

ASH Scotland's evidence for the Scottish Parliament's Health, Social Care and Sport Committee's consideration of the reintroduced Tobacco and Vapes Bill Legislative Consent Memorandum

About Action on Smoking and Health Scotland

ASH Scotland (Action on Smoking and Health Scotland) is a registered Scottish charity. We work in and for Scotland at national, UK and international levels, taking action to reduce the harms caused by tobacco and related products to achieve a tobacco-free generation by 2034.

We do not engage with nor take funding from the tobacco and related products industries or vested interests; and implement Article 5.3 of the World Health Organisation's Framework Convention on Tobacco Control (FCTC).

Executive summary – ASH Scotland's support for the Draft Legislative Consent Memorandum and motion lodged by the Scottish Government

ASH Scotland welcomes this Tobacco and Vapes Bill as a landmark step towards creating a tobacco-free Scotland through reducing the use of tobacco and related products and tackling youth vaping which are major public health concerns.

Although ASH Scotland also advocates for other measures not included in the Bill such as product restrictions that make tobacco products less attractive through mandating only very low nicotine levels below the addiction threshold, banning cigarette filters which have no health benefits and are unnecessary throwaway plastics, and substantially reducing the number of retailers permitted to sell tobacco, we want the Bill to be passed at pace and therefore support it without those additions.

The following summary conveys ASH Scotland's position.

- ASH Scotland strongly encourages the Scottish Parliament's Health, Social Care and Sport Committee to recommend the Tobacco and Vapes Bill is introduced in full through the Legislative Consent Motion.
- ASH Scotland supports the rising age of sale measure for anyone born on or after 1 January 2009 and the provision amending existing age-of-sale legislation in Scotland to decriminalise under-age consumer purchase of tobacco in Scotland.
- ASH Scotland welcomes the addition of a UK-wide ban on the advertising and sponsorship of herbal smoking products, cigarette papers, vaping products, and nicotine products, complementing the existing ban on tobacco product advertising and sponsorship. We also call for the existing complementary restrictions on the advertising and promotions on vaping products in Scotland to be introduced by the Scottish Government without delay through implementing the remaining provisions of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 Regulations 17-19.
- ASH Scotland calls for effective enforcement on social media platforms to restrict promotions of e-cigarettes and other recreational tobacco related products to prevent children's/youth uptake.

- ASH Scotland advocates making Scotland’s existing register conditional to enable restrictions through regulations. We urge the Health, Social Care and Social Committee to request an amendment to the Bill to enable this in this primary legislation, with the registration authority to remain as the Scottish Government. Conditions of registration would give powers to introduce retail regulations to align with measures that may be introduced in the other three nations.
- ASH Scotland supports the extension of SAFE spaces (smoke-free and aerosol-free environments), with a focus on areas frequently used by children such as in and around school premises and playgrounds. In 2024/25 ASH Scotland is leading a Short Life Working Group on Smokefree Spaces at the request of the Scottish Government and we look forward to responding to the government’s consultation about this matter in due course.
- ASH Scotland advocates that e-cigarettes should have no added flavours and for the standardisation of vaping device designs and packaging through preventing imagery, colours, descriptors and branding to reduce the attractiveness of products to children. We look forward to responding to the UK Government’s consultation on these restrictions following the Bill receiving royal assent.
- ASH Scotland asks for the Bill to be amended to include a more comprehensive definition of “nicotine product” so that it is future-proof and can capture products such as synthetic nicotine and nicotine analogues as well as other novel products that may emerge on to the market.

ASH Scotland’s support for the decriminalisation of under-age consumer purchase of tobacco in Scotland

- ASH Scotland supports the introduction of the rising age of sale measure for anyone born on or after 1 January 2009; tobacco remains Scotland’s main preventable cause of death, prematurely ending almost 9,000 lives each year. This measure will progressively and incrementally clear retail spaces of tobacco. We contend that the main focus of regulation should be on product and industry.
- We welcome the Scottish Government’s confirmation that, if the Tobacco and Vapes Bill is passed at Westminster, existing age-of-sale legislation in Scotland will be amended to decriminalise under-age consumer purchase of tobacco in Scotland. ASH Scotland holds that the burden of criminalisation should fall on the producers and promoters of addictive health harming tobacco and related products, rather than on consumers.
- Around 75% of people who smoke started before age 18, and two-thirds of adult smokers in Scotland consistently state that they wish to quit.ⁱ The following figures detail smoking prevalence amongst young people in Scotland:
 - Health Behaviour in School-aged Children (HBSC) 2022ⁱⁱ
 - Ever smoking
 - 15-year-olds: 20%
 - 13-year-olds: 6%
 - 11-year-olds: 1%
 - Current smoking (smoked in the past 30 days)
 - 15-year-olds: 11%
 - 13-year-olds: 3%
 - The Health Behaviour in School-aged Children indicated that the decline in smoking prevalence among young people in Scotland has stalled since around 2018.
 - Although the Scottish Health Survey showed a smoking decline among all adults from 17% in 2019 to 15% in 2022, it, however, also showed smoking prevalence increased by 8% among young men (aged 16-24) from 14% to 22%. Smoking prevalence declined from 15% to 11% for young women (aged 16-24) in the same period.

- The most recent 2023 Scottish Health Survey showed a stalling of smoking prevalence relative to the 2022 figure, remaining at 15% or around 685,000 people. Smoking prevalence among 16-24-year-olds is currently 16%, which has not significantly declined since 2017 when prevalence was 17%. Compared to 2019, there has been a significant 7% increase in smoking among young men and a decrease of 5% among young women.
- Around 28 young people aged between 18 and 24 start smoking per day, more than 10,000 a year in Scotland.ⁱⁱⁱ

ASH Scotland's support for a UK-wide ban on the advertising and sponsorship of herbal smoking products, cigarette papers, vaping products, and nicotine products.

- ASH Scotland urges the Scottish Government to introduce regulations already enabled by the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 to reduce the promotion and visibility of recreational NVPs. Legislative provisions in Scotland enable restricting the advertising of e-cigarettes on billboards, leaflets and bus shelters; ending promotional activities such as give-aways, sponsorship, nominal pricing and brand-sharing. The Scottish Government consulted again on these 2016 legislative measures in Spring 2022 and published the analysis of responses in September 2022. Some measures will be enabled by UK legislation but all 2016 measures should be implemented in Scotland.
- Regulations must capture emerging and future novel tobacco and nicotine-related, to enable intelligence gathering about recreational, health-harming and addictive products. ASH Scotland asks for the Bill to be amended to include a comprehensive definition of 'nicotine product' that captures products containing synthetic nicotine and nicotine analogues as well as novel products that may emerge onto the market in future. For example, it would be important to include nicotine pouches – a growing, youth-targeted market that is currently underexamined and underregulated, as well as heated herbal products and accessories.
- The DISPLAY study (Haw et al, 2020) researching the impact of the point-of-sale tobacco display ban on young people in Scotland found young people recalled seeing e-cigarette displays in retail outlets, and this 'prominent and ubiquitous' visibility was associated with increased risk of experimentation with the products^{iv}, echoing previous tobacco retail displays research.
- 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) and enable Ministers in Scotland (clause 45) to do the same. ASH Scotland welcomes this and calls for the complementary restrictions on the advertising and promotions of vaping products to be introduced by the Scottish Government without delay by implementing all the remaining provisions from the existing Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 Regulations 17-19.
- A CRUK report found that, between 2017 and 2019, young people noticed e-cigarette marketing on websites and social media more than adults (41.1% of young people versus 14% of adults in 2018).^v Other research of user-generated content and influencer marketing related to e-cigarettes in the UK on YouTube and Instagram found that young people positively perceived e-cigarettes in 86.5% of Instagram posts and 66% of YouTube videos. Only 43.3% of YouTube videos and 20.2% of Instagram posts featured warnings about age restrictions. Health warnings were absent from most posts.^{vi} We ask the Health, Social Care and Sport Committee to urge the UK Government to further restrict such marketing.
- ASH Scotland calls for effective enforcement on social media platforms to restrict promotions of e-cigarettes and other recreational tobacco related products to prevent children's/youth uptake.

ASH Scotland's support for making Scotland's existing register conditional

- ASH Scotland believes that further controls on retail conditions are an important part of achieving progress towards the goal of a tobacco-free generation in Scotland by 2034. Making Scotland's existing Register of Tobacco and Nicotine Vapour Product retailers conditional would provide opportunities through regulations to support enforcement and prevent underage sales, increase data collection and intelligence, improve sanctions for repeated non-compliance, and could generate a revenue stream to support maintenance of the register.
- The current registration system in Scotland has some limitations. As it is unconditional, there is no option to charge a fee to help offset administration costs. There is also currently no requirement to renew, so data can become outdated. Introducing a period requirement for renewal (e.g. annually or every two years) would help cleanse the data; and non-renewal would mean removal from the register and consequently the loss of the legal right to sell.
- As the Scottish Government's Register of Tobacco and Nicotine Vapour Product Retailers currently only requires a retailer to notify that they are selling a tobacco or vaping products, ASH Scotland advocates that the register be made conditional, with sufficient support provided for trading standards teams to ensure all shops selling all products covered by the Tobacco and Vapes Bill are compliant. The registration authority should remain as the Scottish Government and conditions of registration should include completing staff training about the health harms caused by tobacco and tobacco-related products and strengthen powers to de-register retailers found persistently in breach of the law. The Society of Chief Officers of Trading Standards in Scotland (SCOTSS) can provide valuable implementation advice regarding enforcement.

Tackling the prevalence of youth vaping

- There remain significant gaps in available data – both in terms of collecting and monitoring prevalence of young people vaping and using other products such as nicotine pouches in Scotland. We urge the Scottish Government to increase the availability and frequency of relevant monitoring and data (as requested by the Health, Social Care and Sport Committee's letter dated 16 January 2023) to provide a clearer picture of overall trends.
- After years of relative stability in e-cigarette use prevalence by young people in Scotland, there was an exponential increase in current and regular use, driven by disposable e-cigarettes.
 - Between the 2018 Scottish Schools Adolescent Lifestyle and Substance Use Survey (SALSUS) and the 2021/22 Health and Wellbeing Census
 - Regular e-cigarette use (once a week or more)
 - 15-year-olds (S4) tripled from 3% to 10%.
 - 13-year-olds (S2) doubled from 2% to 4.3%.
 - The Health Behaviour in School-aged Children (HBSC) survey, carried out every four years, showed that in 2022, and the findings for Scotland were:
 - Current e-cigarette use (used in last 30 days)
 - 15-year-olds: 25% (increased from 7% in 2018)
 - 13-year-olds: 10% in 2022
 - 11-year-olds: 3% in 2022
 - Ever use (used at least once)
 - 15-year-olds: 36%
 - 13-year-olds: 16%
 - 11-year-olds: 4%

- The 2023 Scottish Health Survey:

E-cigarette use, which had 7% prevalence between 2015 and 2019, increased to 12% in 2023.

There has been a four-fold increase in e-cigarette use among 16-24-year-olds from 5% in 2019 to 22% in 2023.

E-cigarette use between the SIMD1 (most deprived) areas and SIMD5 (least deprived) areas increase was 14% v 6% in 2022 and 17% v 6% in 2023.

- World Health Organisation's 2021/2022 Health Behaviour In School-Aged Children report

Girls in the UK are more likely to have used an e-cigarette by the age of 15 than the average for all 44 countries (Europe, Central Asia and Canada) involved in the study.

Two-fifths of girls in Scotland and England have vaped by the age of 15.

30% of 15-year-old girls in Scotland had vaped in the last 30 days.

- The 2022 Scottish Health Survey:

Current e-cigarette use (used in last 30 days)

Two and a half times higher in SIMD1 (most deprived) areas compared to SIMD5 (least deprived) areas: 14% vs 6%.

Dual use of e-cigarettes and smoking tobacco

Six times more common in the most deprived SIMD1 (most deprived) areas compared to SIMD5 (least deprived) areas: 5% vs 1%.^{vii}

Health harms associated with e-cigarette use

- Scottish respiratory paediatricians have expressed concerns about a “vaping epidemic in the adolescent population”, the impacts of e-cigarettes on developing lungs (acute lung disease) and brains (increased addiction, adverse behavioural and developmental outcomes).
- A global systematic evidence review (2023, ANU) found conclusive evidence that e-cigarettes can cause lung injury, burns, poisoning or lead to seizures.^{viii} It also found conclusive evidence of fine particulates in e-cigarette vapour, and air quality researchers have linked exposure to fine particulate (particulate matter) to long-term health risks. This was further confirmed by a published article (2024) by a European project, including researchers from the University of Stirling which showed that e-cigarettes can emit potentially health-harming levels of particulate matter.^{ix} The potential health-harming effect of particulate matter has also been discussed in a project on Smoke and Aerosol Free Environments (SAFE) as part of the EU funded research partnership Joint Action on Tobacco Control (JACT-2).^{x,xi}
- In December 2023, the World Health Organisation (WHO) called on governments to act urgently to protect children from harms caused by vaping, following mounting evidence of adverse health impacts, and studies consistently showing that young people who use e-cigarettes are at up to three times greater risk of both nicotine addiction, and initiating tobacco use, as well as growing international concerns about youth uptake of novel products such as nicotine pouches.^{xii}
- E-cigarettes include toxic chemicals not safety tested for inhalation; WHO notes they ‘emit carcinogens’. Over 30,000 variants are registered by the Medicines and Healthcare products Regulatory Agency (MHRA), few have been tested.

E-cigarettes use for smoking cessation

- The global systematic evidence review (2023, ANU) found that between two-thirds and three-quarters of people who quit smoking long-term do so unaided. In Scotland, 60% of people who gave up smoking did not use anything to aid their quit attempts. The Scottish Health Survey 2022 reported 25% of people use Nicotine Replacement Therapy (NRT) such as gum, patches and lozenges and only 21% of people use e-cigarettes when trying to quit.^{xiii}
- WHO's clinical treatment guideline for tobacco cessation in adults (issued July 2024)^{xiv} provides recommendations on the use of behavioural support delivered in both clinical and community settings including digital tobacco cessation, pharmacological and system-level interventions. The guideline does not include e-cigarettes as current evidence remains not strong enough to recommend.
- No e-cigarette is medicinally licensed either by MHRA or anywhere globally. Through Scotland's consensus approach, NHS Scotland's Quit your Way cessation services welcome people wishing to quit smoking, but only positively recommend medically licensed quit aids, which have the strongest evidence base for efficacy and are tested and monitored, quality-controlled and medicinally supervised and regulated.

Contact ASH Scotland

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ⁱ Department of Health and Social Care (2017) Towards a smoke-free generation: a tobacco control plan for England. Pg9. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/630217/Towards_a_Smoke_free_Generation_-_A_Tobacco_Control_Plan_for_England_2017-2022_2_.pdf

ⁱⁱ Inchley, J., Mabelis, J., Brown, J., Willis, M., Currie, D. (2023) Health Behaviour in School-aged Children (HBSC) Scotland 2022. <https://hbsc.org/launch-of-hbsc-report-on-scottish-adolescents-unraveling-health-trends-and-lifestyle-choices/>

ⁱⁱⁱ Jackson, S and Tattan-Birch, H. Estimating uptake of smoking among 18-25-year-olds: analysis for ASH [England] March 2024. <https://osf.io/nu2rp/>. Note: the figures quoted are Scottish estimated based on the analysis of the research.

^{iv} Haw S, Currie D, Eadie D, Pearce J, MacGregor A, Stead M, Amos A, Best C, Wilson M, Cherrie M, Purves R, Ozakinci G, MacKintosh AM. (2023) The impact of the point-of-sale tobacco display ban on young people in Scotland: before-and-after study. Southampton (UK): NIHR Journals Library; 2020 Jan. <https://www.ncbi.nlm.nih.gov/books/NBK553061/>

^v Stead, M. et al. (2021) E-cigarette marketing in the UK: evidence from adult and youth surveys and policy compliance studies. Cancer Research UK. 2021. https://www.cancerresearchuk.org/sites/default/files/e-cigarette_marketing_in_the_uk_fullreport_march_2021.pdf

^{vi} Smith, M.J., Buckton, C., Patterson, C. et al. (2023) User-generated content and influencer marketing involving e-cigarettes on social media: a scoping review and content analysis of YouTube and Instagram. BMC Public Health 23, 530 (2023). <https://doi.org/10.1186/s12889-023-15389-1>

^{vii} Scottish Government. (2023) Scottish Health Survey 2022: Supplementary tables. 11.Smoking. <https://www.gov.scot/publications/scottish-health-survey-2022-supplementary-tables/>

^{viii} Banks E, Yazidjoglou A, Brown S, Nguyen M, Martin M, Beckwith K, Daluwatta A, Campbell S, Joshy G (2023) Electronic cigarettes and health outcomes: umbrella and systematic review of the global evidence. Med J Aust 2023; 218 (6): 267-275. <http://doi.org/10.5694/mja2.51890>

^{ix} A. Borgini et al (2024) Particulate matter in aerosols produced by two last generation electronic cigarettes: a comparison in a real-world environment. Pulmonology. Vol 30, Issue 2, 2024, Pages 137-144, <https://doi.org/10.1016/j.pulmoe.2021.03.005>

^x Joint Action on Tobacco Control (2024) A Webinar from the Joint Action on Tobacco Control project on Smoke and Aerosol Free Environments. JATC2-WP8: Webinar on SAFE "Webinar on the evidence for supporting the expansion of Smoke and Aerosol Free Environments (SAFE) to other indoor and outdoor areas" January 19, 2024. <https://jaotc.eu/jatc2-wp8-webinar-on-safe-webinar-on-the-evidence-for-supporting-the-expansion-of-smoke-and-aerosol-free-environments-safe-to-other-indoor-and-outdoor-areas/>

^{xi} Joint Action on Tobacco Control (2024) A Webinar from the Joint Action on Tobacco Control project on Smoke and Aerosol Free Environments. Webinar on the evidence for supporting the expansion of Smoke and Aerosol Free Environments (SAFE) to other indoor and outdoor areas. November 17, 2023. <https://jaotc.eu/webinar-on-the-evidence-for-supporting-the-expansion-of-smoke-and-aerosol-free-environments-safe-to-other-indoor-and-outdoor-areas/>

^{xii} German Federal Institute for Risk Assessment. Health Risk Assessment of Nicotine Pouches. BfR Opinion No. 042/2021 of 21 December 2021. DOI 10.17590/20220204-105615. Updated Opinion on 7 October 2022, DOI 10.17590/20220204-105615.

^{xiii} The Scottish Health Survey 2023. Main Report Volume 1. Eds. Victoria Wilson, Hannah Biggs, Susan Reid. Principal authors: Erin Deakin, Victoria Wilson, Sophie Birtwistle, Rory McClelland, Jordan Fox, Hannah Biggs, Sarah Minty. An accredited Official Statistics Publication for Scotland. Scottish Centre for Social Research ISBN 9781836019602.

^{xiv} WHO (2024). Guidelines Review Committee, No Tobacco (TFI) pp 53, ISBN: 978-92-4-009643-1.