

# BMA Cymru Wales response to Senedd Health and Social Care Committee Scrutiny of the Legislative Consent Memorandum: Tobacco and Vapes Bill

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## Annex 1

To inform the Health and Social Care Committee's scrutiny of the Legislative Consent Memorandum ("the LCM") on the Tobacco and Vapes Bill ("the Bill"), we would welcome your views on the matters listed below.

### Overall views

Your overall views on the policy objectives of the Bill to introduce measures to stop people from ever starting smoking and becoming addicted to tobacco products, as well as introducing measures to reduce youth vaping.

Do you think the legislation sufficiently protects young people from vaping while supporting smokers to quit?

- ***The BMA has consistently advocated for strong anti-smoking policies and, therefore, fully supports the Bill.***
- *Doctors directly observe the devastating impact of smoking on their patients' health.*
- *Despite long-term declines in smoking rates, it remains a leading cause of preventable illness and premature death in Wales. In 2024, it was found that over 10 per cent of deaths in Wales were due to smoking.<sup>1</sup>*
- *The BMA welcomes the provisions in this Bill aimed at tackling the rising epidemic of vaping, especially among children and young people.*
- *The increased availability and accessibility of vapes, coupled with advertising and marketing strategies like brightly coloured packaging, prominent in-store displays, and sweet flavours, have played a significant role in the surge of vaping among young people. This issue must be urgently addressed.*
- *The BMA calls for all vape packaging to be standardised and all imagery, branding and bright colours to be prohibited.*
- *To enhance its effectiveness, the BMA believes that the Bill should be accompanied by additional measures to ensure it is enforced effectively and to combat illegal vape sales. The BMA has outlined such measures in various communications with the UK Government about the Westminster Bill.*

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<sup>1</sup> <https://phw.nhs.wales/news/over-10-percent-of-deaths-in-wales-due-to-smoking/>



## Impact on areas of devolved competence

Do you support the principle of Westminster legislating in areas that are devolved to the Welsh Government?

- *We have no comment to make on the constitutional question, although there are clear benefits to legislation being made on what is a UK-wide market.*

How does the Bill align with the goals set out in *A Smoke-Free Wales* and the Welsh Government's public health priorities? Does it adequately respect the devolved nature of public health policy?

- *The Bill is an important step in moving towards a smoke-free Wales. Preventative measures should always be prioritised in public health policy. However, as 12.6% of the Welsh population are smokers, we are concerned that there may not be adequate resources within existing smoking cessation services to achieve a smoke-free Wales.<sup>2</sup>*
- *Funding data on smoking cessation services is limited, and so we would call for better collection of such data. Such a commitment was made in the Tobacco Control Delivery Plan 2022-24. As part of the Wales Tobacco Control Alliance (WTCA), in addition to the retail licensing scheme being a useful tool in enforcement for illegal sales, we would welcome data from the scheme to be used to target smoking cessation support in areas of Wales with greatest use / need.*
- *The data we do have on smoking cessation services shows that the national target for 5% of smokers to make a quit attempt every year (which incidentally the BMA thinks is unambitious) is not being met. The national rate stands at 4.97%, which masks disparity across Wales.<sup>3</sup> Whilst Hywel Dda HB has a 7.46% rate, Cardiff and Vale HB has a 2.19% rate. Funding data of services being made more accessible would be a good start in understanding this disparity, for example.*

Do you think there are areas where greater collaboration with other UK nations is necessary, and/or should Wales consider developing additional, specific measures? (e.g; to consider inequalities in smoking rates across different demographics in Wales, including socio-economic and regional disparities?)

- *Considerable health inequalities certainly exist in Wales as they pertain to smoking. Just under one-third (28.9%) of all smoking adults in Wales lived in the two most deprived deciles in 2021, the same as in 2017.<sup>4</sup> Of people aged 18 years and over in*

<sup>2</sup><https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/healthandlifeexpectancies/bulletins/adultsmokinghabitsingreatbritain/2023>

<sup>3</sup> <https://stats.wales.gov.wales/Catalogue/Health-and-Social-Care/NHS-Performance/smoking-cessation-services/welshresidentsmokersmadequitattemptvianhs-by-lhb-cumulativequarters>

<sup>4</sup><https://www.ons.gov.uk/peoplepopulationandcommunity/healthandsocialcare/drugusealcoholandsmoking/bulletins/deprivationandtheimpactonsmokingprevalenceenglandandwales/2017to2021>

*Wales, 22.4% living in the most deprived neighbourhoods were current smokers in 2021, compared with 6.6% living in the least deprived neighbourhoods.<sup>5</sup>*

- *Inequalities specific to Wales can be found along gender lines. In 2021, in Wales, the proportion of current smokers aged 18 years and over living in the most deprived neighbourhoods was higher in the female population compared with the male population, at 25.9% and 18.3%, respectively. Crucially, this is not the case in England, where the proportion of current smokers, aged 18 years and over, was highest in the male population across all deciles compared with the female population. This suggests a different approach should be considered in Wales to England that is more mindful of gender inequalities.*
- *When addressing health inequalities, those groups for whom smoking is more prevalent should be consulted.*

## **Tobacco**

Your views on proposals to:

- a) make it an offence to sell tobacco products, herbal smoking products and cigarette papers to anyone born on or after 1 January 2009;
  - b) make 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 someone who was born on or after 1 January 2009;
- *The BMA supports the measures in this Bill, which will ensure that anyone born on or after 1st January 2009 will never legally be sold tobacco products. Stopping a new generation of tobacco users will significantly decrease the harms from tobacco for future generations.*
  - *Raising the age of sale is likely to both delay smoking uptake and reduce the number of young people who start smoking.*

## **Vaping and other nicotine products**

Your views on proposals to:

ban vaping products and nicotine products from being sold to under 18s

- *The BMA supports the measures in the Bill to curb youth vaping and regulate their use. The proposed Bill sets out much needed powers for government to address the rising use of vapes by children and young people, through the regulation of issues such as flavours, branding and point-of-sale displays.*

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<sup>5</sup>Ibid.

- *The World Health Organisation has declared vapes harmful and evidence to date confirms that the dangers of vaping and e-nicotine consumption, though less harmful than that of smoking cigarettes, are of concern, particularly for children.<sup>6</sup>*
- *Vapes with nicotine are just as addictive as cigarettes.<sup>7</sup> As more young people are vaping, driven largely by the rise in the use of disposable vapes, there are concerns that this frequent use is exposing them to the risk of addiction to nicotine. The nicotine contained in one disposable vape is approximately equal to two packs of cigarettes.<sup>8</sup> There is also growing evidence to suggest that young non-smokers who use vapes are more likely than non-users to take up smoking.<sup>9</sup>*

ban advertising, promotion and sponsorship agreements for vapes and nicotine products;

- ***The BMA welcomes the proposal to ban advertising of vapes, as well as all nicotine products. This will help to address the rapidly increasing youth vaping rates.***
- *Vapes are being directly marketed at children and young people which urgently needs to be addressed. Around 4.2% of young people (11–17-year-olds) in Great Britain are now regularly using vapes.<sup>10</sup> In 2023, 20.5% of children had tried vaping, up from 15.8% in 2022 and 13.9% in 2020.<sup>11</sup>*
- *Although a ban on vape advertising will help to reduce the awareness of vapes, other measures are needed to address the direct marketing of vapes to children and young people and reduce their appeal.*

provide regulation-making powers to regulate the flavours, packaging, and other product standards of vapes and nicotine products;

- ***The BMA welcomes the inclusion of Clause 35 in the Bill which provides ministers with powers to regulate the flavours, packaging and display of all vapes and other nicotine products. These are essential measures, and it is important that they are not removed or watered down in the passage of the Bill.***
- *These powers must be used to tackle the widespread use of packaging which uses colour, branding, and flavours to specifically attract children.*

provide powers to regulate the display of vapes and nicotine products, empty retail packaging and their prices;

- *Unlike tobacco products, vapes are currently allowed to be displayed at the point-of-sale in shops and supermarkets.*

<sup>6</sup> <https://www.who.int/news-room/questions-and-answers/item/tobacco-e-cigarettes>

<sup>7</sup> <https://www.hopkinsmedicine.org/health/wellness-and-prevention/5-truths-you-need-to-know-about-vaping>

<sup>8</sup> <https://www.innokin.com/blog/how-much-nicotine-is-in-a-vape#:~:text=A%20smoker%20typically%20puffs%20on,about%20two%20packs%20of%20cigarettes.>

<sup>9</sup> <https://onlinelibrary.wiley.com/doi/full/10.5694/mja2.51890>

<sup>10</sup> <https://ash.org.uk/uploads/Use-of-vapes-among-young-people-in-Great-Britain-2024.pdf?v=1725288402>

<sup>11</sup> <https://ash.org.uk/uploads/Use-of-vapes-among-young-people-GB-2023-v2.pdf?v=1697209531>

- *The prominence of vapes in retail has significantly increased. For example, between 2017 and 2020, the number of vape shops in the UK has increased from 2,280 to 3,650, approximately a 61% increase.<sup>33</sup> In addition, vapes are easily available in convenience stores and in supermarkets, with several major retailers across the UK introducing their own e-cigarette brands to meet growing demand.<sup>34</sup> Therefore, it is not surprising that young people are increasingly noticing the display of vapes in supermarkets. For example, more than half of over two thousand 11–17-year-olds surveyed in 2024 are aware of promotion in shops compared to a third two years ago (37% to 55%).<sup>35</sup>*
- *Research on regulation to limit tobacco displays may provide some insight into the potential impact of similar restrictions for vape products. For example, a 2018 cross-sectional study examined the effect that point-of-sale display bans have had on smoking prevalence, across 77 countries, and found that having a point-of-sale display ban reduced overall adult daily smoking, male smoking and female smoking by about 7%, 6% and 9%, respectively.<sup>36</sup>*
- *This suggests that restrictions of point-of-sale displays of vapes has the potential to contribute to a reduction in vaping appeal, particularly for young people. Therefore, the BMA calls for all vapes to be kept behind counters in shops and not be on display.*
- *Meanwhile, the BMA has called for vapes to be made less affordable to make them less accessible to children. It is imperative, however, that vapes remain cheaper than cigarettes to avoid cigarettes becoming the best option.*

ban the presence of vape and nicotine product vending machines;

introduce powers to introduce a new and more robust registration scheme for all vapes and nicotine products. This scheme would also cover tobacco products and non-nicotine vapes;

- *This policy will help to address industry developing product adaptations that fall outside of the regulations and continue to appeal to the younger population*

introduce powers to extend smoke-free laws so that they could also prohibit the use of vapes and heated tobacco products in specified areas where smoking is prohibited.

- *The BMA supports the Bill's provision to extend smoke free and vape free areas, subject to consultation.*
- *However, we do not believe it is right for the Bill to curtail the powers of the Secretary of State to prescribe further areas as smoke free and vape free areas in the future.*

Are the proposed restrictions on advertising, packaging, and flavours sufficient to prevent uptake among young people while maintaining access for smokers using vapes for harm reduction?

- *Addressing issues such as flavours, packaging and point of sale display will help to tackle youth vaping rates as their appeal and accessibility will be significantly*

*reduced. The measures in the Bill are a good start and will make a difference. However, the UK and Welsh governments will need to ensure other interventions are in place to ensure the effectiveness of the proposed restrictions.*

- *For example, it is inevitable that illegal sales of vapes will still take place in the form of underage sales or the sale of products that do not comply with UK regulations. There are interventions that could address these illegal sales, such as clearer product information; education campaigns for retailers on product and regulation information as well as the public on the dangers of vapes; better resources and powers for regulatory bodies such as Trading Standards; and effective deterrents for retailers to breaking the law such as higher fines.*
- *Barriers to preventing the sales of illegal vape products include a lack of vape product information. Evidence from Finland<sup>12</sup> and Australia<sup>13</sup> where flavours are banned, has reported that the variety of vapes available and the difficulty in assessing whether the vapes contain nicotine has contributed to many underage sales. The CTSI (Chartered Trading Standards Institute) has also recognised the difficulty in identifying compliant and non-compliant products and has called for Trading Standards teams to have clearer direction from Government on this issue.<sup>14</sup>*

## **Enforcement**

Your views on proposals to provide enforcement authorities with the power to issue Fixed Penalty Notices of £200 for the underage sale, proxy sale, and free distribution of cigarette papers and tobacco, herbal smoking, vaping and nicotine products, breaches of age of sale notice restrictions and display restrictions, and FPNs of £2,500 for offences in connection with licensing.

- *We welcome the proposals for regulatory bodies to issue fixed penalty notices to non-compliant retailers and regulatory bodies have reported their support for the use of increased fines and sanctions. The CTSI has reported that the sanctions available for those producers, suppliers, retailers who do not comply with the law, should be stronger. For example, there are trials in place that could be extended to trading standards teams to issue restorative justice sanctions which would entail suppliers paying for the cost incurred by Local Authorities to seize and dispose of non-compliant vapes.<sup>15</sup>*
- *However, it is unclear if proposals for providing enforcement officers with the powers to issue 'on the spot' fines of £200 to non-compliant shops will be effective. There has been calls for the fines that courts can impose to non-compliant retailers to increase in value from £2,500 to £10,000, in order to be a significant deterrent.<sup>16</sup> The UKVIA*

<sup>12</sup> <https://tobaccocontrol.bmj.com/content/29/e1/e175.full>

<sup>13</sup> <https://tobaccocontrol.bmj.com/content/31/6/689>

<sup>14</sup> <https://www.tradingstandards.uk/media/3178685/ctsi-statement-on-vapes-1.pdf>

<sup>15</sup> <https://www.tradingstandards.uk/media/3178685/ctsi-statement-on-vapes-1.pdf>

<sup>16</sup> <https://www.betterretailing.com/industry-news/fresh-calls-for-10k-fines-for-retailers-selling-dodgy-vapes/>

*(UK Vaping Industry Association) has also reported that there must be higher fines applied to every breach for the non-compliant retailers and has called for the fines to be raised to at least £10,000.<sup>17,18</sup>*

What potential challenges do you foresee for the enforcement of these regulations in Wales?

- *A challenge to enforcing regulation is the capacity of regulators. The CTSI has reported the need for greater resources to support the undertaking of enforcement work. They have reported that Trading Standards teams are spread very thinly, enforcing laws on a range of issues from food standards to product safety. They need more 'boots on the ground' to help enforce regulations and advise businesses.<sup>19</sup>*
- *In addition to resources, powers of regulators will need to be increased. UK Trading Standards have highlighted the need for greater powers to prevent illegal products from reaching UK markets, particularly at ports and borders when enforcement work can have the most impact. For example, enforcement officers do not hold the power to require locked containers to be opened or to make seizures.<sup>20</sup>*
- *Without much needed resources and powers, regulators such as Trading Standards will not be able to implement regular and consistent monitoring and enforcement.*

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<sup>17</sup> <https://www.conveniencestore.co.uk/your-business/twice-as-many-illegal-vapes-as-counterfeit-cigarettes-seized-in-uk/680885.article>

<sup>18</sup> <https://www.ukvia.co.uk/ukvia-agrees-with-call-for-on-the-spot-fines-and-vape-licensing-scheme-to-protect-itself-from-criminal-activity-and-illegal-vape-sales/>

<sup>19</sup> <https://www.tradingstandards.uk/media/3178685/ctsi-statement-on-vapes-1.pdf>

<sup>20</sup> <https://www.tradingstandards.uk/media/3180088/ctsi-response-to-the-environmental-protection-single-use-vapes-england-regulations.pdf>