

# Report on the Legislative Consent Memorandum for the Tobacco and Vapes Bill

February 2025

## 1. The Tobacco and Vapes Bill

- 1.** The Tobacco and Vapes Bill (“the Bill”) was introduced to the UK Parliament on 5 November 2024. The Explanatory Note to the Bill describes it as ‘a landmark step in creating a smoke-free UK’.<sup>1</sup>
- 2.** The stated policy objectives of the Bill are 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.<sup>2</sup>
- 3.** The Bill modifies, amends, extends, and re-enacts several existing tobacco and vaping control measures to create a consistent legislative framework. These changes will help to ensure a consistent application of the law, close loopholes, improve readability and subsequent enforcement. The Bill broadly seeks to align provisions across the UK, building on the existing legislative frameworks that apply across the UK.
- 4.** The Bill is supported by the governments of all four nations who share ambitions to eradicate smoking and to tackle youth vaping.

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<sup>1</sup> [Tobacco and Vapes Bill: Explanatory Notes](#)

<sup>2</sup> [Legislative Consent Memorandum: Tobacco and Vapes Bill](#)



## Conclusions and recommendations

**Conclusion 1.** A majority of the Committee see no reason that the Senedd should not support the LCM.

**Conclusion 2.** We await an update from the Minister about the outcome of her discussions with the UK Government in relation to clauses 34, 45, 95, 100, 123, 150 and 151.

**Recommendation 1.** The Minister should set out how the implementation of the Bill will be compatible with the operation of the United Kingdom Internal Market Act 2020, particularly if UK and Welsh Government policy in this area were to diverge in the future. ....11

**Recommendation 2.** The Welsh Government, with its partners, including Public Health Wales, should provide clearer messaging for children and young people about the potential long-term health risks of nicotine addiction and vaping, particularly in light of the Minister’s evidence that young people should avoid vaping altogether. .... 18

**Recommendation 3.** The Welsh Government must ensure, alongside its focus on prevention through this Bill, that appropriate support is available for those young people who are already addicted to nicotine. .... 18

**Recommendation 4.** The Welsh Government should assess the enforcement mechanisms accompanying the Bill in order to assure itself that they are sufficient to support the Bill’s effective implementation. The Minister should write to us to outline the findings of this work. .... 19

**Recommendation 5.** The Minister should confirm that the full amount of Barnett consequential funding to support the smoke-free generation and youth-vaping measures will be used to support the implementation, including enforcement, of these measures. .... 19

**Recommendation 6.** The Minister should write to us with an update on the funding position for Ash Cymru Wales. .... 19

**Recommendation 7.** The Welsh Government should: .....23

- confirm whether the delegated powers provided for in clause 92 of the Bill in relation to the content and flavour of vapes apply only to the Secretary of State and not Welsh Ministers; .....23

- confirm that, should a future Welsh Government wish to make different provision about banning the sale of certain vape flavours, they would need to bring forward their own primary legislation to do this;.....23
- set out its position in relation to the previous two points.....23

## 2. The LCM

### Background

**5.** On 20 November 2024, the Minister for Mental Health and Wellbeing (“the Minister for MHW”) laid before the Senedd a legislative consent memorandum (“the LCM”)<sup>3</sup> for the Bill.<sup>4</sup>

**6.** The LCM was referred to the Health and Social Care Committee (“HCS Committee”), and the Legislation, Justice and Constitution Committee (“LJC Committee”) for consideration, with an original reporting deadline of 7 February 2025<sup>5</sup>. This was subsequently extended to 28 February 2025<sup>6</sup> <sup>7</sup>.

**7.** On 4 February 2025, the Minister wrote<sup>8</sup> to both Committees to inform us that, at the request of the Welsh Government, two amendments had been tabled to the Bill regarding clauses 168 and 170. The Minister further stated that she was in discussions with the UK Government about clauses 34, 150, and 151, and was continuing discussions on clauses 45, 95, 100 and 123.

### Our approach to scrutiny

**8.** The HSC Committee considered its approach to scrutiny of the LCM at its meeting on 11 December 2024 and agreed to invite the Minister for MHW to give oral evidence on the LCM on 6 February 2025.

**9.** In addition, the Committee wrote to stakeholders with an interest in the matters raised in the LCM, including NHS bodies, relevant royal colleges and local authority representatives. A full list of consultees, along with a copy of our letter, and the responses we received, is available on the Senedd’s website.<sup>9</sup> We are grateful to those who responded in the short time we were able to offer.

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<sup>3</sup> [Legislative Consent Memorandum: Tobacco and Vapes Bill](#)

<sup>4</sup> [Tobacco and Vapes Bill](#)

<sup>5</sup> [Timetable for consideration: Legislative Consent Memorandum on the Tobacco and Vapes Bill, November 2024](#)

<sup>6</sup> [Timetable for consideration: Legislative Consent Memorandum on the Tobacco and Vapes Bill, December 2024](#)

<sup>7</sup> [Timetable for consideration: Legislative Consent Memorandum on the Tobacco and Vapes Bill, January 2025](#)

<sup>8</sup> [Letter from the Minister for Mental Health and Wellbeing, 4 February 2025](#)

<sup>9</sup> [Welsh Parliament: Legislative Consent - Tobacco and Vapes Bill](#)

## Overview

**10.** Paragraphs 5 to 14 of the LCM summarise the Bill and its policy objectives. Briefly, the Bill, aims 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.

**11.** Paragraph 15 outlines the provisions in the Bill for which Welsh Government believes Senedd consent is required. We explore issues relating to these provisions throughout our report.

## The Welsh Government's position, and engagement with the UK Government

**12.** In the LCM, the Welsh Government set out the core measures of the Bill, including:

- Creating a smoke-free generation, gradually ending the sale of tobacco products across the country and breaking the cycle of addiction and disadvantage by making it an offence to sell tobacco products to anyone born on or after 1 January 2009;
- Enabling regulation to strengthen the existing ban on smoking in public places to reduce the harms of passive smoking, particularly around children, families and vulnerable people;
- Ban vapes and nicotine products from being deliberately branded, promoted and advertised to children to stop the next generation from becoming hooked on nicotine;
- Strengthening enforcement activity to support implementation of the above measures and provide powers to introduce a licensing scheme for the retail sale of tobacco, herbal smoking products, cigarette papers, vapes and nicotine products in England, Wales and Northern Ireland and extend the retail registration scheme in Scotland.

**13.** The Bill sits alongside wider support across the health service to support smokers to quit.

**14.** The Bill is supported by the governments of all four nations who “share ambitions to eradicate smoking and to tackle youth vaping”.<sup>10</sup> In the LCM, the Minister states:

*“Whilst the Bill’s development has been led by the DHSC, co-operation between the Welsh Government, DHSC, Scottish Government and Northern Ireland Executive on the policy and Bill development has been strong and sustained.”<sup>11</sup>*

*“During the Bill’s development, the Welsh Ministers met and corresponded with Ministers in the UK government with responsibility for tobacco to discuss and agree inter-government working on the measures, the consultation, its outcome, policy approaches and the Bill’s development.”<sup>12</sup>*

**15.** In the LCM, the Minister sets out her reasons for making these provisions for Wales in the Tobacco and Vapes Bill.<sup>13</sup> She states:

*“Smoking remains a major cause of mortality and ill health in Wales. (...) on average 10.7% of all deaths in Wales amongst those aged 35 and over in these years [2020-2022] were attributable to smoking. (...) Smoking is also a risk factor for poor maternal and infant outcomes, it significantly increases the chance of stillbirth and can trigger asthma in children.”<sup>14</sup>*

*“The Bill will provide legislative changes across the United Kingdom. It will save tens of thousands of lives and save the NHS billions of pounds. The response to the UK-wide consultation overwhelmingly backed the measures.”<sup>15</sup>*

**16.** She goes on to say:

*“Given the nature of the regulation and enforcement of tobacco, vapes, herbal tobacco and nicotine products, and the product, advertising and sponsorship requirements, it is considered that a collaborative approach between the four*

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<sup>10</sup> [Legislative Consent Memorandum: Tobacco and Vapes Bill](#), paragraph 8

<sup>11</sup> [Legislative Consent Memorandum: Tobacco and Vapes Bill](#), paragraph 8

<sup>12</sup> [Legislative Consent Memorandum: Tobacco and Vapes Bill](#), paragraph 14

<sup>13</sup> [Legislative Consent Memorandum: Tobacco and Vapes Bill](#), paragraphs 182-194

<sup>14</sup> [Legislative Consent Memorandum: Tobacco and Vapes Bill](#), paragraphs 183-184

<sup>15</sup> [Legislative Consent Memorandum: Tobacco and Vapes Bill](#), paragraph 187

*nations is the most efficient and effective way to proceed for Wales and the UK.*

*The starting point for the regulatory regime for these products should be that it is, as far as possible, identical across the UK or at least Great Britain. Further, as far as possible, that it should be introduced at the same time. Otherwise, products that are acceptable in one part of the UK may be able to enter another part of the UK where they might not meet regulations.”<sup>16</sup>*

**17.** She concludes:

*“In my view it is appropriate to deal with these provisions in this UK Bill as there is a need for a UK wide approach on tobacco and vapes. I will seek further engagement with the UK Government in relation to clauses 45, 95, 100 and 123 and provide the Senedd with updates accordingly. I strongly support the policy proposals of the Bill and therefore, I recommend that the Senedd gives its consent to this Bill.”*

## **Provisions for which consent is required**

**18.** The UK Government has stated that the Bill will be a landmark step in creating a smoke-free UK. It has sought consent for the entirety of the Bill with the exception of clauses 5, 13, 16-18, 25, 29, 33, Parts 2, 3, and 4, clauses 95, 100, 109, 114-120, 123, 126, 127, 136-147, 153-159, 162 and 164, as these have been determined by the UK government not to engage the LCM process.<sup>17</sup>

**19.** The Welsh Government agree with the UK government’s assessment in relation to clauses 5, 13, 16-18, 33, Parts 2 and 3, clauses 136-146, 153-159, 162 and 164.

**20.** However, there is a difference in position in relation to the need for consent for clauses 25, 29, Part 4 and clauses 95, 100, 109, 114-120, 123, 126 and 127. The LCM states:

*“In my view, these clauses make provision in relation to Wales that have regard to the devolved matter of public health. As a*

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<sup>16</sup> [Legislative Consent Memorandum: Tobacco and Vapes Bill](#), paragraph 189

<sup>17</sup> [Tobacco and Vapes Bill: Explanatory Notes](#)

*result, in accordance with Standing Order 29, Senedd consent is required.”<sup>18</sup>*

**21.** The Minister for MHW confirmed that the reference in paragraphs 179 and 180 of the Welsh Government’s LCM to clause 147 not engaging the LCM process was a mistake and would be rectified before introduction to the Senedd.

## **Delegated powers in the Bill**

**22.** The Bill includes a large number of delegated powers. As set out in the Delegated Powers Memorandum<sup>19</sup>, there are 63 measures which contain new or amended delegated powers, of which 17 are Henry VIII clauses<sup>20</sup>. We asked the Minister for MHW if she had any concerns that so many Henry VIII clauses could result in powers being given to the UK Government to make changes to regulations without the involvement of the Senedd.

**23.** The Minister told us:

*“As you know, the policy in Welsh Government is not to allow that to happen and to call for consent in these areas, so that the powers do come to the Senedd and Welsh Ministers. These discussions are ongoing.”<sup>21</sup>*

**24.** Stephanie Barnhouse, Head of Risk Behaviours, Welsh Government, added:

*“The balance of powers in the Bill was closely looked at by Welsh Ministers and by the UK Government, and we think that the balance is the correct one in terms of where the powers will lie for Welsh Ministers to take action in regulations for areas that are within devolved competence.”<sup>22</sup>*

## **Evidence from respondents**

**25.** There was broad agreement among consultation respondents that the Bill aligns with the Welsh Government’s public health goals and the “Smoke-Free Wales” strategy, providing a strong case for legislative consent.

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<sup>18</sup> ~~Legislative Consent Memorandum: Tobacco and Vapes Bill~~, paragraph 181

<sup>19</sup> Tobacco and Vapes Bill, ~~Delegated Powers Memorandum~~, 5 November 2024

<sup>20</sup> ‘Henry VIII clauses’ are clauses in a Bill that enable ministers to amend or repeal provisions in an Act of Parliament using secondary legislation which is subject to varying degrees of parliamentary scrutiny

<sup>21</sup> RoP, 6 February 2025, paragraph 52

<sup>22</sup> RoP, 6 February 2025, paragraph 53



**26.** The Bill had strong backing from key health organisations, including the Royal College of Paediatrics and Child Health (RCPCH), which called it a "once-in-a-generation opportunity" to protect children and future generations. The Tobacco Control Alliance described the Bill as "the single biggest public health measure of a generation". The Children's Commissioner for Wales and Asthma + Lung UK Cymru also expressed strong support.

**27.** ASH Cymru endorsed the Bill's measures to reduce tobacco use, particularly in disadvantaged communities, citing public support—62% of Welsh adults and 58% of small retailers favour raising the tobacco sales age.

**28.** NHS leaders, including the Welsh NHS Confederation, emphasised the Bill's alignment with Wales' broader public health goals, especially the goal of a smoke-free generation by 2030. They stated:

*"NHS leaders recognise the insufficiency of current measures and support additional legislative action to close gaps."*

**29.** Similarly, the British Medical Association (BMA) backed the Bill, emphasising that its measures will help tackle youth vaping, which is an increasing concern in Wales. Asthma + Lung UK Cymru stated:

*"Vaping, despite its harm reduction potential, is increasingly used recreationally by young people rather than solely as a cessation tool. Reports suggest as many as 25% of children aged 11-16 have tried vaping."*

**30.** The Independent British Vape Trade Association (IBVTA) broadly supported the Bill but stressed the need for proportionate regulation. While backing measures to protect young people, it warned against unintended consequences that could deter adult smokers from switching to vaping or push them back to cigarettes. The IBVTA argued that vaping, as a harm-reduction tool, should not be regulated in the same way as traditional smoking, highlighting the differences in health impacts.

## **Our view**

**31.** A majority of us support the principles of the Tobacco and Vapes Bill to create a smoke-free generation, to reduce tobacco use and to help tackle the problems of youth vaping. Smoking is the largest single cause of avoidable early death in Wales, with smoking-attributable mortality most prevalent in the most deprived communities. It causes significant harm to infants, children and young

people, as well as being extremely costly to the NHS. Whilst we do not yet understand the long-term risk to health posed by vaping, we are concerned by what appears to be a worrying rise in vaping particularly amongst secondary school-age children. In aiming to create a smoke-free generation, reduce nicotine dependency and reduce the harms of passive smoking, we believe the Bill will be an important contribution to the long-term improvement of public health in Wales.

**32.** We note that the Bill is supported by the governments of the four nations in the UK, and that there has been co-operation between the governments in the development of the policy and the Bill itself. We support this four-nation approach.

**33.** We have a number of comments on specific parts of the Bill. These are set out in the remainder of this report.

**34.** In relation to the LCM, we note the Minister's assessment of the provisions in the Bill that require the consent of the Senedd. Further, we note the difference in position between the Welsh and UK Governments in relation to clauses 25, 29, Part 4 and clauses 95, 100, 109, 114-120, 123, 126 and 127, and that the LCM seeks consent for these provisions.

**35.** We also note the corrections to be made, by the Minister, to paragraphs 179 and 180 of the LCM, and that this will be done prior to seeking the Senedd's consent.

**Conclusion 1.** A majority of the Committee see no reason that the Senedd should not support the LCM.

**36.** Some Members could not support the LCM on the basis of concerns about the long-term, 'generational' nature of the Bill and the number of Henry VIII powers contained within it.

**37.** One member stated their objection, in principle, to legislation affecting devolved Welsh matters – namely public health, being enacted via a UK Government Bill. We note the Minister's strong assurance that the Bill will "absolutely not" transfer powers back to the UK Government to make decisions and regulations in areas that are devolved.

**38.** We note the Minister's letter of 4 February 2025, where she confirms that she is undertaking discussions with the UK Government regarding clauses 34, 150, and 151, and is seeking further engagement in relation to clauses 45, 95, 100 and 123.

She states that she will update the Committee on the outcome of these discussions as soon as possible.

**Conclusion 2.** We await an update from the Minister about the outcome of her discussions with the UK Government in relation to clauses 34, 45, 95, 100, 123, 150 and 151.

**39.** There are a significant number of delegated powers provided for in the Bill, including Henry VIII powers. These are discussed in some detail in the report of the Legislation, Justice and Constitution Committee, and we note that Committee is seeking clarification from the Welsh Government on a number of points in this area. We would be grateful if the Minister would share her response to that Committee with us.

**40.** More broadly, we wish to record our view that Henry VIII powers, by their very nature, undermine parliamentary scrutiny in enabling primary legislation to be amended by secondary legislation, with limited opportunities for Senedd Members to be involved in scrutinising policy proposals.

**41.** Separately, we would appreciate some clarity from the Minister in relation to the interaction between the Bill and the United Kingdom Internal Market Act 2020 (UKIMA). Health is an extensively devolved subject area, and the Welsh Government has historically taken a proactive stance on tobacco control, often implementing stricter regulations ahead of other UK nations. Whilst the Bill is based on a four-nation approach, should UK and Welsh Government policy in this area diverge in the future, we would like to understand how implementation of any policy divergence will be affected by the operation of the UKIMA, specifically whether the Bill would inhibit such divergence if it was considered to have an impact on trade.

**Recommendation 1.** The Minister should set out how the implementation of the Bill will be compatible with the operation of the United Kingdom Internal Market Act 2020, particularly if UK and Welsh Government policy in this area were to diverge in the future.

### 3. Provisions in the Bill for which consent is required

#### Sale of vaping and nicotine products

**42.** Part 1 of the Bill (clauses 10-12) relates to the sale of vaping and nicotine products. These clauses restrict the sale of vaping and nicotine products. Clause 10 makes it an offence to sell a vaping or nicotine product to a person who is under the age of 18. Clause 11 makes it an offence for a person aged 18 or over to buy, or attempt to buy, a vaping product or a nicotine product on behalf of someone who is under the age of 18, also known as proxy purchasing. Clause 12 makes it an offence for a person who manages or controls a premises to have a vape or nicotine product vending machine (“an automatic machine from which vaping/nicotine products may be bought”) available for use on the premises.

**43.** The proportion of young people vaping has risen substantially in Wales and across Great Britain in recent years, despite the fact that it has been illegal to sell a vape to anyone under 18 since 2015. Data from the 2023 School Health Research Network Survey (conducted every 2 years) indicated that the proportion of learners in years 7 to 11 in Wales reporting vaping at least once a week is now 7%, an increase on 2021 when it was 5.4% and 2019 when it was 2.7%.<sup>23</sup>

**44.** The Minister for MHW told us:

*“... teachers are saying that children are coming to secondary school from primary school addicted to vaping. Some of them are having to leave lessons two or three times to vape; they can't sit through their mock exams to be able to do that.”<sup>24</sup>*

**45.** Evidence from the Children’s Commissioner for Wales states that “children and young people are rightly highly concerned about the health impacts, the availability and prevalence of e-cigarettes / vapes” and they “want more pressure from government on making change”.<sup>25</sup>

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<sup>23</sup> LCM TV10 Public Health Wales

<sup>24</sup> RoP, 6 February 2025, paragraph 26

<sup>25</sup> LCM TV05 Children’s Commissioner for Wales

## Health impacts of vaping on children and young people

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**46.** Witnesses agree that, as a relatively new product, the long-term impacts of vaping are not yet known.

**47.** Asthma + Lung UK said that there is some evidence to suggest health risks of the chemicals used to flavour e-cigarettes, e.g. the flavouring ‘cinnamaldehyde’ is a cause of concern, and flavourings linked to Bronchiolitis Obliterans were subsequently banned from e-cigarettes.<sup>26</sup>

**48.** According to Public Health Wales:

*“Research with young people highlights widespread confusion of the relationship between nicotine and vapes, including a lack of knowledge about what nicotine is, the effects of addiction and the fact that it may or may not be present in vapes.”<sup>27</sup>*

**49.** Evidence collected by the Children’s Commissioner for Wales during a focus group with young people found that some see vaping as a safe alternative to smoking; others know the risks but do so anyway, while some saw vaping as harmful but did not know just how harmful.<sup>28</sup>

**50.** Ed Wilson, Deputy Director of Public Health Improvements and Inequalities, Welsh Government, told us:

*“There is a bit of a misnomer, I think, sometimes, around the language we use around vapes, about ‘safer’ and ‘healthier’. Our policy has always been as a Government that if you don’t smoke, you shouldn’t vape; it’s not something we’d recommend people to take up.”<sup>29</sup>*

## Support for young people addicted to nicotine

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**51.** Evidence from BMA Cymru Wales states that vapes with nicotine are just as addictive as cigarettes:

*“As more young people are vaping, driven largely by the rise in the use of disposable vapes, there are concerns that this*

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<sup>26</sup> LCM TV02 Asthma + Lung UK

<sup>27</sup> LCM TV10 Public Health Wales

<sup>28</sup> LCM TV05 Children’s Commissioner for Wales

<sup>29</sup> RoP, 6 February 2025, paragraph 31

*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>30</sup>*

**52.** We asked the Minister for MHW what support would be available for young people who are already addicted to vapes/nicotine products. Ed Wilson said that Welsh Government officials had been working with Public Health Wales on resources for teachers and parents that give support and advice to help children and young people understand the risks around vaping. He also referenced the free Help Me Quit service, run by Public Health Wales, which was traditionally used to support tobacco-addicted smokers, adding:

*“Public Health Wales are working to alter that service now, so that it focuses on being a nicotine addiction service, so that regardless of the methodology that you are hooked on nicotine through, you will get that support, free and confidential advice and support, and looking at how we can support children and young people to come off nicotine as well.”<sup>31</sup>*

**53.** The Minister for MHW confirmed that this was a priority for Welsh Government, saying:

*“we recognise that there will be that cohort, and we will make sure that they have that support.”<sup>32</sup>*

**54.** She went on to say that some local authorities had a policy of excluding young people found vaping from school:

*“This is something that teachers are very against, and would prefer us to be able to come at this from a completely different angle and work together to ensure that that isn't happening as well.”<sup>33</sup>*

**55.** We asked the Minister for MHW about the support that would be available for public and educational bodies to ensure people understand the new legislation. We highlighted the considerable experience of Ash Wales Cymru in

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<sup>30</sup> LCM TV01 BMA Cymru Wales

<sup>31</sup> RoP, 6 February 2025, paragraph 31

<sup>32</sup> RoP, 6 February 2025, paragraph 40

<sup>33</sup> RoP, 6 February 2025, paragraph 26

this area, and raised concerns about their ability to continue, following the reduction in their funding.

**56.** The Minister for MHW said that the changes in the funding arrangements with ASH Wales Cymru were “not intended so that they no longer exist”. She went on to say:

*“A letter to ASH Wales Cymru confirming that their grant for 2025-26 will be at least £75,000 was issued in December, and officials will work with ASH Cymru to understand what work they could take forward in the 2025-26 financial year to support the tobacco control agenda, and detailed ministerial advice be submitted to me shortly. As soon I have an update, I will share that with the committee.”<sup>34</sup>*

### **Enforcement by local weights and measures authorities**

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**57.** Part 1, clause 32, places a duty on local weights and measures authorities to enforce the provisions in Part 1 of the Bill and any regulations made under clause 14.

**58.** The Minister for MHW said that, in order for the measures in the Bill to be effective, a strong approach to enforcement and compliance would be needed. She went on to say:

*“We also will work with Trading Standards Wales to ensure that we are supporting officers to take rigorous enforcement of the existing legislation, and also deal with the illegal market, which will not be tolerated.”<sup>35</sup>*

**59.** However, evidence from Trading Standards Wales highlighted a number of potential challenges in enforcing the regulations, including:

- limited enforcement powers for local authority officers to enforce penalties;
- difficulty in locating individuals if a penalty charge notice is issued to someone who cannot be readily identified;

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<sup>34</sup> RoP, 6 February 2025, paragraph 49

<sup>35</sup> RoP, 6 February 2025, paragraph 45

- safety concerns when issuing penalty charge notices to confrontational members of the public or in locations where there is a heightened risk of violence or aggression;
- Need for adequate training to ensure local authority officers are issuing penalty charge notices correctly, consistently, and fairly;
- increased workload;
- costs associated with issuing and enforcing penalty charge notices.

**60.** BMA Cymru Wales and Asthma + Lung UK both highlight the need for additional funding and resources for Trading Standards teams to monitor compliance effectively.

**61.** BMA Cymru Wales warns that enforcement of the Bill may be hindered by limited resources and powers for Trading Standards officers. They advocate for stronger deterrents, including increasing fines for non-compliant retailers to at least £10,000. They also highlight regulatory gaps at ports and borders, making it difficult to prevent illegal vape products from entering the market.<sup>36</sup>

**62.** We raised concerns about the possible increase in the sale of unregulated vapes to young people as a result of the restrictions imposed by the Bill with the Minister for MHW.

**63.** Evidence from Ash Wales Cymru states:

*“More than half (55%) of all pupils that vape reported using vaping products that are highly likely to be illegal, unregulated products that contain over 600 puffs. [ ] Concerns have also been raised about device safety and quality, with increasing numbers of non-compliant vaping devices / consumables seized by trading standards teams in Wales often containing higher levels of contaminants and nicotine than those permitted by UK law.”<sup>37</sup>*

**64.** Trading Standards Wales suggested a strategy for dealing with the impact of the legislation on the illegal tobacco/vapes market was needed. It said:

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<sup>36</sup> LCM TV01 BMA Cymru Wales

<sup>37</sup> LCM TV06 ASH Wales Cymru



*“It is felt that legislation alone will not achieve this. There needs to be an emphasis on education and tackling illegal ‘underground’ sales once the legislation comes into force. This cannot be undertaken without adequate local authority resourcing.”<sup>38</sup>*

**65.** The Minister for MHW agreed that a lot of young people were already buying illegal vapes and this needed to be stopped. She confirmed that:

*“We also will work with Trading Standards Wales to ensure that we are supporting officers to take rigorous enforcement of the existing legislation, and also deal with the illegal market, which will not be tolerated.”<sup>39</sup>*

**66.** The Minister for MHW acknowledged that one of the key parts of the Bill would be to strengthen the enforcement system by providing for new fixed-penalty notices and the potential for this to increase pressure on local authorities. She said she would be consulting with local authorities as part of this.

**67.** The Minister also confirmed that the UK Government had announced additional funding that had resulted in Barnett consequential funding of £5 million for the Welsh Government to support the smoke-free generation and youth vaping measures. This funding was not ring-fenced, but instead allocated into the general pot. She said that options for how this would support the Bill were being considered.

**68.** Evidence from Asthma + Lung UK states:

*“The legislation takes important steps in regulating vaping products, particularly with restrictions on sales to under-18s and limits on advertising. However, greater clarity on the regulation of refillable devices is needed to avoid manufacturers exploiting loopholes by producing ostensibly reusable but practically disposable products.”*

**69.** We raised this concern with the Minister for MHW, who told us:

*“As we know, this is a sector that is able to move very quickly and adapt very quickly, sometimes, around the policy and legislation that we try to put in place, as you pointed to. This*

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<sup>38</sup> LCM TV03 Trading Standards Wales

<sup>39</sup> RoP, 6 February 2025, paragraph 45

*wouldn't come under this LCM today. However, I am more than happy to go away and ask my officials to look into that for you, and we will be able to write to the committee with an update."*

## **Our view**

**70.** The rising trend in vaping amongst young people, including those who have not previously smoked, is worrying and needs to be addressed. We were particularly concerned to hear about children reaching secondary school-age already addicted to vaping. Whilst vaping is less harmful than smoking tobacco, the long term effects are not yet known, and there appears to be a lack of understanding amongst young people about the possible harms associated with vaping, including long-term nicotine addiction.

**71.** We understand there is some danger of mixed-messaging for children and young people in relation to vaping, given that it is encouraged in adults as a smoking cessation tool.

**72.** Whilst the Welsh Government's policy has always been "if you don't smoke, you shouldn't vape", we believe there is a need for further work by the Welsh Government and its partners to provide clearer messages to children and young people about the potential long-term health risks of nicotine addiction and vaping.

**Recommendation 2.** The Welsh Government, with its partners, including Public Health Wales, should provide clearer messaging for children and young people about the potential long-term health risks of nicotine addiction and vaping, particularly in light of the Minister's evidence that young people should avoid vaping altogether.

**73.** We recognise and support the Bill's focus on prevention, aiming to stop young people from ever starting to smoke or vape. However, we are concerned about the current generation of young people who are already addicted to nicotine and have taken up vaping. We note that Public Health Wales is working to alter the Help Me Quit service to focus on being a nicotine addiction service but we believe that young people should have access to such support in surroundings that are less formal and more familiar to them. We would also welcome clarification on the availability of Nicotine Replacement Therapy for under 18s.

**Recommendation 3.** The Welsh Government must ensure, alongside its focus on prevention through this Bill, that appropriate support is available for those young people who are already addicted to nicotine.

**74.** Strong enforcement will be key to the success of the legislation but we have concerns about the challenges facing local authorities in this regard, particularly in terms of limited resources. Funding from the UK Government to support the smoke-free generation and youth-vaping measures has resulted in Barnett consequential funding of £5m for the Welsh Government. As this funding is un-hypothecated, we seek the Minister's assurance that the full amount will be directed towards the enforcement of these measures.

**75.** We remain concerned about the potential impact of the Bill on the sale of unregulated/illegal vapes to young people, particularly as the Minister told us these may contain more nicotine, and harmful chemicals, such as nickel and zinc. Witnesses told us 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. We therefore think there will be a substantial body of work for Trading Standards in tackling these illegal sales and would urge the Welsh Government to ensure they are adequately funded and resourced to carry out this work.

**76.** We note the Minister has confirmed that funding decisions regarding ASH Cymru Wales do not reflect a change in government policy or priorities. We welcome the government's collaboration with ASH to set priorities for 2025-26 in support of the tobacco agenda, which is key to the effective implementation of this Bill. We look forward to hearing from the Minister once she has received advice from her officials

**Recommendation 4.** The Welsh Government should assess the enforcement mechanisms accompanying the Bill in order to assure itself that they are sufficient to support the Bill's effective implementation. The Minister should write to us to outline the findings of this work.

**Recommendation 5.** The Minister should confirm that the full amount of Barnett consequential funding to support the smoke-free generation and youth-vaping measures will be used to support the implementation, including enforcement, of these measures.

**Recommendation 6.** The Minister should write to us with an update on the funding position for Ash Cymru Wales.

**77.** While we accept that it is not an issue for this LCM, we are concerned that manufacturers will find ways to circumvent the regulations in relation to refillable devices. We welcome the Minister's commitment to look into this and write to us with her findings.

## Product and information requirements

**78.** Part 5, clauses 90-113 deal with product and information requirements. This Part contains a suite of regulation making powers to enable requirements to be set in relation to product standards, including packaging, features of products, content and flavouring.

### Packaging and flavours

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**79.** According to the Children’s Commissioner for Wales, a study from 2023 showed that colour, as well as branding and flavour, enhanced the appeal of the products:

*“Colour was most frequently mentioned and discussed by participants when discussing the appeal of packaging. Pack colour helped signal taste, as it matched the flavour, and also product type, with brightly coloured packs linked to disposables. Brightly coloured packs were also seen as appealing to young people and the products designed for, and targeted to, children and young people.”<sup>40</sup>*

**80.** The Independent British Vape Trade Association agreed that emotive flavour names and ‘cartoon’ packaging be addressed to remove aspects believed to be disproportionately attractive to children.<sup>41</sup> The Children’s Commissioner for Wales said, ‘Simply, vaping products should be made as unattractive to children and young people as possible.’<sup>42</sup>

**81.** Alongside brightly coloured packaging, we were told that flavours have been introduced to deliberately be promoted to appeal to young people. ASH found the most popular vape flavours are fruit (59%), sweet (16%) and mint (6.9%).<sup>43</sup>

**82.** Philip Morris Ltd is of the view that the focus of regulation should be on allowing flavours which are predominantly appealing to adult smokers (such as mint, menthol and tobacco) and can help them switch, with the use of any additional flavours undergoing stringent scrutiny to guard against unintended use:

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<sup>40</sup> LCM TV05 Children’s Commissioner for Wales

<sup>41</sup> LCM TV08 Independent British Vape Trade Association

<sup>42</sup> LCM TV05 Children’s Commissioner for Wales

<sup>43</sup> LCM TV09 Royal College of Paediatrics and Child Health Cymru

*“Restrictions should prevent the use of child appealing elements and features for example, those relating to toys, cartoons, sweets, desserts, drinks including alcohol or energy drinks etc. These products are for adult smokers and adult nicotine users only, and they should be presented as such.”<sup>44</sup>*

**83.** The Minister for MHW said:

*“... young people have told us that they are being influenced by the colour of packaging, packaging marketed to children, advertising towards children, the appealing flavours [ ]. These are all the things that we also want to prevent in Wales.”<sup>45</sup>*

**84.** Stephanie Barnhouse, Head of Risk Behaviours, Welsh Government, added:

*“It's about making sure that we're not allowing the child-appealing elements of vapes, so looking at the flavours, the packaging, the placement in shops. And those powers will be through regulation, so we can adapt those and make sure they remain flexible.”<sup>46</sup>*

### **Vaping as a cessation tool**

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**85.** A number of witnesses raised concerns about the impact of the regulations on the ability of adults wishing to quit smoking to access vapes as a cessation tool.

**86.** Asthma + Lung UK said that ensuring equitable access to reusable vapes and effective cessation tools for adults seeking to quit smoking is crucial to balancing youth protection with harm reduction efforts.<sup>47</sup>

**87.** Similarly, the Independent British Vape Trade Association told us:

*“The Bill must strike a crucial balance in terms of vaping regulation, by both preventing youth initiation of nicotine use and ensuring that dramatically less harmful alternatives for adult smokers continue to be accessible and attractive as a form of cessation. Since 2015, vapes have been recognised as*

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<sup>44</sup> LCM TV07 Philip Morris Ltd

<sup>45</sup> RoP, 6 February 2025, paragraph 5

<sup>46</sup> RoP, 6 February 2025, paragraph 37

<sup>47</sup> LCM TV02 Asthma + Lung UK

*effective harm reduction tools and are now incorporated into DHSC and NHS-funded cessation programs.”<sup>48</sup>*

**88.** The Minister for MHW agreed that vapes were useful to some smokers in helping them stop, and confirmed that:

*“... we need to tackle the worrying rise in youth vaping and stop the next generation from ever participating. That is fundamentally what this Bill is about. So, it's not intended to stop adults from using vapes if they choose to. It doesn't apply to adults.”<sup>49</sup>*

**89.** We asked the Minister for MHW how the Welsh Government would tailor its approach in relation to vulnerable groups.

**90.** The Minister told us:

*“We do understand, of course, that smoking and vaping are very much linked to stress, and when you are under immense stress, when you are potentially in crisis, when you are not very well, to then also have the additional, you know, trying to come off what is a very acute addiction, it is a lot. So, with this as well, that is something that we would be very compassionate and understanding towards.”<sup>50</sup>*

## **Our view**

**91.** As we have already stated, the rise in vaping amongst young people is a matter of concern. It is clear that young people are influenced by brightly coloured packaging and sweet flavouring, and that some unscrupulous manufacturers are trading on this. As such, we support the measures in the Bill to curb youth vaping.

**92.** Specifically in relation to clause 92, regarding the content and flavours of relevant products, i.e. vaping products, we note that the power to make regulations in relation to content and flavour is a specific power for the Secretary of State, and not for Welsh Ministers. Our understanding of this position is that, should a future Welsh Government wish to make different provision about banning the sale of certain vape flavours, they would not be able to do so under

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<sup>48</sup> LCM TV08 Independent British Vape Trade Association

<sup>49</sup> RoP, 6 February 2025, paragraph 7

<sup>50</sup> RoP, 6 February 2025, paragraph 107

the Bill but would instead need to bring forward their own primary legislation. If so, this may be significant as the Welsh Government has previously taken a stronger position on vapes than other parts of the UK. We ask the Minister to confirm that our understanding is correct, and to set out the Welsh Government's position on this.

**Recommendation 7.** The Welsh Government should:

- confirm whether the delegated powers provided for in clause 92 of the Bill in relation to the content and flavour of vapes apply only to the Secretary of State and not Welsh Ministers;
- confirm that, should a future Welsh Government wish to make different provision about banning the sale of certain vape flavours, they would need to bring forward their own primary legislation to do this;
- set out its position in relation to the previous two points.

**93.** It is recognised that vaping is less harmful than smoking tobacco products, and that many smokers are choosing to use vapes to help and support them to quit smoking. We therefore welcome the Minister's assurance that the Bill will not affect the ability of adults to access vapes as a smoking cessation tool.

**94.** We welcome the Minister's assurance that the Welsh Government will tailor its approach to the application of the Bill in relation to vulnerable groups.

## 4. Human rights issues

**95.** To create a smoke-free UK and to minimise the harms of smoking, the Bill will create a smoke-free generation by gradually ending the sale of tobacco products across the country, (including herbal smoking products and cigarette papers) so children born on or after 1 January 2009 will never be legally sold these products.<sup>51</sup>

**96.** We asked the Minister for MHW what assessment had been made of the potential for legal challenge in respect of article 8 (respect for private and family life) and article 14 (prohibition of discrimination) of the European Convention on Human Rights.

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<sup>51</sup> [Tobacco and Vapes Bill: Explanatory Notes](#)

**97.** Ed Wilson said that the UK Government had undertaken an impact assessment and is confident that the Bill is compatible with human rights legislation. He went on to say:

*“There is also a separate school of thought around whether addiction is a choice. So, nicotine is a highly addictive substance. If you ask most smokers if they wished they could stop smoking, they would agree. And so, actually, being addicted to nicotine through any method takes a lot of choices away from you. But in terms of the actual question around the legality of it, UK Government have looked into that issue and are confident that it is compatible.”<sup>52</sup>*

### **Our view**

**98.** We note the Minister’s evidence that the UK Government has assessed the legislation as being compatible with the European Convention on Human Rights. A majority of us take confidence from the Minister’s assurances on this matter. However, some Members remained concerned that this aspect could be subject to legal challenge in the courts.

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<sup>52</sup> RoP, 6 February 2025, paragraph 118