enabling the Department of Health to restrict nicotine products offence to sale by retail

**Clause 52** would ensure that business-to-business sales would not be in scope of the age-of-sale restrictions for nicotine products.

#### Legislative background

Section 1 of the [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016](#) prohibits the sale of nicotine products to individuals under 18-years. Clause 52 would amend section 1, so that 'sale' is defined as sale by retail.

## 10.3

## Clause 53: Free distribution of vapes and nicotine products

Currently, the [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016](#) (the 2016 Act) does not include any restrictions on the free distribution of nicotine products or vaping products.

**Clause 53** of the Bill would amend the 2016 Act by inserting new section 2A. New section 2A would give the Department of Health in Northern Ireland powers to introduce restrictions on the free distribution of nicotine products and non-nicotine vaping products. Clause 53 aligns closely with clause 9 in Part 1 of the Bill and its prohibition on the free distribution of vaping products to under 18s in England and Wales.

Specifically, new section 2A would empower the Department of Health in Northern Ireland to make regulations prohibiting a person acting in the course of a business from:

- giving away a nicotine product or a non-nicotine vaping product, or a coupon that could be redeemed for one of these products to someone who is under the age of 18, or
- causing or permitting that to happen.

For the purposes of the new clause, “a coupon for a nicotine product or non-nicotine vaping product” would mean anything (whether in physical or electronic form) which, by itself or not, could be redeemed for a nicotine product or non-nicotine vaping product.

Under **clause 2A(2)**, a person who breaches a prohibition in regulations under subsection (1) would commit an offence. A person guilty of an offence would be liable:

- on summary conviction by a magistrates’ court, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;<sup>71</sup>
- on conviction on indictment in the Crown Court, to imprisonment for a term not exceeding two years, or a fine, or both.<sup>72</sup>

Under **clause 53(3)**, it would be a defence for the person convicted to prove they took all reasonable precautions and exercised all due diligence to avoid committing the offence.

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<sup>71</sup> Clause 2A

<sup>72</sup> Clauses 2A(4)

## 10.4

## Clause 54: Power to regulate displays of vaping and nicotine products

Currently, there are no restrictions in Northern Ireland on the displays of vaping and nicotine products.

**Clause 54** of the Bill would amend the [Health \(Miscellaneous Provisions\) Act \(NI\) 2016](#) (the 2016 Health Act) by inserting new clause 2B after new clause 2A (inserted by clause 53 of the Bill). New clause 2B would give the Department of Health in Northern Ireland powers to regulate the display of vaping and nicotine products.

Specifically, new clause 2B(1) would empower the Department of Health in Northern Ireland to make regulations imposing prohibitions, requirements or limitations on retailers in relation to the display of:

- nicotine products or non-nicotine vaping products in a place where the products are offered for sale<sup>73</sup>
- empty retail packaging for nicotine products or non-nicotine vaping products in a place where the products are offered for sale
- prices of nicotine products or non-nicotine vaping products in a place where the products are offered for sale

Under new clause 2B(6), “retail packaging” would mean the packaging in which is, or is intended to be, presented for sale by retail.

New clause 2B would make it an offence to breach these regulations.<sup>74</sup> A person convicted of an offence would be liable:

- on summary conviction in a magistrates’ court, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum or both.
- or on conviction on indictment in the Crown Court, to imprisonment for a term not exceeding 2 years, or a fine, or both.

However, under new subsection (4), the Department of Health would be able to make regulations to provide for defences to the offence.

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<sup>73</sup> In new clause 2B(1)(a) a reference to a nicotine product or a non-nicotine vaping product includes anything that represents such a product and that is intended to be exchanged for the product at the point of sale

<sup>74</sup> Clause 2B(3)



## 10.5

### Clause 56: Power to extend restricted premises orders

**Clause 56** would have a similar effect as clause 15 of Part 1 of the Bill concerned with the power to extend restricted premises orders in England and Wales.

It would amend the [Tobacco Retailers Act \(Northern Ireland\) 2014](#) to update the list of offences that are classified as a tobacco, nicotine or non-nicotine vape offence.

Clause 56 would also insert into the 2014 Act new section 9A after section 9. New section 9A(1) would introduce a regulation making power for the Department of Health in Northern Ireland to amend the definition of a “tobacco, nicotine or non-nicotine vape offence” in section 15(4) so as to add other offences related to those products.

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# 11

## Clauses 58 to 60: Tobacco product requirements in the UK

Clauses 58 to 60 would enable the Secretary of State to make regulations about the retail packaging, flavour and appearance of tobacco products in the UK.

### 11.1

#### Clause 58: Tobacco product requirements

**Clause 58** would enable the Secretary of State to make regulations about the retail packaging of tobacco products.

There are existing provisions concerning the packaging of tobacco products:

- [Section 94 of the Children and Families Act 2014](#) enables the Secretary of State to make regulations that impose requirements or limitations on the appearance, texture, size, shape and branding on the packaging. They are intended make tobacco products less attractive and advise on the associated health risks.
- [The Standardised Packaging of Tobacco Products Regulations 2015](#) impose specific restrictions for tobacco packaging, including the use of specified standard colours and requiring the brand and variant name to be printed in a standard typeface.

The Department for Health and Social Care (DHSC) has published [guidance on tobacco packaging requirements currently in place](#).<sup>75</sup>

New regulations introduced under clause 58 could set out further requirements for packaging, including the markings on packaging (including the use of branding, trademarks or logos), the information provided on the packaging or supplied with the product and the mechanism by which the product is opened.

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<sup>75</sup> DHSC, [Packaging of tobacco products](#), last updated 19 April 2021

## 11.2

## Clause 59: Flavour of tobacco products

**Clause 59** would enable the Secretary of State to make regulations about the flavour of tobacco products.

They could impose prohibitions, requirements and limitations regarding the production, manufacture and importation of flavoured tobacco products that are expected to be consumed in the UK, sold in the retail travel sector, or supplied for business.

**Clause 59(3)** provides for the regulations to include provision about how the flavour of a product is to be determined. The Explanatory Notes suggest this could be used to establish an independent advisory panel to determine if a product has a certain flavour.

### Legislative background

There are already provisions, in existing legislation, for the regulation of flavoured tobacco products.

[Section 94\(8\) of the Children and Families Act 2014](#) enables the Secretary of State to make regulations concerning the flavour of tobacco products.

The [European Union Tobacco Products Directive](#) (2014/40/EU) introduced a ban on the use of characterising flavours in cigarettes and roll-your-own tobacco. The Directive was transposed into UK law in the [Tobacco and Related Products Regulations 2016](#).

Section 15 of the 2016 Regulations, which applies across the UK, prohibits the production or supply of cigarettes and other tobacco products with a characterising flavour. A ‘characterising flavour’ is defined in the Regulations as:

a smell or taste other than one of tobacco which—

- a) is clearly noticeable before or during consumption of the product; and
- b) results from an additive or a combination of additives,

including, but not limited to, fruit, spice, herbs, alcohol, candy, menthol or vanilla;<sup>76</sup>

The ban on menthol as a characterising flavour came into force in May 2020.

Section 15(3) of the 2016 Regulations (as amended) provide that regulations may specify whether a tobacco product in Great Britain has a characterising flavour.

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<sup>76</sup> Section 2, [The Tobacco and Related Products Regulations 2016](#) (as amended)

## 11.3

## Clause 60: Power to make other regulations about tobacco products

**Clause 60** would enable the Secretary of State to introduce further regulations to make provision about tobacco products. This might include the appearance, size and shape of the products, any other features of tobacco products which could be used to distinguish between different brands of tobacco products, and markings on the products (clause 60(1)).

The Bill's explanatory notes highlight that clause 60 would allow for the regulation of tobacco products themselves, as opposed to their packaging (as provided for in clause 58).

### Legislative background

The provisions set out in clause 60 are largely present in existing legislation:

Section 94(8) of the [Children and Families Act 2014](#) provides for exactly the same powers as clause 60(1), except that section 94(8) also provides for the regulation of product flavours.

[The Standardised Packaging of Tobacco Products \(SPoT\) Regulations 2015](#) were introduced using powers in section 94 of the [Children and Families Act 2014](#).

Section 5 of the SPoT Regulations make provisions concerning the appearance of cigarettes. For example, it limits the permitted colour or shade for the paper, casing, filter or other material forming part of a cigarette (except the tobacco itself) to a plain white matt finish (subject to further provisions). It also limits the appearance of the text used to print the brand name and variant of the cigarette.

The explanatory notes state that the effect of the SPoT regulations is unchanged by the Bill.

## 12

# Clauses 61 to 63: Vaping and nicotine product requirements in the UK

Clauses 61 to 64 would enable the Secretary of State to make regulations about the retail packaging, contents, flavour and product requirements of vaping and nicotine products.

### 12.1

## Clause 61: Retail packaging of vaping and nicotine products

**Clause 61** would enable the Secretary of State to make regulations about the retail packaging of vaping or nicotine products intended for consumption in the UK, or in the retail travel sector.

Powers under clause 61 could be used to implement the government's aim to reduce the appeal and attractiveness of vaping and nicotine products to children and young people.

The explanatory notes set out that clause 61 could be used to restrict the variety and range of colours and imagery used on packaging. They also say the powers could be used regulate various aspects of retail packaging, including its appearance, the information provided on it and its shape and texture.

### Legislative background

Currently, the sale of tobacco products is regulated by the [Tobacco and Related Products Regulations 2016](#), which transposed the [European Union Tobacco Products Directive](#) (2014/40/EU) into UK law.

The Directive was subsequently amended by Article 20, which set out requirements for vaping products.

Regulation 37 of the [Tobacco and Related Products Regulations 2016](#) already sets out some information and labelling requirements for vaping products. Packaging must:

- state all substances contained in the product, and information on the product's nicotine strength, on the label

- display instructions for use, information on addictiveness, and toxicity on the packaging and accompanying information leaflet. This should include that the product is not recommended for use by young people and non-smokers, as well as warnings for specific risk groups and possible adverse effects
- include a health warning covering 30% of the surface of the unit packet and any outside packaging stating “This product contains nicotine which is a highly addictive substance.”

Following the UK’s departure from the EU, the UK Government can no longer rely on powers in the Directive, to implement changes to the 2016 Regulations.

## Response to the Bill

The smoking cessation charity ASH Scotland welcomed the Bill, urging the UK and Scottish governments to:

move swiftly to prevent the use of imagery, colours and branding on vaping devices and packaging to reduce their attractiveness to young people and for all e-cigarettes to be hidden from view in shops so that they can no longer be displayed at points-of-sale surrounded by confectionery.<sup>77</sup>

Prior to the introduction of the Bill, the Labour Party had called on the government to further regulate the vaping industry to address vaping among young people.<sup>78</sup> In its [Child Health Action Plan](#), Labour committed to banning vapes from being branded and advertised to appeal to children.<sup>79</sup>

## 12.2

## Clause 62: Contents and flavour of vaping and nicotine products

**Clause 62** would enable the Secretary of State to make regulations about the substances that can be included in the flavour of vaping or nicotine products. The regulations could also limit the amount of any given substances present in products.

Regulations made under this power could also include provision about how the flavour of the product is to be determined. The Bill’s explanatory notes suggest this could include establishing of an independent expert advisory panel.

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<sup>77</sup> ASH Scotland, [ASH Scotland welcomes the UK Government’s Tobacco and Vapes Bill](#), 20 March 2024

<sup>78</sup> The Guardian, [Wes Streeting threatens to ‘come down like ton of bricks’ on vaping industry](#), 8 October 2023

<sup>79</sup> Labour, [Labour’s Child Health Action Plan will create the healthiest generation of children ever](#), 11 January 2024

The explanatory notes set out that this provision could be used to prohibit certain ingredients (such as vitamins, colourings or additives), including those which impart a particular flavour, smell or taste for vaping products.

## Response to the Bill

Industry stakeholders have argued that restrictions on flavours could reduce the appeal of vaping to adult smokers, not just children. The Independent British Vape Trade Association (IBVTA) said

the role of flavours in supporting adult smokers to a successful quit attempt is extensive and widespread, and therefore any reference to potential powers to permit future legislation around their use is extremely worrying, and threatening to the government's own goals of becoming smoke free by 2030.<sup>80</sup>

Online vape retailer Evapo, while expressing some support for the Bill, similarly considered the measures on flavouring to be excessive:

We are disappointed to see the extent to which the Government is seeking to regulate vaping products in the Bill, which includes powers to not only regulate on packaging, flavours and displays, but also to regulate the size and shape of vaping products, any markings like branding and trademarks, as well as other features that help to distinguish between different brands.

These regulations go far beyond what is needed to ensure they are not disproportionately appealing to minors, and further than the public was lead to believe.<sup>81</sup>

Andrej Kuttruf, CEO and Founder of Evapo, said more generally that some of the Bill's regulations "may actually work to deter current smokers from making the switch to a less harmful alternative by making vaping appear to be as harmful as smoking, or simply by making it an unappealing alternative".<sup>82</sup> [Evapo has also raised concerns](#) about the risk of vape users returning to tobacco smoking if the government restricts vape flavours.<sup>83</sup>

A petition hosted on the UK Parliament website calls for the government "[to not ban flavoured e-liquids for e-cigarettes](#)".<sup>84</sup> The petition, which had gained over 50,000 signatures at the time of this briefing's publication, suggests that "banning flavoured e-liquids will reduce incentives to switch to vaping, which can help people live longer, healthier lives".<sup>85</sup> By contrast, British American Tobacco (a tobacco and vaping company) called for a ban on dessert and soft drink flavours:

As the largest manufacturer of vaping products in the UK, we are clear on our responsibilities and are urging the government to introduce more stringent vaping regulations. We believe that underage users should never vape, so we

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<sup>80</sup> IBVTA, [IBVTA statement on the Tobacco and Vapes Bill](#), 19 March 2024

<sup>81</sup> Evapo, [Is there a vape flavour ban in the UK?](#), 20 March 2024

<sup>82</sup> Evapo, [Is there a vape flavour ban in the UK?](#), 20 March 2024

<sup>83</sup> Evapo, [Vape flavour ban could drive most ex-smokers back to cigarettes](#), 20 March 2024

<sup>84</sup> UK Parliament petitions, [Don't ban flavoured e-liquids for e-cigarettes](#), accessed 5 April 2024

<sup>85</sup> UK Parliament petitions, [Don't ban flavoured e-liquids for e-cigarettes](#), accessed 5 April 2024

want confectionery, dessert and soft drink flavours to be banned and the introduction of a new regime for how and where vapes are sold.<sup>86</sup>

## 12.3 Clause 63: Other product requirements of vaping and nicotine products

**Clause 63** would enable the Secretary of State to make regulations about other product requirements for vaping and nicotine products. These would relate specifically to the products themselves, as opposed to their packaging.

The provisions could relate to the appearance, size or shape of products, their markings, information provided with them, and any other feature used to distinguish between brands.

## 12.4 Policy background on requirements for vaping and nicotine product

The government has made several proposals package and flavour restrictions for vaping products and held subsequent consultations on these. Below we have provided an overview, but for a more detailed background, see section 4 of the Library's briefing, [Youth vaping in England](#).

### Appearance of vapes and packaging

There have been concerns that the use of colour and imagery on packaging for vaping products may encourage children to take up or continue vaping.

The 2022 Khan Review recommended banning child friendly cartoon packaging and descriptions. For further information on the Khan review, and the government's response, see section 3 of the Library's briefing, [The smokefree 2030 ambition for England](#).

Between April and June 2023, the Office for Health Improvements and Disparities (OHID) held [a call for evidence on youth vaping](#). It sought evidence on identifying opportunities to reduce the number of under-18s accessing and using vape products, while ensuring they remained easily available as a cessation aid for adult smokers.

The government [published its evidence analysis](#) in October 2023.<sup>87</sup>

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<sup>86</sup> British American Tobacco, [We need more regulation says UK's largest vapour manufacturer](#), 27 November 2023

<sup>87</sup> OHID, [Youth vaping call for evidence analysis](#), updated 4 October 2023



Some respondents said standardised or plain packaging should be introduced for vaping products on the basis that the current packaging of many vape products would appeal to children; 48% said this included the use of colours. Others thought the product and packaging resembled popular sweet brands, or that the shape of some products resembled soft drink cans and toys.

In [Stopping the start: our new plan to create a smokefree generation](#), the DHSC said it would consider further regulation of vape packaging and product presentation to ensure that neither the device nor its packaging targets children.

The government held a further consultation, [creating a smokefree generation and tackling youth vaping](#), between October and December 2023. The consultation was held by the DHSC on behalf of all administrations within the UK.

Respondents were asked to choose the most effective way to restrict the packaging and presentation of vapes to reduce youth vaping. The most popular option was to prohibit the use of all imagery, colouring and branding for vape packaging and devices.

In its [response to the consultation](#), published in January 2024, the government set out an intention to bring forward legislation, working with the devolved administrations, that would enable the regulation of vape packaging.<sup>88</sup>

## Flavour of vape products

Some respondents to the OHID's call for evidence on youth vaping said that flavours of vaping products should be limited or banned. In its response, [Stopping the start: our new plan to create a smokefree generation](#) the DHSC set out its intention to restrict vape flavours and their description and promised to consult on this and other measures.

The government held its consultation, [creating a smokefree generation and tackling youth vaping](#), between October and December 2023.

Respondents were asked if they agree or disagree that the UK Government and devolved administrations should restrict vape flavours. 47% agreed and 51% disagreed.<sup>89</sup> The government committed to bringing forward legislation to enable the regulation of vape flavours.<sup>90</sup>

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<sup>88</sup> Department of Health Northern Ireland, Department of Health and Social Care, Scottish Government and Welsh Government, [Consultation Outcome: a smokefree generation and tackling youth vaping consultation: government response](#), published 29 January 2024

<sup>89</sup> The consultation response does not advise specifically on the number of responses for this question.

<sup>90</sup> Department of Health Northern Ireland, Department of Health and Social Care, Scottish Government and Welsh Government, [Consultation Outcome: a smokefree generation and tackling youth vaping consultation: government response](#), published 29 January 2024

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## 13

# Clauses 64 to 65: Supplementary provisions for the UK

Clauses 64-65 would enable the Secretary of State to make provision about the enforcement of product requirements, including the role of local Trading Standards and national authorities in carrying out enforcement. Clause 65 sets out that such provisions could be applied to the Crown.

### 13.1

## Clause 64: Power to include provisions about enforcement

**Clause 64** of the Bill is concerned with regulations on tobacco and, vaping and nicotine product requirements.

The clause would provide the Secretary of State with a power to make provision about the enforcement of product requirements, including:

- conferring functions on the relevant enforcement authorities (local Trading Standards in England, Scotland and Wales and a district council in Northern Ireland), and
- enabling the relevant national authority (the Secretary of State, Welsh Ministers, Scottish Ministers or the Department of Health in Northern Ireland) to take over enforcement of a particular description or case from a relevant local enforcement authority.

**Clause 64(2)** stipulates that regulations made under this power could apply (with or without modifications) any of the enforcement provisions of the [Consumer Protection Act 1987](#).

In other words, clause 64 would empower the Secretary of State to grant Trading Standards the same enforcement powers that it already has to enforce the provisions of the [Tobacco and Related Products Regulations 2016](#) and the [Standardised Packaging of Tobacco Product Regulations 2015](#).

The Government believes the enforcement provisions provided under these regulations are effective in enforcing the types of offences that may be created by regulations made under the powers in Part 4.<sup>91</sup>

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<sup>91</sup> [Explanatory Notes](#), Bill 189-EN

## 13.2

### Clause 65: Power to make provision binding the Crown

Under **clause 65**, regulations made under Part 4 of the Bill, imposing tobacco, vaping and nicotine product requirements, can include provisions binding the Crown. In which case, the product requirements would need to be met where a product is sold on the Crown Estate.

However, the Crown itself may not be prosecuted for an offence under regulations made under Part 4. This exemption would not, however, apply to persons in the public service of the Crown.<sup>92</sup>

The powers to make regulations that apply to the Crown in clause 65 are different from those in clause 33. Under clause 65, regulations made under Part 4 of the Bill can be applied to the Crown but are not required to. Under clause 33, Part 1 and regulations made under it are explicitly applied to the Crown.

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<sup>92</sup> Clause 65(4)

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## 14

# Clauses 71 to 73: Notification requirements for vaping and nicotine products in the UK

Clauses 71 to 73 concern an existing requirements for manufacturers of nicotine vaping products, to notify the Medicines and Healthcare products Regulatory Agency, when placing their products on the market.

The Secretary of State would be able to extend this requirements to non-nicotine products. The Secretary of State would also be able to amend the information manufacturers must submit under the notification requirements and make exceptions to publishing the information it receives through the notification requirements.

### 14.1

## Clause 71: Extension of notification requirements

**Clause 71** would provide the Secretary of State with a new power to require manufacturers to notify the Medicines and Healthcare products Regulatory Authority (MHRA) when they put vaping or nicotine products on the market.

The clause allows the Secretary of State to extend existing notification requirements in the [Tobacco and Related Products Regulations 2016](#), which apply to tobacco and nicotine products but not non-nicotine vape products. The notification requirements set out by the 2016 Regulations apply across the UK.

This system helps the government to ensure that products meet the standards set out by the 2016 Regulations.

The government has said it is important, given the Bill's new regulation-making powers on vapes (both nicotine and non-nicotine vapes), that the current notification system aligns with future regulatory requirements.<sup>93</sup>

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<sup>93</sup> DHSC, [Tobacco and Vapes Bill: vapes and other nicotine products factsheet](#), 20 March 2024

## 14.2

### Clause 72: Power to amend information to be notified

**Clause 72** would provide the Secretary of State with a new power to amend the information manufacturers must submit as per the notification requirements.

Section 31 of the Tobacco and Related Products Regulations 2016 specifies which information manufacturers must submit with their notification. Clause 72 would allow the Secretary of State to amend the range of information required. The explanatory notes suggest, for example, that an amendment could be made requiring an image of the product or the packaging to be submitted to the MHRA.

The government has said any changes to the notification system under the 2016 Regulations in Great Britain will be subject to further consultation.<sup>94</sup>

The explanatory notes say that any regulations would be subject to the affirmative procedure in Parliament.

## 14.3

### Clause 73: Exceptions to publications

Clause 73 would provide the Secretary of State with new powers to, by regulations, create exceptions to publishing information it receives through the notification requirements.

Section 34 of the Tobacco and Related Products Regulations 2016 places a duty on the Secretary of State to publish information it receives through the notification system (considering any need to protect trade secrets).

Clause 73 would allow the Secretary of State make regulations to define exceptions to this duty to publish. The Bill's explanatory notes suggest that regulations made under this power could provide for a notification to be removed where the appropriate fee (for notification) has not been paid. The notes also set out that any regulations would be subject to the affirmative procedure in Parliament.

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<sup>94</sup> DHSC, [Tobacco and Vapes Bill: vapes and other nicotine products factsheet](#), 20 March 2024

## 15 Economic and financial impacts of the Bill

The Government published an impact assessment alongside the Bill, as is standard practice.<sup>95</sup> This includes several estimates of potential costs and benefits of implementing the policies.

The impact assessment is split into two main sections: one on raising the legal age of sale for tobacco products and one on the new restrictions on vaping.

### 15.1 Raising the legal age of sale for tobacco products

#### Potential costs

The list below gives the estimated total costs for the UK over 30 years from 2027 to 2056, in 2027 prices:<sup>96</sup>

- £26.1 billion cost to HMRC, through reduced receipts from tobacco duty as the number of smokers decreases.
- £3.49 billion in lost profits for manufacturers, wholesalers and retailers, through lower sales as the number of smokers decreases. The cost to each group is estimated as follows:
  - Retailers: £2.29 billion
  - Wholesalers: £0.51 billion
  - Manufacturers: £0.70 billion
- A few other smaller costs, such as £117 million for retailers to carry out further age verification, £9.0 million for retailer staff training, and £1.8 million in communication costs for the Department of Health and Social Care.

<sup>95</sup> Department of Health and Social Care, [Tobacco and Vapes Bill Impact assessment](#) (PDF), 20 March 2024. The Regulatory Policy Committee has [assessed this impact assessment as fit for purpose](#).

<sup>96</sup> Impact assessment, as above, pp39-40

## Potential benefits

Some of the potential benefits are as follows, again expressed over 30 years and in 2027 prices:

- £24.6 billion in productivity gains for society as a whole. This is based on the fact that non-smokers tend to live longer than smokers and are more likely to be employed, so reducing the number of smokers could result in more years of productive employment.
- £6.24 billion due to reduced costs associated with smoking:
  - Healthcare costs: £3.26 billion
  - Social care costs: £1.95 billion
  - Fire-related costs (because of a reduction in the number of fires caused by smoking): £1.03 billion
- £0.48 million as the estimated inherent value of people living longer because fewer of them smoke. This is estimated using the standard measure of quality-adjusted life years (QALYs).<sup>97</sup>

The impact assessment gives an overall “net present social value” of the policy as £18.6 billion.<sup>98</sup> This is an estimate of the total value of the policy to society in 2019 prices as of the present, with future effects discounted at an appropriate rate.

This cost estimate does not include the cost to HMRC of reduced receipts from tobacco duty. According to the impact assessment, this is because the loss of tax revenue is offset by people having more money available to spend on other goods and services (since that money is not being spent on tobacco duty), so the net effect on society is neutral. The assessment says that even if this cost were included, the net present social value of the policy would still be positive.

There are also several costs and benefits listed in the impact assessment that do not have monetary cost estimates associated with them (for example, lower costs to local authorities because they have to clear up less smoking-related litter).

## Other estimates of costs

The TaxPayers’ Alliance, a think tank, published a briefing note in December 2023 which says that tobacco duty revenues are currently three times larger than the cost to the NHS and social care sector caused by smoking. The note

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<sup>97</sup> See HM Treasury, The Green Book, [section 9.3](#)

<sup>98</sup> [Chapter 6](#) of HM Treasury’s Green Book goes into more detail on how the costs and benefits of different policies should be calculated.

concludes that banning smoking would therefore result in a net cost to the Treasury of around £6 billion per year.

The briefing note also uses HMRC figures to show that total tobacco duty revenues are roughly equivalent to increasing the basic and higher rates of income tax by 1p in the pound, plus a 1% decrease in the income tax personal allowance.<sup>99</sup>

## 15.2

### Vaping policies

The Government's impact assessment does not include an overall estimate of the costs or benefits associated with the Bill's vaping policies. It does, however, say that these estimates would be included in impact assessments accompanying any secondary legislation that implemented the policies.

A few of the policies do have some indicative estimates. Some of the largest are:

- £158 million cost to UK retailers over 10 years (to 2034) from reduced profits as a result of restricting the flavours of vapes. The equivalent cost to manufacturers is estimated at £152 million.
- £184 million cost to retailers because of the increase in stock-taking times due to new restrictions on point-of-sale displays for vapes, also over ten years.

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<sup>99</sup> TaxPayers' Alliance, [Briefing: the cost of the proposed smoking ban](#), 6 December 2023



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## 16

# New tobacco and vaping measures that are not part of the Bill

Prior to the Bill, the UK government said it would introduce a new ban on the sale of disposable vapes, increase the tax paid on tobacco products, and introduce a new tax on vaping products.

### 16.1

## Ban on the sale of disposable vapes

The UK, Scottish and Welsh Governments are working towards a ban on the sale and supply of disposable vapes. This follows concerns about the detrimental impact of these items on the environment.

### What are disposable (single-use) vapes?

Disposable vapes are non-reusable devices that typically come ready-filled with 2 ml of e-liquid (approximately 600 'puffs') and a maximum of 2% nicotine. A typical disposable vape pen contains a mixture of materials including plastic, copper and a lithium battery.<sup>100</sup>

### Extent of and disposal of single-use vapes

Research commissioned by Material Focus (a not-for-profit recycling organisation) in 2023 found that in the UK:

- 7.7 million single-use vapes are bought per week (double the number in 2022)
- Enough lithium to power the batteries of 5,000 electric vehicles is being thrown away each year
- Only 17% of people who buy vapes say that they recycle single-use vapes in a shop or local recycling centre
- 73% of UK vapers say they throw away single-use vapes<sup>101</sup>

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<sup>100</sup> BBC News, [Should disposable vapes be banned?](#) 24 October 2022

<sup>101</sup> Material Focus, [Number of disposable single-use vapes thrown away have in a year quadrupled to 5 million per week](#), 8 September 2023

## Environmental impact of disposable vapes

A letter from academics at the Mines Saint-Étienne research institution, published in the *Lancet Respiratory Health*, highlighted that incorrect disposal of disposable vapes can release, plastic, electrical and hazardous chemical waste into the environment, calling it “highly concerning on an ecological level.”<sup>102</sup> The Institute of Environmental Management and Assessment, a UK professional body, has said that if disposable vapes are discarded into litter bins, they can cause fire risks due to the risk of the lithium battery igniting.<sup>103</sup>

The non-profit Bureau of Investigative Journalism has also highlighted that lithium (a valuable material widely used to make batteries in devices such as smart phones and electric vehicles) is lost when vapes are thrown in the bin.<sup>104</sup> The UK Government has assessed lithium (among other minerals) as being a critical resource for the UK.<sup>105</sup>

## Proposals to ban disposable vapes

In a consultation, [Creating a smokefree generation and tackling youth vaping](#) (October 2023), the UK, Welsh and Scottish Governments proposed restrictions on the sale and supply of disposable vapes due to concerns about their environmental impacts.<sup>106</sup> The [government response](#) noted “widespread support” for the proposal and confirmed that restrictions would go ahead. Northern Ireland will consider this proposal at a later date.<sup>107</sup>

Draft regulations to enact a ban, made under powers stemming from section 140 of the [Environmental Protection Act 1990](#), have now been published for [England](#) and [Scotland](#).<sup>108</sup> At the time of writing no legislation has been made in respect of Wales.

The UK Government has said that the legislation will allow for an implementation period of at least six months, “which takes into consideration concerns that industry will require time to adapt.”<sup>109</sup>

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<sup>102</sup> The Lancet, [From smoking to vaping: a new environmental threat?](#), 23 May 2022

<sup>103</sup> IEMA, [Disposable vapes – a challenge to the recycling sector](#), 9 May 2022

<sup>104</sup> Bureau of Investigative Journalism, [Rise of single-use vapes sending tonnes of lithium to landfill](#), 15 July 2022

<sup>105</sup> HM Government, [Resilience for the Future: The UK’s critical minerals strategy](#), July 2022

<sup>106</sup> HM Government, [Creating a smokefree generation and tackling youth vaping: your views](#), October 2023

<sup>107</sup> HM Government, [Creating a smokefree generation and tackling youth vaping consultation: government response](#), updated 12 February 2024

<sup>108</sup> For England see [The Draft Environmental Protection \(Single-use Vapes\) \(England\) Regulations 2024](#). For Scotland see the [Draft Environmental Protection \(Single-use Vapes\) \(Scotland\) Regulations 2024: consultation](#). Accessed 25 March 2024

<sup>109</sup> HM Government, [Creating a smokefree generation and tackling youth vaping consultation: government response](#), updated 12 February 2024

## Response to proposed ban

The UK Vaping Industry Association (UKVIA) reported “dismay” at the proposals calling them “counterproductive”. It has argued that disposable vapes have been “instrumental” at helping adults stop smoking traditional cigarettes and believes that a ban will increase a black market in illegal vapes, which will be accessible to children.<sup>110</sup>

The health charity Action on Smoking and Health (ASH) agreed with the government that “tough action” on disposable vapes was needed but cautioned that there remain “significant challenges” to making a ban work, particularly around enforcement of illegal vapes. It has also called for exemptions to the ban for use by healthcare professionals with vulnerable smokers (such as those patients who would find it difficult to use a refillable product).<sup>111</sup> The Royal College of Paediatrics and Child Health has welcomed the ban, saying that it prioritises “the health and well-being of our children and the planet.”<sup>112</sup>

The environmental charity Green Alliance supported the ban and noted that “valuable lithium ion batteries will stop going to waste or winding up as litter.”<sup>113</sup> Similarly, the National Association of Waste Disposal Officers was supportive of the ban, saying it would prevent environmental harms and minimise the risk of fire from mishandled batteries.

## 16.2

## A new tax on vaping products, and increased tax on tobacco products

In his Spring Budget statement on 6 March 2024 Chancellor Jeremy Hunt announced that the Government had decided to introduce an excise duty on vaping products from October 2026. The Chancellor added that the Government would “introduce a one-off increase in tobacco duty at the same time to maintain the financial incentive to choose vaping over smoking.”<sup>114</sup>

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<sup>110</sup> UKVIA, [UKVIA Response to the Government’s Disposable Vape Ban & Other Measures](#) (accessed 25 March 2024)

<sup>111</sup> ASH, [ASH response to government announcement on smoking and vaping](#), 29 January 2024

<sup>112</sup> The Royal College of Paediatrics and Child Health, [“Paediatricians celebrate win as Government plan to ban disposable vapes”](#) 29 January 2024

<sup>113</sup> Resouce.co, [Government announces ban on sales of disposable vapes](#), 29 January 2024

<sup>114</sup> [HC Deb 6 March 2024 c848](#)

There is a significant difference in price between vapes and tobacco products.<sup>115</sup> This is partly because vapes are only subject to VAT, while tobacco is also subject to excise duty.<sup>116</sup>

As part of its [consultation on actions to tackle smoking and youth vaping](#) launched in October 2023, the Government had argued that there was a “strong case” to take action on the affordability of vapes, and noted that it was considering a new duty on vapes “while ensuring that there is a significant differential between duty on vapes and duty on tobacco products.”<sup>117</sup>

Responses to the consultation were split on whether the price of vapes should be increased. The Government noted that charging an extra tax on tobacco had proved to be an effective method to reduce young people smoking, but there was a need to “to balance a price increase that deters young people vaping with ensuring that vaping remains a more affordable option than smoking, to encourage adult smokers to quit.”<sup>118</sup>

The 2024 Spring Budget report confirms that the rates of the new duty will be £1.00 per 10ml for nicotine free liquids, £2.00 per 10 ml on liquids that contain 0.1 mg to 10.9 mg nicotine per ml, and £3.00 per 10 ml on liquids that contain 11 mg or more per ml.<sup>119</sup> The Government’s purpose in placing a higher tax burden on vaping products with higher nicotine products is to encourage “those who vape to reduce the amount of nicotine they consume even if they do not reduce the amount they vape.”<sup>120</sup>

It is forecast that the new duty will raise £500m in 2028/29.<sup>121</sup> The Government intends to increase tobacco duty by £2 per 100 cigarettes or 50 grams of tobacco when the new duty takes effect.<sup>122</sup> This is forecast to raise £170m in 2028/29.<sup>123</sup>

The Government plans to introduce legislation to establish the new duty in a future finance bill.<sup>124</sup> It has published [a consultation on how the duty will be](#)

<sup>115</sup> It is estimated that smoking is 3 times more expensive than vaping, and that the average smoker in England could save around £670 per year from switching to vaping (Department of Health & Social Care, [Creating a smokefree generation and tackling youth vaping: your views](#), updated 12 February 2024 (“Affordability”).

<sup>116</sup> For more details see, HM Revenue & Customs (HMRC), [Tobacco Products Duty](#) and [Rates and allowances for Tobacco Products Duty](#), updated 22 November 2023

<sup>117</sup> Department of Health & Social Care, [Creating a smokefree generation and tackling youth vaping: your views](#), updated 12 February 2024 (“Affordability”). See also, [PQ11350](#), 31 January 2024.

<sup>118</sup> Department of Health & Social Care, [Creating a smokefree generation and tackling youth vaping consultation: government response](#), updated 12 February 2024 (“Affordability of vaping products”).

<sup>119</sup> HM Treasury (HMT), Spring Budget 2024, HC 560 (PDF) March 2024 [para 5.31](#)

<sup>120</sup> HMT/HMRC, [Vaping products duty consultation](#) (PDF) March 2024 para 3.4

<sup>121</sup> HMT, Spring Budget 2024: Policy Costings (PDF) March 2024 [p25](#). See also, Office for Budget Responsibility, Economic and Fiscal Outlook, CP 1027 (PDF) March 2024 [para 3.22-3.26](#)

<sup>122</sup> HMRC, [Overview of Tax Legislation and Rates](#), March 2024 para 2.17

<sup>123</sup> HMT, Spring Budget 2024: Policy Costings (PDF) March 2024 [p26](#)

<sup>124</sup> HMRC, [Overview of Tax Legislation and Rates](#), March 2024 para 2.17. Generally all tax measures announced in the Budget and other fiscal events are legislated for this way. For more details see, Commons Library research briefing CBP-813 [The Budget and the annual Finance Bill](#).

designed and implemented.<sup>125</sup> HM Revenue and Customs has also published research on the vaping market.<sup>126</sup>

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<sup>125</sup> HMT/HMRC, [Vaping products duty consultation](#) (PDF) March 2024. The consultation closes on 29 May 2024.

<sup>126</sup> HMRC, [Understanding the vaping market – HMRC research report 740](#), 6 March 2024



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