

## Health, Social Care and Sport Committee: Tobacco and Vapes Bill Legislative Consent Memorandum (LCM): Request for further information

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Link to Legislative Consent Memorandum: <https://www.parliament.scot/-/media/files/legislation/bills/lcms/tobacco-and-vapes-bill-nov24/legislative-consent-memorandum.pdf>

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6<sup>th</sup> December 2024

Dear Convener,

### Health, Social Care and Sport Committee: Tobacco and Vapes Bill Legislative Consent Memorandum (LCM): Request for further information

The Scottish Grocers' Federation (SGF) is the leading trade association for the Scottish convenience store sector. There are 5,220 convenience stores in Scotland, which includes all the major symbol groups, co-ops and convenience multiples in Scotland. SGF promotes responsible community retailing and works with key stakeholders to encourage a greater understanding of the contribution convenience retailers make to Scotland's communities.

Being able to offer and advertise a diverse range of products is of paramount importance for local convenience stores. Modern convenience stores now offer a wide range of products and services, often at with limited financial incentive, from post office facilities, bill payment services and access to cash, to deli counters, coffee machines and collection lockers. A more restrictive range, not being able to provide easy access to the products that a customer wants or being unable to provide a 'good deal' on the 'full basket' of items customers intend to purchase, could encourage customers to search out harmful illicit products. Undermining many local businesses and the services they provide.

A typical convenience store offers a range of at least 17 kinds of different product categories. While they are ancillary to wider ranges of grocery and retail, tobacco & vaping products are one

of the product categories that some customers enter the shop to purchase. Combined, tobacco and e-cigarettes currently account for approximately 20.1% of the overall sales (UK wide).

Our SGF Local Shop Report 2024, shows that the sector has contributed over £10.8bn in Gross Value Added and over 9.4bn in taxes in the past year. ([Scottish Local Shop Report 2024](#))

Likewise, SGF recognises the associated benefits that come from communities having access to a local convenience store. With over five thousand convenience stores in Scotland, employing over 55,000 people, and with 84% of independent retailers engaged in some form of community activity in the last year. Convenience stores have an increasingly important role in their local communities. As you will be aware, convenience stores are also recognised to have a significant local economic multiplier effect, creating employment and encouraging local growth in a variety of ways.

Nevertheless, many convenience stores are facing an extremely challenging trading environment. As well as contending with their own pressures such as cost-of-living crisis, retailers are still trying to cope with higher-than-normal energy costs, high inflation and food inflation, higher interest rates, continued supply chain disruption and a substantial rise in retail crime.

This is in addition to the burden of further regulation from government across a range of issues such as restrictions to HFSS products, MUP, potential alcohol marketing restrictions, waste/recycling/EPR changes, charges for single use items, and Business Rates, also impacts on small business viability.

### **Tobacco products and the Generational Ban**

SGF promotes responsible retailing. However, it is important to mitigate any unintended consequences of a generational ban, and it is essential that careful consideration be given to how such a ban will work at an operational level, in-store.

There will be potential issues regarding the implementation and practicality of the policy as set out in the Bill, and these will have to be addressed.

Customers of all ages will be required to carry identification and be prepared to show it, despite having previously purchased the same product without any restrictions. Despite many people in

the UK not regularly carrying identification. However, our latest Crime Report indicates that the most prevalent causes of threatening behaviour in stores is the 'refusal of sale' and 'asking for proof of age'. The statistics show that 92.8% of retail workers experience abuse on a weekly basis when a sale is refused, and around half experience abuse on either a daily or weekly basis when asking for proof of age ([SGF Scottish Crime Report & Safer Business Guide 2023/24](#)). Hence, we must do all we can to educate customers, ensuring that the policy does not result in additional flashpoints, exacerbating the upsurge in retail crime.

Similarly, in Scotland retailers are legally required to record staff who sell age-restricted products they cannot buy themselves, such as cigarettes. This would apply, for example, to a 28-year-old employee after 1st January 2037. Most age restricted items, such as alcohol, will continue to require 18+ signage. Alongside, in many cases, Challenge 25 posters near to the till area, and a variety of other customer notices such as health and safety posters, customer instructions and marketing materials.

In most convenience stores, space is at a premium and the suggested wording set out in UK Government proposals will require a significant surface area in order to be legible and accessible to all customers. The complexity of a moving ban will require very clear public messaging. Appropriate and mandatory signage is essential for good practice and the sale of age restricted items, SGF is concerned that multiple messages throughout the store relating to various product ranges and items could potentially create confusion and lead to challenging interactions between customers and staff.

Furthermore, illicit trade in tobacco continues to be a significant issue. Fuelling the recent surge in retail and organised crime and undermining both the UK and Scottish Economies. Hence, enforcement agencies, SCOTSS, Trading Standards, Police Scotland & HMRC, will need to be provided extra resource to ensure that, should any generational ban be introduced, they are proactive in dealing with any escalation of this problem. SGF is of the view that the government must ensure these operational concerns form a key part of any deliberations on implementation.

Nonetheless, SGF strongly agrees with regulations and measures preventing adults from proxy purchasing on behalf of children and younger people under the age of 18, across a range of products such as tobacco, alcohol and vapes.

As stated above, SGF promotes responsible retailing, and the vast majority of convenience retailers have significant experience implementing a robust measures to prevent underage sales.

Using good practice, such as Challenge 25, and instore procedures such as a refusal register and till prompts.

However, given the nature of the restrictions there are multiple scenarios where it is either difficult or impossible to determine proxy purchasing, and this may make determination effectively impossible for a retailer. This would apply, for instance, to a person buying for their adult partner or on behalf of other adult family members, or situations such as co-workers shopping for adult colleagues at lunch.

Likewise, it is not clear that current proxy purchasing law are being enforced. As the limited examples of prosecutions highlight.

For these reasons, it is essential that any measure to enforce a prohibition on proxy sales must be accompanied by a significant public awareness campaign and additional resources for Trading Standards and enforcement agencies.

With regard to the extension of definitions of tobacco and nicotine products set out in the Bill, in general it would make sense for nicotine products to be regulated proportionately. Likewise, as they are not directly harmful, it is not clear that ancillary and related products such as papers and non-tobacco products ought to be included in the generational ban.

Nonetheless, we do want to see tighter enforcement on the issues set out above and therefore suggest that the provision and punishments set out in the Bill do not go far enough to deter non-compliance among those intentionally breaking the law.

### **Powers to restrict the sale and marketing of Nicotine Vaping Products**

As stated throughout, SGF promotes responsible community-based retailing and we support the objective of reducing use of Nicotine Vaping Products among younger people, while also protecting the natural environment from the impact of litter. Nonetheless, nicotine vaping products are a critical cessation aid for those who wish to quit smoking.

It is our view that vapes (including a choice of flavours that adult smokers use) are too critical to smoking cessation to restrict. The ban on single-use vaped, due to come into force on 1<sup>st</sup> June, alongside potential further restrictions on vaping products, disrupts more than 80% of the vape

market in Scotland with little understanding of the impact on smokers who wish to use vapes to quit. Increasing the negative perception of vaping amongst adult smokers.

Balancing the potential harms of vaping for young non-smokers against the clear benefits of vaping to adult smokers is an exceptionally difficult public policy issue. SGF's Healthier Choices, Healthier Communities campaign aims to send a clear message that if you smoke and wish to quit, then consider vaping, but if you don't smoke, don't vape. ([Healthier Choices, Healthier Communities: Reducing harm from smoking](#))

Scotland was the first part of the UK to ban smoking in public places, which has indisputably led to a reduction in smoking rates, either directly or indirectly. However, more than one-in-seven people in Scotland still smoke. To take the next step towards a smoke-free generation, there needs to be a nuanced debate about vaping. The current discourse runs the risk of going too far by making it increasingly difficult for smokers to access vaping products. NHS Scotland has previously said that:

*"There is now agreement based on the current evidence that vaping e-cigarettes is definitely less harmful than smoking tobacco. Although most e-cigarettes contain nicotine, which is addictive, vaping carries less risk than smoking tobacco. Thus, it would be a good thing if smokers used them instead of tobacco".*

Therefore, using the powers set out in the bill to further restrict access to affordable vaping products risks an increase in cigarette consumption. According to research conducted by our members, of 1,000 Scottish adults in June 2023, more than half of Scottish smokers had tried using vapes as an alternative source of nicotine.

SGF is of the view that if the measures that are currently in place had been sufficiently enforced, there would be no need for a ban on single-use vapes or further restrictions to vaping products proposed in the Bill.

With approximately 222 restricted and age restricted products on the Scottish market, the vast majority of convenience retailers are very familiar and experienced with using measures to ensure compliance. This includes significant experience implementing robust measures to prevent underage sales. For example, using good practice, such as Challenge 25, and instore procedures such as a refusal register and till prompts. SGF also recently provided Challenge 25 posters, and

an example refusal register to stores across Scotland, which were distributed to approximately 8,000 subscribers of Scottish Local Retail magazine.

Nevertheless, as stated above, evidence is now clear that too many young people are vaping. Hence, SGF has called for manufacturers and suppliers to rename and redesign the packaging of products to make them less appealing to children and young people, whilst not limiting their value as a cessation tool for adult smokers who wish to quit. We also note that leading companies have already reviewed and changed descriptors where there is a perceived appeal to children.

Likewise, SGF is of the view that if the current regulations have been enforced there would be fewer concerns regarding the environmental impact of vaping products. SGF encourages full compliance with the current Waste Electrical and Electronic Equipment (WEEE) regulations and recycling policy aimed at reducing waste and litter. SGF do this by sharing information and providing essential guidance with our members on complying to the WEEE legislation. Indeed, we have previously developed a Retailers Guide ensuring full compliance with the regulations relating to the sale of tobacco and vapes in Scotland. SGF also launched a campaign in October 2023, with members, to provide 1,000 free vape recycling bins to convenience retailers in Scotland, which were delivered in the spring of 2024. This is part of our campaign to support the acceleration of recycling points for used vapes in Scotland and builds on the significant progress that has already been made.

A lot of emphasis has been placed on the environmental impact but there has been little public communication aimed at educating vapers on returning their used vapes. This also applies to retailers and their provision of vape take-back which is also being stepped up under the reform of WEEE. We are also concerned that our members may still be expected to take-back illegal vapes into their stores if required to provide in-store bins. This could be potentially dangerous, if products are unregulated, and could impact insurance premiums.

In addition, restrictions on disposable vapes will inevitably and significantly fuel illicit trade in cheap and unregulated products. Fuelling organised crime and harming the wellbeing of communities. This is already a major factor contributing to youth vaping and the environmental impact and we note that the current regulations are only enforced to a limited extent and both Police Scotland and Trading Standards appear to have very limited resources to mitigate the rise in illicit goods that will result from the ban.

SGF has consistently worked alongside Trading Standards and authorities across Scotland, to ensure full and active compliance with the regulations on the sale of tobacco products and e-cigarettes. Our updated retailers guide Regulations for NVPs and Tobacco Compliance in Scotland, is a refresh of our previous version published in 2016, is widely distributed by Trading Standards offices across the country, ensuring retailers are familiar with and understand the key elements of the laws currently in force. (Regulations for Nicotine Vaping Products and Tobacco Compliance in Scotland)

Nonetheless, as highlighted, Trading Standards presently do not have the resources to properly enforce the current regulation and that has created the situation leading to the problems highlighted. As a result, compliant businesses that are meeting all their requirements being targeted for tighter restrictions even though they are already part of the ongoing solution.

SCOTSS and Police Scotland resources, powers and capacities are limited, and we have been informed that no additional financial capacity to manage the ban has been made available (for instance, from the £30million previously announced by the previous UK Government).

SGF is of the view that government and enforcement bodies must take a more proactive approach to clamping down on bad practice and repeat offenders. Ensuring that problem outlets are no longer able to sell these products, while responsible and compliant retailers remain free to trade within the rules. Likewise, manufacturers and wholesalers must ensure the products they are distributing to retailers are fully compliant with regulation.

Those who wish to continue to use disposable vapes will be encouraged to access illicit and unregulated goods. Now a significant proportion of the vaping products used by consumers in the UK. Which are more likely to be harmful and non-compliant to the current safety regulations in place in the UK.

According to studies carried out by colleagues in the convenience sector (ACS), the disposable vapes ban will lead to more customers (24% of current users of disposable vapes) moving to the already burgeoning illicit vape market, costing legitimate Scottish businesses £67m in lost sales and millions more in the value associated with footfall loss, threatening the viability of some stores.

SGF believes that both the UK and Scottish Government should do more to ensure retailers remain in a strong position to counter any potential illicit trade in that market by being able to offer and effectively market vaping products that help smokers, who wish to quit, stop.

The SGF Healthier Choices, Healthier Communities campaign aims to create public policy which simultaneously encourages vaping amongst adults who wish to quit smoking and discourages it amongst non-smokers. The campaign sets out 17 policy objectives:

Action by PRODUCERS SGF will encourage vape producers to:

- rename products to make them less appealing to children
- change packaging to make it less appealing to children
- encourage alternative vaping products over disposables

Action by RETAILERS SGF will work alongside retailers to:

- ensure that vaping products remain in public view, but are placed alongside tobacco products to show them as an alternative, not an addition
- ensure the continued success of Challenge 25 is maintained, alongside the robust use of a refusal register, which must be checked on a regular basis by store managers
- advocate the use of age-restricted till prompts in all stores
- ensure retailers are registered to sell both vapes and tobacco by completing the Tobacco Register
- install Challenge 25 posters and statutory warning notices, and to install Healthier Choices, Healthier Communities campaign material
- provide easy waste and recycling options for disposable vaping products

Action by POLICYMAKERS SGF will ask policymakers to:

- ensure current legislation is enforced fully to punish retailers and wholesalers responsible for illegal sales of vapes
- rule out an outright ban on disposable vapes - so as not to fuel illicit trade - and rule out restrictions on flavour, but consider restrictions on youth appealing names and packaging
- provide a forum for open discussion by all of those with the shared aim of ensuring that smokers who wish to quit can use a less harmful alternative such as vapes, whilst ensuring that non-smokers do not



## Action by ENFORCEMENT AGENCIES

SGF will ask trading standards departments to:

- ensure wholesalers check that all goods are compliant and that only compliant products are distributed to retail
- check that retailers are registered to sell both vapes and tobacco, where required
- ensure that the reduction of illicit sale of tobacco and vaping products is a primary objective for trading standards officers
- provide suitable access to recycling facilities and options for takeback
- ensure strict age enforcement and control of online vape sales for under 18's

As stated above, SGF does believe that tighter enforcement on the issues set out above should be a priority and therefore suggest that the provision and punishments set out in the Bill do not go far enough to deter non-compliance among those intentionally breaking the law.

For this reason, SGF supported a non-punitive duty on vaping products, in order to bring vapes and similar goods under the tax and enforcement of HMRC. Further protecting the industry from illicit trade and consumers from the dangers of potentially harmful unregulated products. As stated in our response to the Vaping Products Duty consultation 2024. However, we have noted concerns about the potential lack of enforcement of imports of vaping products, following the single-use ban. Potentially significantly exacerbating the volume of illicit goods entering the UK market.

With regard to the review and extension of a vape licencing scheme, SGF is a strong supporter of the Register of Tobacco & Vape Nicotine Product Retailers and have consistently encouraged full compliance with the register among our members. This includes our widely recognised Retailers Guide, [Regulations for Nicotine Vaping Products and Tobacco Compliance in Scotland](#), which is shared by Trading Standards offices across Scotland (which SGF is presenting in the process of republishing). Providing a particular focus on the responsibilities and actions which retailers must take to be compliant with legal requirements (e.g. completing the Scottish Tobacco Register, adhering to Challenge 25/ Age-verification policy, and only selling vaping products with published notifications on the UK Medicines and Healthcare products Regulatory Agency (MHRA) etc). SGF has been approached by the Scottish Government to support the review and repurposing of the Register in the coming months.

However, SGF would not support any scheme that would put an additional administrative or cost burden on small retailers at this difficult time. Likewise, it is not clear that enforcement bodies or trading standard have the resources to manage such a license. Meaning that there will be an additional burden for already compliant businesses, while bad actors continue to ignore their legal obligations.

Similarly, regardless of the outcome of the final Bill as it comes into force, any changes should be preceded with clear and comprehensive compliance guidance for retailers and a full public awareness campaign. Setting out clearly the new obligations under the regulations, providing training and assistance where possible to support the changes needed in store, and highlighting the penalties for non-compliance.

SGF welcomes the opportunity to respond to the request for further information and hopes the Committee will find the information provided in this response useful.

Yours sincerely,

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**Disclosure:**

SGF represents the entire Scottish convenience sector and many of our members sell either or both tobacco and/or nicotine vaping products. SGF also has corporate members that manufacture, produce and sell tobacco and nicotine vaping products for the UK and Scottish markets.

- SGF gives permission to the Health, Social Care and Sport Committee to publish its consultation response in full (organisation included) and to share this response internally as required.
- SGF is also content to be contacted again in the future, in relation to this consultation exercise.