

Tobacco and Vapes Bill

Lead department	Department for Health and Social Care
Summary of proposal	Primary legislation introduced to make it an offence for anyone born on or after 1 January 2009 to be sold tobacco products. A number of vaping policies, including restrictions on vape flavours, regulation of vape packaging and presentation, and regulation of point of sale for vapes, are to be implemented via secondary legislation.
Submission type	Impact assessment (IA) – 19 March 2024
Legislation type	Primary legislation
Implementation date	1 January 2027
Policy stage	Final
RPC reference	RPC- DHSC-5316(2)
Opinion type	Formal
Date of issue	04 April 2024

RPC opinion

Rating ¹	RPC opinion
Fit for purpose	<p>As originally scrutinised, the IA for the Bill submitted by the Department in November 2023 was considered not fit for purpose. The RPC had concerns over the evidence used to support key assumptions made within the quantified analysis for the Smokefree Generation policy, and there was insufficient consideration of the impact upon small and micro businesses (SMBs). In response to the RPC’s concerns, the Department provided an updated IA, in January 2024, which included a more robust quantified scenario 1² assessment of the impact of the Smokefree Generation component, as well as including an illustrative scenario 2 assessment of the vaping components enabled by the Bill. The IA covered a range of impacts including those faced by small and micro businesses. However, the IA should consider the wider impacts of the various policies more thoroughly, in particular the effect on the online vape market. On 19th March, the Department submitted a further revised IA which included an extension of the Smokefree Generation policy to</p>

¹ The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

² As set out in RPC Primary Legislation Guidance

cover Northern Ireland (previously limited to GB only); the provision of an extended power for a nicotine notification system to cover non-nicotine vapes and other consumer nicotine products.

Business impact target assessment

	Department assessment	RPC validated
Classification	Qualifying regulatory provision	Qualifying regulatory provision
Equivalent annual net direct cost to business (EANDCB)	<u>Smokefree Generation</u> £67.8 million (initial IA estimate) £97.7 million (final IA estimate) £100.5 million (revised IA estimate) <u>Vaping policies</u> Not quantified (further assessments to be produced for secondary legislation)	<u>Smokefree Generation</u> £100.5 million (2019 prices, 2020 pv) <u>Vaping policies</u> Not quantified (further assessments to be produced for secondary legislation)
Business impact target (BIT) score	<u>Smokefree Generation</u> £502.6 million <u>Vaping policies</u> Not quantified (further IAs to be produced for secondary legislation)	<u>Smokefree Generation</u> £502.6 million <u>Vaping policies</u> Not quantified (further IAs to be produced for secondary legislation)
Business net present value	<u>Smokefree Generation</u> -£1,913.5 million <u>Vaping policies</u> Not quantified (further IAs to be produced for secondary legislation)	
Overall net present value	<u>Smokefree Generation</u> £18,584 million <u>Vaping policies</u> Not quantified	

(further IAs to be produced for secondary legislation)

RPC summary

Category	Quality ³	RPC comments
EANDCB	Green	The IA now identifies appropriately all of the likely direct impacts of all policies considered. The IA includes a fully quantified assessment of the impacts of the Smokefree Generation policy (covering all of the UK), and an indicative assessment of the vaping policies considered, in line with RPC guidance.
Small and micro business assessment (SaMBA)	Green	The IA now includes a suitable consideration of the impacts upon SMBs, including setting out the number likely to be affected by the various policies, as well as discussing potential aspects of policies that may have a disproportionate impact SMBs. In addition, the IA now discusses the possible existence of a small number of SMBs as manufacturers of specialist tobacco products.
Rationale and options	Weak	The Department does well to explain the rationale for intervention for the Smokefree Generation policy, with this being supported to some degree by stakeholder feedback. The rationale for intervention for the range of vaping policies needs to be strengthened, particularly in light of mixed-to-negative consultation feedback and a lack of appropriate consideration of the role of online vape sales, as well as the decision taken in other countries not to proceed with similar smoking ban policies.
Cost-benefit analysis	Satisfactory	The IA includes a detailed account, including additional detail in relevant annexes, of the modelling that has been used for establishing both the counterfactual and impact of the policy. The IA generally explains key assumptions well, however, could provide more discussion for some where the original source is not immediately clear.
Wider impacts	Weak	The Department has included an overview of the distributional and equalities assessment that has been undertaken for these policies. However, the IA does not provide any evidence on the behavioural impacts on inbound tourism which could be substantial. In addition, the IA does not

³ The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. Please find the definitions of the RPC quality ratings [here](#).

include a competition assessment for the Smokefree Generations policy, despite one being included for the vapes policy.

Monitoring and evaluation plan **Weak**

The IA does not include a monitoring and evaluation (M&E) plan for any of the policies in the Bill. While the Department indicates its intent to commission external research to understand the effect of the policies, the IA needs to include some indication of the likely structure of any evaluation. This is particularly lacking for the Smokefree Generation policy being enacted through the Bill itself.

Summary of previous RPC scrutiny

The Department first submitted an IA for scrutiny covering the measures contained in the Bill in November 2023. During the initial review, the RPC determined that the Department had not provided appropriate evidence and justification to support a number of key assumptions made within the quantified analysis for the Smokefree Generation policy. As these proposals will be implemented through the Bill itself, this prevented the RPC from validating the EANDCB for the policy. In particular, the Department had not explained sufficiently how key assumptions in the modelling (of both the counterfactual and policy itself) had been derived, or sufficiently supported, including those underpinning the instigation rates used. In addition, the IA did not include suitable evidence to support the assumptions relating to the costs to business of verifying the age of customers. Moreover, the IA did not explain suitably why the approach taken to estimate the lost profit to retailers was appropriate. The initial review also identified that the SaMBA for the Smokefree Generation policy failed to identify the presence and importance of SMBs across the affected sectors, nor was there sufficient explanation to support the view that there would not be a drop in footfall-related sales for SMBs.

The Department in responding to those initial concerns added further discussion to explain the approach and evidence used within the modelling and has included a more realistic consideration of the likelihood that some people will continue to smoke (including illegally) after the introduction of the ban. Furthermore, the Department included additional evidence and discussion to support the estimates for the cost of age verification and provided an appropriate discussion to support the methodological approach taken to estimating the scale of the lost profit to retailers. Additionally, the Department has rectified previous concerns with the SaMBA, by including numbers setting out the presence of SMBs in the retail sector and providing evidence to support the Department's assessment of the impacts faced by SMBs.

The Tobacco and Vapes Bill was introduced to Parliament on 20th March 2024. The RPC had, prior to this date, issued a fit for purpose opinion of the Bill's IA on 12th February 2024 and had been preparing to publish it upon introduction of the Bill. The Department, on 19th March, submitted a revised IA which now includes an extension of the Smokefree Generation policy to cover Northern Ireland (previously limited to GB only); the provision of an extended power for a nicotine notification system to cover non-nicotine vapes and other consumer nicotine products; as well as the inclusion of evidence not available at the time of the previous submission.

The IA (January 2024) submitted by the Department in response to the concerns raised during initial review, saw the estimate for the EANDCB increase from £67.8 million to £97.7 million. It should be noted, that while this increase was in part driven by the adjustment to the assumption relating to age verification and the profit margin assumed for retailers, it was also a result of the increase in geographic scope of the policy (changing from England only, to that of Great Britain) at that time. The subsequent March 2024 IA, by changing further the geographic scope to include Northern Ireland, has increased the EANDCB for the Smokefree Generation policy to £100.5 million.

Summary of proposal

Tobacco use remains a significant challenge to public health across the United Kingdom and is the leading cause of premature death. Evidence shows that majority of smokers start at a young age. Although a high proportion of people want to quit smoking, it can be very challenging due to the addictive nature of nicotine. Evidence also shows that people who start smoking as teenagers have higher levels of nicotine dependence compared to those starting aged over 21 years and are less likely to make an attempt to quit and succeed. As a result, the Government propose prevention of future generations from ever taking up smoking and getting smoking prevalence to zero per cent.

The Department has consulted on the following options:

1. **Option 1 (Do nothing)** – This option would mean the legal age of sale for purchasing tobacco would remain at 18 years.
2. **Option 2 (Smokefree Generation Policy)** – This option would introduce legislation to make it an offence for anyone born on or after 1 January 2009 to be sold tobacco products in the UK. Over time, an increasing proportion of the population would be unable to purchase tobacco products, effectively increasing the legal age of sale until no-one can be sold tobacco products.

For the Smokefree Generation policy, the IA estimates a net present value (NPV) of approximately £18,584 million over the 30-year appraisal period (2027 to 2056). The IA estimates an EANDCB figure of £100.5 million and a business NPV figure approximately of -£1,913.5 million, for the Smokefree Generation policy only. The largest impacts, which have been monetised in the IA, include productivity gains and a reduction in tobacco duty receipts. For businesses, the largest estimated direct impact is the loss in profit due to fewer smokers purchasing tobacco.

The IA also considers a number of vaping policies. The options below outline the various vaping policy options that the Department has consulted upon, that could be implemented through secondary legislation using the powers conferred by the Bill.

The Department has consulted on the following options to restrict vape flavours:

1. **Option 1 (Do nothing)** – No restriction on combinations of flavours or flavour types for vapes.
2. **Option 2** – Limit how vape flavours are described, e.g., 'blueberry' flavour instead of 'blueberry muffin'.
3. **Option 3** – Limit the ingredients in vapes.
4. **Option 4** – Limit the distinguishing flavours (e.g., the taste and smell) of vapes.

The Department has consulted on the following options to regulate vape packaging and product presentation:

1. **Option 1** – Prohibit the use of cartoons, characters, animals, inanimate objects and other child-friendly imagery, on both the vape packaging and vape device. This would still allow for colouring and tailored brand design.

2. **Option 2** – Prohibit the use of all imagery and colouring on both the vape packaging and vape device. This would still allow for branding such as logos and names.
3. **Option 3** – Prohibit the use of all imagery, colouring and branding for both the vape packaging and vape device. This is equivalent to the standardised packaging rules on tobacco.

The Department has consulted on the following options to regulate point of sale displays for vapes:

1. **Option 1** – Vapes must be kept behind the counter and cannot be on display. This is equivalent to the point of sale display restrictions for tobacco products.
2. **Option 2** – Vapes must be kept behind the counter but can be on display.

In addition to the headline vaping policies discussed above, the Bill also proposes the:

- prohibition of the sale of non-nicotine vapes to under 18s⁴ in England and Wales (and in the case of Northern Ireland, providing a power to do so);
- prohibition of the distribution of free samples of vapes, vaping products and nicotine products to under 18s^{Error! Bookmark not defined.} in England and Wales (and in the case of Northern Ireland, providing a power to do so);
- provision of powers to extend to other nicotine products, the above two proposals;
- introduction of powers in England and Wales for local weights and measures authorities to issue fixed penalty notices to enforce tobacco and vaping product (nicotine and non-nicotine) offences;
- provision of powers to extend the notification, reporting and vigilance requirements in The Tobacco and Related Products Regulations 2016 to non-nicotine vaping products and nicotine products, including the associated fee requirements.

It should be noted that the proposals to prohibit the sale of non-nicotine vapes, and to prohibit the distribution of free vape and non-vape samples in England and Wales will be introduced directly through the Bill.

For the vaping policies, which require future secondary legislation, the IA provides only indicative estimates for some of the costs and benefits, with no summative NPV or EANDCB provided at this stage, as the policy interventions will require further

secondary legislation. Due to these differences in the level of assessment for the respective policies, the IA does not provide an overall NPV and EANDCB for the whole of the policy.

While the IA states the Smokefree Generation policy will take effect from 1 January 2027, no clear date of implementation has been established for the vaping policies. For the purposes of the IA's indicative assessment, it is assumed that the vaping policies will come into force from 2025, although no exact date has been provided nor is there rationale for the implementation year being 2025.

EANDCB

Smokefree Generation Policy

As this policy will take effect through the Bill, the Department has sought to provide a scenario 1 assessment for this policy, in accordance with RPC guidance⁵. The IA has correctly classified direct impacts to businesses. The following impacts have been included in the EANDCB:

- Lost profits due to fewer smokers to retailers and wholesalers.
- Age verification for retailers and shisha bars.
- Familiarisation (staff training and awareness) for retailers and shisha bars.
- New signage for retailers and shisha bars.

The IA includes a detailed discussion, including further annexed information, of the modelling that has been used to establish the counterfactual, as well as to understand the likely impact on the rate of smoking in the intervention scenarios. The calculations informing the EANDCB are, after post-initial review improvement, clearly explained and sufficiently supported by evidence.

In addition, the Department has included a brief qualitative discussion of the impacts on the small number of domestic producers of tobacco products (e.g., producers of pipe tobacco and snuff), whilst noting the limitations in the evidence available for these businesses.

Vaping policies

The Department has included an indicative scenario 2 assessment, as set out in RPC guidance, for the various vaping policies that will be enabled but not enacted by the Bill. The IA includes a good attempt at setting out the expected scope of businesses affected and the likely impacts that they will face, if secondary legislation was to be introduced. The indicative assessment of the vaping policies would be improved by considering the likely overlap in impacts faced by businesses, not only of the vaping policies being considered within the context of the Bill, but also those being deployed more broadly to tackle the take-up of vaping by young people (e.g., a potential ban on disposable vapes).

⁵ <https://www.gov.uk/government/publications/rpc-case-histories-primary-legislation-ias-august-2019>

The RPC expect the Department to develop its understanding of the impacts of the vaping policies, ahead of further assessments produced (as necessary) ahead of the introduction of any related secondary legislation.

The Department has now included a qualitative assessment of the two vaping policies (i.e. the ban on sales of non-nicotine vape products and distribution of free samples to under-18s) that will take effect through the Bill. While it is noted that the impacts of these interventions are expected to be small, the IA would be improved if the Department is able to provide additional evidence to further support this position and the decision not to quantify the impacts of these policies on proportionality grounds for inclusion in the EANDCB figure.

SaMBA

Smokefree Generation Policy

The IA includes figures setting out the prominence of SMBs, in particular within the retail market. Rather than relying upon official government figures for broader retail, the Department has utilised research that allows a more granular assessment of the number of small retail establishments. In addition to setting out the number of small retail firms affected, the IA includes a summary of the scale of the costs attributed to these businesses from those that have been quantified. The IA would be improved by including a comparison of the costs faced by SMBs, with those of all businesses, to illustrate more clearly to readers, the share of the impact faced by these firms. While the Department has included some discussion surrounding the difficulty to ascertain evidence on the presence of domestic SMB manufacturers, it should consider in more detail the specific impacts faced by these businesses. The IA correctly identifies that the main direct impact on these manufacturers would be the foregone profit from goods sold, appropriately taking into account production costs, however the IA should also discuss the broader implications for their viability as a business. Whilst many SMB retailers identified may have a broad inventory of goods for sale, these manufacturers may specialise in the production of tobacco-related products and the restriction of their customer base may have a significant effect. The IA would benefit further from considering what support or mitigation could be provided to these firms to help them transition to producing alternative products for sale.

The IA also includes some consideration of the potential indirect impacts for SMB retailers. While the Department has included some research findings to support the position taken, that there is unlikely to be a significant reduction in footfall-related sales (driven by tobacco related products), the evidence appears to focus on transaction numbers, whilst not considering the value of these transactions. The IA would benefit from the Department undertaking a more detailed analysis of the consumer habits, and drivers of these habits in smaller retailers, with a focus on the role of tobacco products.

Vaping policies

The IA states that no SMBs would be exempt from the overall Bill, but acknowledges that, for specific regulations, some SMBs may be exempt; the IA provides the example of specialist vape retailers being exempt from certain vaping regulations. Furthermore, retailers are the only SMBs included within the scope of the IA's SaMBA, with the IA stating that limited evidence means that the proportion of small and micro vape wholesalers and manufacturers, is unknown. The IA states its intention to provide an enhanced SaMBA for vape retailers, wholesalers and manufacturers in future IAs for any related secondary legislation.

With regards to restricting vape flavours, the IA states that the main costs to small and micro retailers are familiarisation and disposal costs as well as reduced profits from fewer vape sales. However, the IA would benefit from providing indicative estimates for disposal costs to small and micro retailers; the IA should also make clear what are the disposal costs to retailers, i.e., whether they refer to the cost of disposing of existing vape stock. The IA should explain what comprises the indicative familiarisation costs and how the indicative profit loss is calculated. The IA would benefit from providing an estimate for a reduction in footfall-related sales.

Medium-sized business exemption

While the Department has included an assessment of the impacts faced by SMBs across the various policies covered by the Bill, the IA does not include a similar assessment of the impact upon medium-sized businesses (MSBs) or at least address directly why they cannot be exempt from the requirements being proposed. The IA should include an assessment of the impact on MSBs in line with government guidance⁶.

Rationale and options

Rationale- Smokefree Generation Policy

The Department has included a range of evidence to support the rationale for intervention. To support the position that the ban on sales is necessary, the IA includes evidence illustrating that the downward trends in the number of people smoking will always be affected by some inertia and will never truly reach zero. Furthermore, the IA includes a summary of feedback received from stakeholders during consultation, where responses indicate that a majority of respondents were in favour of the policy. However, the IA would benefit from discussing the key concerns raised by the 32 per cent of consultees who did not support the policy recommendation. The rationale provides summaries of modelling results for raising the legal age of sale of tobacco, from New Zealand, Singapore, the US and the Solomon Islands. The IA provides a good discussion on the impacts of the Tobacco 21 (T21) policy implemented in the US in 2019, which is supported by various credible studies detailed in the IA. Whilst New Zealand has since changed its policy position on its version of the ban, the Department highlights that the evidence used

⁶ <https://www.gov.uk/government/publications/better-regulation-framework/medium-sized-business-regulatory-exemption-assessment-supplementary-guidance--2>

to shape and promote that policy remains valid. However, the IA would benefit from discussing what considerations and evidence drove the change in the direction of policy in New Zealand (and Malaysia), identifying whether these are applicable to the design and implementation of this policy.

Whilst the Department has made a clear case for the implementation of this policy, the IA should also consider broader societal factors that drive rates of smoking, particularly amongst younger age groups and whether alternative policies (either in place of, or to support the ban) could correct for these factors. The Department could have assessed these factors through the consideration of evidence gathered and evaluated on previous smoking related policy interventions, for which a post-implementation review (PIR) has been produced.

The IA needs to consider also whether the success of achieving the objective, chiefly a reduction to a zero per cent rate of smoking prevalence, will be undermined by the continued likelihood of some people buying cigarettes illegally for others, as well as those who will be banned from purchasing them in the UK still being able to purchase these elsewhere.

Rationale - Vaping policies

The IA uses published evidence from the Office of Health Improvement and Disparities to explain the relatively less harmful health impacts of vaping in the short- and medium-term compared to smoking tobacco. The IA also explains that vaping should not be taken up by non-smokers or children, as the main ingredient is nicotine, which can pose health risks and be highly addictive for young people and non-smokers. Furthermore, the IA provides evidence on the prevalence of regular vape use among younger people between the ages of 11 to 15 years. Supporting analysis by ASH has shown an upward trajectory in the number of young people who have tried vaping, since before the first COVID-19 lockdown. Moreover, the IA explains that a number of measures have already been implemented to deter and restrict non-smokers and young people from vaping.

The Department make a well-evidenced case for the restriction of vape flavours in an attempt to reduce their attractiveness to young people including children. The IA goes on to explain that current vape packaging vary in their overall design (e.g., colour, style, imagery, branding and shape), which can make them appealing to children. The IA details similar findings from a study that assessed the impact of standardised packaging on 16 to 19-year-olds across England, Canada and the US. The IA uses this combination of evidence to support its rationale for the Government regulating vape packaging, to reduce their appeal to children.

It is noted that there are currently no restrictions around the display of vapes at the point of sale in shops and the Department presents a range of evidence to highlight the problem of children noticing point of sale displays for vapes in shops. The IA should provide information on how point of sale displays are currently likely to differ between retailers and the types of displays young people are drawn more to. Furthermore, while the Department's focus is on the sale of vapes in shops, in the research cited by the Department on the structure of the vape market it noted how

significant online vape retailers (both specialised and those selling other goods) are supplying the market. Despite this, the IA does not consider restrictions or limitations on the point of sale online and, therefore, to what extent this will have a negative impact on the objectives of the policy. This would be more significant if children were more likely to purchase vapes online than in physical stores, and the Department should also seek to address this in future assessments.

Similar to smoking, the IA would benefit greatly from considering the societal factors and pressures that drive people, in particular children, to begin vaping, and whether potential solutions to these factors could be alternative (or complementary) interventions to those being proposed.

As is the case for the Smokefree Generation policy, the Department has included a summary of stakeholder responses from consultation, however unlike Smokefree Generation it does not appear that stakeholders were in favour of all of the policies being considered. The IA should address in more detail why, in spite of perceived negative responses from stakeholders, the preferred options should be implemented, or what further engagement the Department intends, to ensure that concerns raised by stakeholders are reflected in the policy design.

Options - Smokefree Generation

The Department has ruled out some of the options considered on the basis that they would not achieve the policy objective of preventing future generations from taking up smoking and getting smoking prevalence to zero per cent (e.g., raising the age of sale for tobacco products to a specific age); however, based on the international examples provided by the IA in its rationale, these options would still, in theory, yield some reduction in smoking prevalence. The IA has discounted the option to prohibit the sale of tobacco products to prevent anyone of any age from purchasing them; as the overall policy objective is to get smoking prevalence to zero per cent, the IA should make clear why it will not prevent any adults, who currently smoke, from continuing to do so. The IA does not consider the option to increase the age of sale of tobacco from 18 to 21 years, despite evidence showing that people who start smoking as teenagers have higher levels of nicotine dependence compared to those starting over the age of 21 years and who are less likely to make an attempt to quit. An additional option, which increases the age of purchasing tobacco from 18 to 21 years, could in theory, provide many of the benefits of the Smokefree Generation policy, without the same degree of enforcement and administrative costs.

The IA would benefit from considering whether these discounted options could be used to support the preferred option and ensure the objectives of the policy are met.

Options - Vaping policies

For each of the vape policies covered in the IA, the Department has considered more than one policy option in addition to the do-nothing baseline. However, the IA could benefit from considering further potential options, in particular non-regulatory options seeking to target societal factors that could be implemented.

Cost-benefit analysis

Evidence and data

The Department has drawn upon a range of evidence sources including stakeholder consultation and engagement, bespoke pieces of research conducted by industry and academia, official government data, as well as previous policy interventions (including both domestic and international) and reviews of where available. While the Department has used recent evidence across most of the IA, some of the evidence or research cited is not that recent. The IA, where necessary, notes when the evidence used is the most recent or applicable available, however the Department should outline the efforts that were made to ensure that this was the most recent data available, as well as consider what work can be done to improve this evidence for use in future assessments.

Methodology – Smokefree Generation

The IA sets out clearly the modelling that has been undertaken, including both an overview in the main body of the assessment as well as a more detailed annex. Furthermore, since submission of the IA, the Department has published a further analytical note covering the modelling work, which has been undertaken, to look at determining the stock of likely smokers in the counterfactual and interventions scenarios.

The Department has provided some discussion of alternative approaches that could have been taken to estimate the loss of profit to retailers, from lost future sales of tobacco products. While this discussion includes reference to the evidence being insufficient to support an alternative approach, the IA would benefit from providing more detail of those limitations and whether this would be evidence that the Department may wish to gather to support any future evaluation of the policy.

The largest quantified costs included in the IA are the reduction in future profits for retailers and wholesalers of tobacco related products, which would appear to have an undiscounted value of £1.5 billion and £427 million respectively, across the entire appraisal period. As the policy is to restrict the sale of all tobacco related products, the approach taken by the Department is to attribute the typical annual number of cigarettes consumed to each smoker. While the Department provides justification for this approach in the IA, noting that alternative approaches (such as a top-down assessment looking at a reduction in the overall size of the market) are not suitable due to evidence limitations, the IA would benefit from setting out more clearly the annual breakdown of this impact to better illustrate how these will be distributed.

Assumptions, risk and sensitivity – Smokefree Generation

The IA makes use of many assumptions which, while supported by some evidence, may appear too general, and perhaps not quite reflect the true impact faced by businesses and individuals. In particular, while the costs faced by business overall may be supported by evidence, the assumptions informing these would not appear to reflect the more-nuanced experience of SMBs. The IA would benefit more strongly

from, in addition to the quantification of impacts, the inclusion of more qualitative assessments of the reality of key assumptions and estimated costs.

The IA models six scenarios including the baseline and central scenario, as part of its sensitivity analysis. The scenarios modelled assume greater or lesser reductions in instigation rates for those under the age of sale, compared to the central scenario which assumes 30 per cent reduction in instigation rates. The IA should explain more clearly how the Department decided on the scenarios to model in its sensitivity analysis as it is not always apparent why these choices have been made.

Furthermore, the IA acknowledges uncertainties that could affect its estimation of costs and benefits, with the largest quantified benefit being the productivity gains from a fall in the number of smokers. However, the ASH estimates that this is based upon, do not control for other factors that may affect a person's earnings; this in turn means that the IA overestimates the productivity gains from the Smokefree Generation policy. The IA should explore ways to mitigate uncertainty in the analysis and identify methods to isolate the impacts of smoking on people. There also appears to be an over-reliance on evidence from ASH, particularly for the IA's discussion of productivity benefits which relies entirely on a single ASH source.

The Department has utilised prior assumptions made in previous related IAs, however the IA should explain how these assumptions remain relevant and truly representative of the impacts. This is particularly true for the assumptions relating to the cost of age verification, where the Department should discuss what feedback it has received previously on these assumptions and how that has informed its decision to use them in this assessment.

Wider impacts

Smokefree Generation Policy

The IA explores the relationship between smoking and ill-health. As part of its discussion of the legislation on health and longevity impacts, the IA could consider the relationship between smoking and mental health, as well as the relationship between smoking and alcohol and drug addiction. For example, if those who smoke are more likely to drink alcohol, the IA should explore the impacts of the legislation on alcohol purchase. The IA discusses the possible impacts affecting different groups with protected characteristics. The IA states that more deprived areas may see a bigger positive impact and reduction in health inequalities caused by tobacco use. The light-touch equalities assessment does not consider that due to its highly addictive nature, the demand for tobacco can be very inelastic, particularly for those from lower socioeconomic backgrounds. As smoking prevalence falls over the long run, as forecast by the IA, there should be a discussion on what this could mean for the supply of tobacco products. This should include any price implications, as higher prices could affect disproportionately people from lower socioeconomic backgrounds, i.e., due to their inelastic demand for tobacco, they may end up spending a higher proportion of their disposable incomes on tobacco products. People from more deprived communities may also face greater barriers to quitting or

may be more likely to take up smoking⁷, which could be exacerbated by stress-related hardship and smoking being prevalent among friends and family⁸.

In addition, the IA should explore the unintended consequence of the proposals creating 'black markets' for the sale of tobacco products to those under the legal age, as well as an increase in the rate of those purchasing cigarettes when overseas. For example, those above the legal age of purchase may exploit this fact by bulk buying cigarettes to sell to those under the legal age. The IA also does not consider the possibility of family members and friends offering cigarettes to those under the legal age.

The IA also does not account for the possibility that people who would be under the legal age in the UK, may purchase tobacco products abroad (e.g., on holiday or duty-free cigarette purchases from airports) and bring these back to the country, either for recreational use or for selling.

While the Department has supported the position, that the policy is unlikely to have substantial impacts on tourism, immigration, trade or investment due to an absence of concerns being raised during policy development, the IA should question further whether this really will be the case. With the proposed ban being somewhat unprecedented globally, it does not seem entirely safe to assume that minimal impact would indeed be the case. The IA needs to have considered the behavioural impacts on tourism (both the level of inbound tourism to the UK and the spending habits of those returning from abroad), as well as the attractiveness of the country to business leaders who use tobacco products, which might influence inward investment choices. Furthermore, the IA should discuss the potential impacts of the policy given the extension to Northern Ireland and the consideration of any divergence in policy between there and the Republic of Ireland.

Vaping policies

The IA explains that only an initial assessment of the wider impacts of the vaping policies included within the Bill has been provided at this stage. The Department intends to produce more-detailed analysis in future IAs of the finalised vaping policies that would be brought forward via secondary legislation.

The IA should discuss the potential creation of 'black markets' for restricted vape flavours as there could be potential for 'black market' vapes to include more harmful ingredients⁹. With regards to other unintended consequences, there appears to be limited assessment of the risk of the vaping proposals increasing tobacco smoking.

The IA should explore how the disposal of prohibited vape flavours would interact with DEFRA's proposal to reform the UK producer responsibility system for waste electricals. The IA should discuss how the disposal of existing, non-compliant vape stock could be conducted in ways that limit the environmental impacts as much as possible. The disposal of existing vape packaging and changes to the presentation

⁷ https://ash.org.uk/uploads/ASH-Briefing_Health-Inequalities.pdf

⁸ <https://ash.org.uk/uploads/HIRP-Low-income-households.pdf?v=1652365229>

⁹ <https://www.bbc.co.uk/news/health-65614078>

of vape packaging could also yield potentially significant direct costs to businesses, which the IA has omitted.

The IA's light-touch equalities assessment uses data across four different sources including the ONS and ASH, over 2021 and 2022. The equalities assessment breaks down vaping prevalence based on age, gender, socio-economic status and ethnicity, and concludes that the impacts of the vape policies on different socioeconomic groups or ethnicities, is uncertain. The IA should consider the impact on consumer incomes of those with more inelastic demand for vapes and whether cost-pass through (e.g., potentially higher costs to manufacturers of changing existing vape packaging) and the overall reduction in supply of vapes, will disproportionately affect specific groups of people. In addition, the IA should consider that restricting vape flavours may make vaping less enjoyable for many people, which could in turn increase cigarette cravings and make specific groups of people more vulnerable to relapse.

The IA states that it is unaware of any evidence to suggest the vaping policies would have a significant impact on those living in rural areas. However, it would be useful for the IA to break down vaping prevalence by rural and urban areas, to highlight any disparities.

The IA's competition assessment makes use of the Competition and Market Authority's Competition Assessment checklist. In addition, the competition assessment notes that the impacts in this area would vary between the different vape policies. It highlights that restricting vape flavours could result in manufacturers that specialise in specific vape flavours that could become prohibited, being forced to exit the market, which would directly limit the number of suppliers in the market. As previously mentioned, the focus of the IA is on the in-person sale of vapes, with the discussion of online sales rather limited. The competition assessment should discuss in detail the potential restructuring of the market, to a stronger online presence, as a result of the in-person sales restrictions being considered.

Monitoring and evaluation plan

The IA states that any regulations implemented using powers created by the Bill will be subject to review after five years, in the form of a PIR. The IA cites a few data sources such as the Smoking, Drinking and Drugs use among Young People Survey and ONS' Adult Smoking Habits in the UK, which could be used to monitor smoking and vaping prevalence. However, the IA does not provide a monitoring and evaluation plan (MEP) for the measures in the Bill, stating that an MEP is still in development (paragraph 617). The MEP should set out exactly how the Department intends to isolate the impacts of the Smokefree Generation Policy, i.e., how would a reduction in deaths and disease be attributed only to the policy and not to external factors? The IA explains additionally that more-detailed MEPs will be outlined in future IAs for vaping policies brought forward via secondary legislation.

For further information, please contact regulatoryenquiries@rpc.gov.uk. Follow us on Twitter [@RPC_Gov_UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](#) or consult our website www.gov.uk/rpc. To keep informed and hear our views on live regulatory issues, subscribe to our [blog](#).

One Committee member did not participate in the scrutiny of this case to avoid a potential conflict of interest.