

## Tobacco and Vapes Bill

|                            |  |
|----------------------------|--|
| <b>Lead department</b>     | Department for Health and Social Care  |
| <b>Summary of proposal</b> | Primary legislation introduces making it an offence for anyone born on or after 1 January 2009, to be sold tobacco products, and to ban vape advertising, sponsorship and vending machines. Other policies will be implemented via secondary legislation, including powers to expand existing smoke-free places and restrictions on vape flavours, packaging, and point of sale. |
| <b>Submission type</b>     | Impact assessment (IA) – 15 October 2024   |
| <b>Legislation type</b>    | Primary legislation  |
| <b>Implementation date</b> | 1 January 2027 for the progressive smoking ban; from 2026 onwards for above stated vape advertising, sponsorship and vending machines policies.  |
| <b>Policy stage</b>        | Final  |
| <b>RPC reference</b>       | RPC-DHSC-5316(3)   |
| <b>Opinion type</b>        | Formal   |
| <b>Date of issue</b>       | 31 October 2024  |

## RPC opinion

| <b>Rating<sup>1</sup></b> | <b>RPC opinion</b>  |
|---------------------------|---|
| <b>Fit for purpose</b>    | The Department, following the decision by the new Government to re-introduce the Bill, has added elements in the IA, which required RPC scrutiny, including two new bans on: vape advertising & sponsorship, and vending machines. The IA covers a range of elements via a series of powers, if the powers are taken, then the RPC expects further assessments at secondary legislation stage. As originally submitted, the IA was not fit for purpose, due to insufficient consideration of the impact upon small and micro businesses (SMBs). The IA is now fit for purpose, but should be improved, for example, with much better consideration of a monitoring and evaluation plan. |

<sup>1</sup> 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.

## Business impact target assessment

|   | Department assessment  | RPC validated  |
|---|--|--|
| <b>Classification</b>   | Qualifying regulatory provision  | Qualifying regulatory provision                                      |
| <b>Equivalent annual net direct cost to business (EANDCB)</b> | <u>Progressive smoking ban</u><br>£67.8m (initial estimate)<br>£100.5m (revised) <sup>2</sup><br>£155.8m (final, 2024 prices, 2024 pv) | <u>Progressive smoking ban</u><br>£155.8m (2024 prices, 2024 pv)     |
|   | <u>Vape advertising and sponsorship ban</u><br>£728.6m (final IA estimate)   | <u>Vape advertising and sponsorship ban</u><br>£728.6m               |
|   | <u>Vape vending machine ban</u><br>£128m (final IA estimate)   | <u>Vape vending machine ban</u><br>£128m                             |
|   | <u>Other policies</u><br>Not quantified (further IAs to be produced)   | <u>Other policies</u><br>Not quantified (further IAs to be produced) |
| <b>Business net present value</b>                             | <u>Progressive smoking ban</u><br>-£2,966m   |  |
|   | <u>Vape advertising and sponsorship ban</u><br>-£6,272m  |  |
|   | <u>Vape vending machine ban</u><br>-£1,101m  |  |
|   | <u>Other policies</u><br>Not quantified (further IAs to be produced)   |  |
| <b>Overall net present value</b>                              | <u>Progressive smoking ban</u><br>£30,382m   |  |
|   | <u>Vape advertising and sponsorship ban</u><br>-£6,252m  |  |
|   | <u>Vape vending machine ban</u><br>-£1,098m  |  |
|   | <u>Other policies</u><br>Not quantified (further IAs to be produced)   |  |

<sup>2</sup> 2019 prices, 2020 pv

## RPC summary

| <b>Category</b>                             | <b>Quality<sup>3</sup></b> | <b>RPC comments</b>   |
|---|----------------------------|---|
| EANDCB                                      | <b>Green</b>               | The IA identifies the likely direct impacts of all policies considered. The IA includes quantified assessments of the impacts of the progressive smoking, vape advertising and vending machine bans, and an indicative assessment of other policies, in line with RPC guidance.   |
| Small and micro business assessment (SaMBA) | <b>Green</b>               | The IA considers the impacts upon SMBs, setting out the number likely to be affected and quantifying the impact, particularly on convenience stores. The IA has been improved by explaining lead-in times, to mitigate impact. The IA should be improved with more detail on the breakdown of the different impacted types of SMBs.                     |
| Rationale and options                       | <b>Satisfactory</b>        | The Department explains the rationale for the progressive smoking ban well, with this being supported by some stakeholders, but should explain why other countries e.g. New Zealand, did not proceed with similar bans. The rationale for the vape advertising and vending machine bans is clear about the need to reduce uptake amongst young people.  |
| Cost-benefit analysis                       | <b>Satisfactory</b>        | The IA includes detailed accounts of the modelling used for establishing the counterfactual and impact and uses updated data from Action on Smoking and Health (ASH). The IA generally explains key assumptions well. The IA would be improved with further assessment of any health trade-offs between the policies, including quantitative estimates. |
| Wider impacts                               | <b>Weak</b>                | The Department includes an overview of the distributional and equalities assessment undertaken. The IA must detail evidence on the behavioural impacts from the progressive smoking ban on inbound tourism. The IA needs a detailed competition assessment for the progressive smoking ban, particularly as one is included for the vape policies.      |
| Monitoring and evaluation plan              | <b>Very weak</b>           | The IA does not include a monitoring and evaluation plan for any policy. While the Department indicates its intent to commission external research to understand the effect of the policies, the IA must include some indication of the structure of an evaluation.   |

<sup>3</sup> 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](#).

## Summary of previous RPC scrutiny

The Department first submitted an IA covering measures in the Bill in November 2023. The RPC determined the Department had not provided appropriate evidence to support key assumptions made for the progressive smoking ban. As some proposals will be implemented through the Bill, this prevented the RPC from validating the EANDCB. The IA did not include suitable evidence to support the assumptions relating to the costs to business of verifying the age of customers. The IA did not explain suitably why the approach taken to estimate the lost profit to retailers was appropriate. The SaMBA for the progressive smoking ban failed to identify the presence and importance of SMBs.

The Department submitted a revised IA in January 2024. It added sufficient discussion to explain the approach and evidence used, and included more realistic consideration of the likelihood some people will continue to smoke, including illegally, after the ban. The Department added evidence and discussion to support cost estimates for age verification and appropriate discussion to support the method to estimate lost profit to retailers. The Department rectified concerns within the SaMBA on the progressive smoking ban, by including numbers of SMBs in retail and providing evidence on the impacts faced by SMBs. The revised IA saw the EANDCB increase, driven by adjustments to assumptions on age verification, profit margins for retailers, and increase in scope, from England to Great Britain. The RPC issued a fit for purpose opinion on 12 February 2024. The Tobacco and Vapes Bill was first introduced to Parliament on 20 March 2024, with a revised IA. The Department, on 19 March, submitted a further revised IA which included extending the ban to Northern Ireland, that increased the EANDCB to £100.5 million. The RPC published a fit for purpose opinion on 8 April 2024.

Following the change in Government, and ahead of the reintroduction of a changed Bill, the Department submitted a revised IA on 22 August 2024, which provided an increased EANDCB for the progressive smoking ban, primarily due to costs now being presented in 2024 prices and values, instead of 2019 prices and values. This rebasing is because the Bill is being reintroduced in a new parliament, and to ensure consistency, as EANDCBs for new elements are in 2024 prices. As originally submitted, this IA was not fit for purpose, due to insufficient consideration of the impact upon SMBs within the SaMBA, regarding the new vape advertising and vending machine bans. The IA did not provide enough evidence on the impact on SMBs, nor how much evidence had been tested with stakeholders.

The Department has now improved the SaMBA in response to the RPC's concerns. The updated assessment provides more analysis of the impact on SMBs and addresses key areas of concern. The IA now discusses disproportionate effects on SMBs and outlines mitigation, including some stakeholder engagement and lead-in times for implementation. The IA should still be improved with more detail on the breakdown of the different impacted types of SMBs.

## Summary of proposal

Tobacco use remains a significant challenge to public health across the UK and is the leading cause of premature death. Evidence shows most smokers start at a young age. Although a high proportion want to quit, it is challenging due to the addictive nature of nicotine. Evidence shows people who start smoking as teenagers have higher levels of nicotine dependence compared to those starting aged over 21 and are less likely to attempt to quit and succeed. The Government proposes prevention of future generations from ever taking up smoking and getting smoking prevalence to zero per cent. As a result, the Government proposes several bans, to be enacted via the Primary legislation:

### *Progressive smoking ban*

The Department consulted on the following options:

1. **Option 1 (Do nothing)** – This would mean the legal age of sale for purchasing tobacco would remain at 18 years.
2. **Option 2 (Progressive smoking ban - preferred)** – This 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.

The IA estimates a net present value (NPV) of approximately £30,382 million over the 30-year appraisal period (2027 to 2056). The latest IA estimates an EANDCB figure of £155.8 million. The largest monetised impacts, 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.

### *Vape advertising and sponsorship ban*

The Department considered the following options:

1. **Option 1 (Do nothing)** – continue with the current reduced advertising and sponsorship restrictions for nicotine vapes, and full advertising and sponsorship restrictions for tobacco products only.
2. **Option 2 (Vape advertising and sponsorship ban - preferred)** - full regulatory ban of advertising, or sponsorship, which is intended to promote herbal smoking, vaping or nicotine products, or cigarette papers, and powers to create regulations on brand-sharing.

The IA estimates a net present value (NPV) of approximately £6,252 million over the 10-year appraisal period (2027 to 2036). The IA estimates an EANDCB figure of £728.6 million. For businesses, the largest estimated direct impact is the loss in profit due to reduced consumption of vapes.

### *Vape vending machine ban*

The Department considered the following options:

1. **Option 1 (Do nothing)** - continue without restrictions on vaping and nicotine product vending machines.
2. **Option 2 (Vape vending machine ban - preferred)** - Full ban on vaping and nicotine product vending machines.
3. **Option 3 (Location restriction)** - Restrict where machines can be operated to age restricted over-18 premises.
4. **Option 4 (Age verification)** - Mandate specific age-verification software
5. **Option 5 (Location restriction and age verification)** - Restrict both the location of machines and mandate specific age verification.

The IA estimates an NPV of approximately -£1,098 million over the 10-year appraisal period (2026 to 2035). It estimates an EANDCB of £128 million. For businesses, the largest estimated direct impact is the profit loss due to reduced consumption of vapes.

### *Other vaping policies*

The IA considers other policies. The options below outline vaping policy options that the Department has previously consulted upon, that could be implemented through secondary legislation using powers conferred by the Bill. The RPC would expect to see further assessments as and when these powers are taken forwards.

The Department 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. taste and smell) of vapes.

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

1. **Option 1** – Prohibit use of cartoons, characters, animals, inanimate objects and other child-friendly imagery, on the vape packaging and device. This would still allow for colouring and tailored brand design.
2. **Option 2** – Prohibit use of all imagery and colouring on vape packaging and device. This would still allow for branding such as logos and names.
3. **Option 3** – Prohibit use of all imagery, colouring and branding for packaging and device. This is equivalent to the packaging rules on tobacco.

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

1. **Option 1** – Vapes must be kept behind the counter, not 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 policies discussed above, the Bill proposes to:

- Ban the sale of non-nicotine vapes and nicotine products to under 18s. The Bill will also ban the purchase of these products on behalf of someone under 18.
- Ban the free distribution of vaping and nicotine products to people of all ages, with exemptions for public authorities.
- Provide regulation making powers to:

consider expanding existing smoke-free places legislation from indoor to outdoor public places and, create heated tobacco-free places.

extend measures in the Bill to other products such as devices that are used for smoking.

establish a new registration system which will include reporting requirements for vaping products, nicotine products, tobacco products, herbal smoking products and cigarette papers. This builds on the notification system in place for nicotine vapes and tobacco products.

create vape-free places.

create a licensing scheme in England for the retail sale of tobacco, herbal smoking, vaping and nicotine products, and cigarette papers.

Proposals to ban the sale of non-nicotine vapes, and nicotine products, to under-18s, and distribution of free vape and non-vape samples are discussed in the Bill. The Department assessed the potential impact of these policies and estimates show limited impacts on businesses. For policies which require secondary legislation, the IA provides qualitative assessments, or indicative estimates for costs and benefits, with no summative NPV or EANDCB required.

Due to the differences in the level of assessment for different policies and their interaction, the IA does not provide an overall NPV and EANDCB for the Bill. The progressive smoking ban, vape advertising, sponsorship and vending machine bans are Scenario 1 assessments, while the rest of the proposed policies are Scenario 2.

The IA states the progressive smoking ban will take effect from 1 January 2027. The vape advertising and sponsorship ban will apply from 2027. The vape vending machine ban is expected to apply from 2026, coming into force 6 months after Royal Assent.

## EANDCB

### *Progressive smoking ban*

As this policy will take effect through the Bill, the Department provided a scenario 1 assessment, in accordance with RPC guidance.<sup>4</sup> The IA has correctly classified direct impacts to businesses. The following impacts were 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 annexed information, of the modelling 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 clearly explained and sufficiently supported by evidence. The Department included a qualitative discussion of the impacts on the domestic producers of tobacco products (e.g. pipe tobacco, snuff), whilst noting limitations in evidence available for these businesses.

### *Vape advertising and sponsorship ban*

This policy will take effect through the Bill and the Department has provided a scenario 1 assessment. The IA has correctly classified direct impacts to businesses. The following impacts were included in the EANDCB:

- Lost profits for retailers, wholesalers, and producers from reduced consumption of vapes
- Familiarisation costs for retailers, advertising companies, and producers
- Enforcement costs for Advertising Standards Agency (ASA)
- Reduced advertising spend

The IA includes detailed discussion of the modelling used to establish the counterfactual, as well as to understand the likely impact on vape consumption. The calculations informing the EANDCB are explained and supported by evidence. The IA notes some advertising agencies may experience a profit loss, but the impact is excluded from the EANDCB, as there is an offsetting gain to other businesses reduction of advertising spend.

Key assumptions include: an 11.7% reduction in vape consumption due to the ban, based on evidence from tobacco advertising bans and uplifting profits to account for 50% of the market being non-disposable vapes. The Department has clearly noted limitations in the available data.

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<sup>4</sup> <https://www.gov.uk/government/publications/rpc-case-histories-primary-legislation-ias-august-2019>



### *Vape vending machine ban*

This policy will take effect through the Bill and the Department has provided a scenario 1 assessment. The IA has correctly classified direct impacts to businesses. The following impacts were included in the EANDCB:

- Lost profits due to reduced sales for retailers, wholesalers and manufacturers
- Disposal costs
- Asset value loss for vending machine owners
- Familiarisation costs for vape vending machine distributors and host sites
- Transition costs for vape vending machine distributors

The IA includes detailed discussion of the methodology used to estimate the number of vape vending machines and distributors in the UK, as well as the expected reduction in vape consumption due to the ban. The calculations informing the EANDCB are clearly explained and supported by evidence, though in some cases proxy data was used, due to limited data on the vape vending machine market. The Department has made a reasonable attempt to quantify impacts given the limited evidence base.

The IA acknowledges uncertainties in the estimates, particularly regarding the size of the vape vending machine market and projected growth. Sensitivity analysis has been conducted on key assumptions to illustrate the potential range of impacts.

### *Other policies*

The Department has included an indicative scenario 2 assessment, as set out in RPC guidance, for other policies enabled by the Bill, but not enacted. The IA includes a reasonable attempt at setting out the expected scope of businesses affected, if secondary legislation is introduced.

The RPC expects the Department to strengthen the rationale and develop its understanding of the impact of the other policies, in further assessments before the introduction of secondary legislation.

The Department has included a reasonable indicative assessment of other policies, e.g. the ban on sales of non-nicotine vape products under-18s and distribution of free samples, that will take effect through the Bill.

## SaMBA

### *Progressive smoking ban*

The IA includes figures setting out the prominence of SMBs, in particular within the retail market. Rather than relying upon government figures for broader retail, the Department has utilised research that allows more granular assessment of the number of small retailers. The IA includes a summary of the scale of the costs attributed to these businesses. The IA would be improved by including a comparison of the costs faced by SMBs, with those of all businesses, to illustrate more clearly, the share of the impact faced by these firms. The Department should consider specific impacts faced by all domestic SMBs such as manufacturers; the IA should discuss the implications for their viability as a business. These businesses may specialise in production or retail of tobacco-related products and the restriction of their customer base may have significant effects. The IA would benefit from considering what support or mitigation can be provided to help transition to producing alternative products.

The IA includes consideration of the indirect impacts for SMBs. The Department has included 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 focuses on transaction numbers, whilst not considering the value of these transactions. The IA would benefit from the Department undertaking more detailed analysis of consumer habits, and drivers of these habits in smaller retailers, with a focus on the role of tobacco products.

### *Vape advertising, sponsorship and vending machines bans*

The IA of 22 August 2024 did not provide enough evidence on whether the impact on SMBs was disproportionate, nor how much evidence was tested with stakeholders. The Department has improved the SaMBA in response to the RPC's concerns.

The IA now clearly explains why SMBs cannot be exempted, e.g. citing the need to prevent children's exposure to vape advertising across all business types. The IA provides updated detailed estimates of the number of SMBs affected, and key impacts such as reduced profits. The IA acknowledges limitations in data for vape wholesalers and manufacturers, noting the proportion of SMBs in these categories is unknown. The Department assumes all 60 vape vending machine distributors are SMBs, and 99% of the estimated 10,547 host venues (clubs, pubs, bars) are SMBs. The IA includes updated figures on the prominence of SMBs in the retail market. The Department estimates 66% of vape retailers in the UK (39,348 businesses) are SMBs: convenience stores and specialist vape retailers.

The Department has updated the estimate that 20% of convenience store sales come from tobacco and vape products. The IA provides the scale of costs attributed to SMBs, from reduced profits from lower vape sales. The IA compares these costs to the average annual profit of convenience stores to provide context. The updated estimated reduced profit in the first year (£6,000) is equivalent to approximately 1.4% of annual convenience store profit, but losses are likely to be offset by goods

purchased in place of vapes. The IA now discusses disproportionate effects on SMBs. The Department is unable to provide profit loss estimates for larger businesses and therefore determine if the policies would have a disproportionate impact on SMBs. However, it notes vape sales could account for a larger proportion of profit, compared to larger businesses.

The IA now outlines mitigation measures, including stakeholder engagement and lead-in times for implementation. The Department explains that representative bodies have supported a need to reduce the appeal and availability of vapes to children, and cited their main concerns as being lead in times and guidance. Any loss of sales, from any reduced footfall, was not brought up by stakeholders regarding vape proposals. The Department now states that lead-in is likely to be about 1 year (the vending machine ban will be 6 months from Royal Assent and the Bill's passage is assumed to take 6 months). The IA should be improved with detail on the breakdown of the impacted types of SMBs, e.g. specialist vape retailers.

#### *Other vaping policies*

The IA acknowledges that, for future specific regulations, some SMBs may be exempt e.g. specialist vape retailers. The IA states its intention to provide an enhanced SaMBA for vape retailers, wholesalers and manufacturers, in IAs for secondary legislation.

With regard to restricting vape flavours, the IA states that the main costs to SMB retailers are familiarisation and disposal costs as well as reduced profits from fewer vape sales. A future IA would benefit from providing indicative estimates for disposal costs to SMB retailers, and should make clear the disposal costs to retailers, i.e. whether they refer to the cost of disposing of existing vape stock. The IA should explain how the indicative profit loss figures are calculated.

## **Rationale and options**

### *Rationale - Progressive smoking ban*

The Department has included a range of evidence to support the rationale for intervention. To support the position that the ban is necessary, the IA includes evidence illustrating the downward trend in people smoking will always be affected by inertia, and never reach zero. The IA includes a summary of feedback received from stakeholders during consultation, where responses indicate most were in favour of the policy. However, the IA should discuss key concerns raised by the 32 per cent who did not support it. The rationale provides summaries of modelling results for raising the 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 policy implemented in the US in 2019, which is supported by credible studies detailed in the IA. Whilst New Zealand has changed policy on its ban, the Department highlights the evidence used to shape and promote that policy remains valid. However, the IA should discuss what considerations drove the change in 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, the IA should consider broader societal factors that drive rates of smoking, particularly amongst young people and whether other policies to support the ban, could help correct these factors. The Department could have assessed these factors through consideration of evidence gathered and evaluated on previous smoking related policy interventions, for which post-implementation reviews (PIR) have been produced.

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

#### *Rationale - Vape advertising and sponsorship ban*

The Department has included a range of evidence to support the rationale. The IA presents data showing the increase of vaping among young people, with 18% of children aged 11-17 having tried vaping in 2024, up from 14% in 2020. The IA cites evidence that advertising is noticed more by young people and appeals to children.

The IA explains that, while vaping poses less risk than smoking in the short to medium term, long-term health impacts are unknown. The main health risk identified is nicotine addiction, particularly for adolescents whose brains are still developing. The IA argues advertising restrictions are necessary to reduce the visibility and appeal of such products to children. The Department draws on evidence from tobacco advertising bans to support the effectiveness of this approach.

The IA considers the partial restrictions on vape advertising under the Tobacco and Related Products Regulations (TRPR) 2016, making good use of its PIR, noting these have been insufficient to prevent increasing youth awareness and uptake of vaping. The Department cites ASA reports of increasing use of social media to advertise vapes to children, despite existing prohibitions.

While the IA makes a case for further restrictions, it should be strengthened by providing more international evidence, more evidence on the direct link between vape advertising and youth uptake, discussing in more detail the effectiveness and limitations of current advertising restrictions, and addressing the impact on adult smokers using vapes as a smoking cessation aid.

#### *Rationale - Vape vending machine ban*

The IA presents a clear rationale, focusing on the need to prevent youth access to vape products and reduce vaping. The IA notes the difficulty of enforcing age restrictions on vending machines, particularly for proxy sales; the potential for vending machines to normalize vaping; the evidence of increasing youth vaping and the health risks, and that Scotland banned vape vending machines in 2018.

The Department cites relevant data, including a survey by Action on Smoking and Health (ASH) showing that 6.6% of 11–17-year-olds who vape have used vending machines as a source. The rationale draws parallels with the 2011 ban on tobacco vending machines, which faced similar concerns about youth access.

The rationale should be improved by providing more international evidence and on the specific role of the online vape market.

#### *Rationale - Other vaping policies*

The Department make a well-evidenced case for the restriction of vape flavours to reduce their attractiveness to young people. The IA explains that vape packaging i.e. colour, imagery, branding and shape, can make vapes appealing to children. The IA details 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 evidence to support its rationale for regulating vape packaging, to reduce appeal to children.

There are currently no restrictions on the display of vapes at point of sale and the Department presents evidence to highlight the problem of children noticing point of sale displays for vapes. The IA should provide information on how point of sale displays differ between retailers and the types of displays young people are drawn more to. While the Department's focus is on vape sales in shops, in the research cited it notes how significant online retailers 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 must address this in future assessments. Future IAs would benefit from considering societal factors and pressures that drive people, in particular children, to begin vaping, and whether solutions to these factors could be complementary interventions.

The Department included a summary of consultation responses, however unlike the progressive smoking ban, several stakeholders were not in favour of all policies considered. Future IAs need to address why, despite perceived negative responses, the preferred options should be implemented, or what further engagement the Department intends, to ensure concerns are reflected in policy design.

#### *Options - Progressive smoking ban*

The Department ruled out some options, as 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 age of sale to a specific age. However, based on international examples provided in the rationale, these options would still yield reduction in smoking prevalence. The IA discounts the option to prohibit the sale of tobacco products to prevent anyone of any age from purchasing them. As the objective is to decrease smoking prevalence to zero per cent, the IA should make clear why the Government 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 from 18 to 21, despite evidence showing people who start smoking as teenagers have higher levels of dependence compared to those starting after 21 and who are less likely to try to quit. An additional option, which increases the age from 18 to 21, could provide many of the benefits of the progressive smoking ban, without the same degree of enforcement and administrative costs. The IA should consider

whether these discounted options could be used to support the preferred option and ensure the objectives of the policy are met.

#### *Options - Vape advertising and sponsorship ban*

The IA provides a clear explanation against the status quo option, arguing it would not achieve the objective of preventing advertisements from being visible to children. However, the IA should be improved by detailed discussion of options other than a ban e.g. targeted restrictions on advertising channels most visible to young people, non-regulatory alternatives, such as industry codes of practice.

The IA should provide more discussion on potential variations within the full ban, such as different implementation timelines or phased introduction of restrictions. The IA would benefit from thorough discussion of the potential risks and unintended consequences of a full ban, such as the impact on adult smokers using vapes to quit smoking, or the potential for driving advertising to less regulated channels.

#### *Options - Vape vending machine ban*

The Department provides an explanation for discounting the location restrictions and age verification options, citing continued risk of proxy sales and advertising concerns. The IA should consider whether elements of the discounted options could be used as interim measures.

#### *Options - Other vaping policies*

For other policies, e.g. flavours, future IAs should consider non-regulatory options.

## **Cost-benefit analysis**

### *Methodology – Progressive smoking ban*

The IA sets out clearly modelling undertaken, including a detailed annex. The Department has published a further analytical note covering the modelling work undertaken, to look at determining the stock of likely smokers in the counterfactual and intervention scenarios.

The Department provides discussion of alternative approaches that could have been taken to estimate profit loss to retailers, from lost future sales of tobacco products. While this discussion notes evidence is insufficient to support an alternative approach, the IA would benefit from more detail on the limitations and whether this would be supportive evidence that the Department may wish to gather to support evaluation.

The largest quantified costs included in the IA are the reduction in profits for retailers and wholesalers of tobacco related products, which have an undiscounted value of £2.4 billion and £508 million respectively, across the 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 justifies this approach, noting alternative approaches (such as top-down assessment looking at reduction in the overall market size) are

unsuitable due to evidence limitations, the IA should set out clearly the annual breakdown of this impact, to illustrate how these will be distributed.

*Methodology - Vape advertising, sponsorship and vending machine bans*

The IA sets out clearly the modelling undertaken and detailed explanations of the methodology. The methodology is clear and logical, making reasonable use of available data, including to estimate consumption changes. It could be improved by providing more justification for using tobacco advertising ban impacts as a proxy for vapes and better accounting of the complexity of the vape market, including online sales and different retailer types, as well as monetisation of advertisers' profit loss.

The IA shows useful analysis estimating how many people would need to give up vaping, for the health benefits to break even with the costs. However, there are limitations in how the IA describes the interplay between vaping and tobacco use. The IA notes 1 QALY loss is estimated for tobacco use and 0.2 from vaping. This implies that the measures need to result in five times as many people who will no longer vape or smoke, than people who stop switching from tobacco to vaping. The IA should be improved with better quantification of health trade-offs, and quantitative benefit estimates of the vape advertising and vending machine bans.

*Assumptions, risk and sensitivity – Progressive smoking ban*

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

The IA acknowledges uncertainties that could affect estimates of costs and benefits; the largest quantified benefit is productivity gain from a fall in the number of smokers. However, ASH estimates this is based on, do not control for other factors that may affect a person's earnings; this means the IA overestimates productivity gain from the progressive smoking ban. The IA should explore how to mitigate uncertainty and identify methods to isolate the impacts of smoking on people.

The Department has utilised prior assumptions made in related IAs; however the IA should explain how these assumptions remain relevant and 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 on these assumptions and how that has informed its decision to use them.

### *Assumptions, risk and sensitivity - Vape advertising and sponsorship ban*

The IA relies on assumptions and acknowledges uncertainty. The central assumption of an 11.7% reduction in vape consumption is based on evidence from tobacco advertising bans. The IA assumes a simplified supply chain and 50% of the market is non-disposable vapes, which may not capture market complexity. The IA conducts sensitivity analysis, including consumption reduction scenarios of 5% (low) and 20% (high). The IA should consider the impact of increased advertising and accelerated product launches ahead of the ban - a pattern observed with tobacco advertising bans.

### *Assumptions, risk and sensitivity - Vape vending machine ban*

The IA relies on key assumptions: 2% of vape sales are from vending machines, about 11,000 vape vending machines in operation, 60 vape vending machine distributors, and the ban will result in an estimated 2% reduction in consumption. The IA acknowledges the uncertainty in these and conducts sufficient sensitivity analysis on key variables. It models scenarios with 1% and 0.5% reductions in vape consumption and considers different numbers of vending machines.

The IA discusses risks and uncertainties, including the potential for the vape vending machine market to grow significantly without intervention, the uncertainty about the number of vending machines and distributors, and potential variations in the impact on different types of businesses.

The IA could be improved by providing more justification for the 2% reduction in vape consumption. It could consider a wider range of scenarios in the sensitivity analysis, such as different growth projections as well as discussing how these assumptions and uncertainties might affect the conclusion about the policy's effectiveness. The IA should consider potential unintended consequences, such as: a shift to online vape purchases or alternative sources, and the impact on smoking cessation efforts if vapes become less accessible.

## **Wider impacts**

### *Progressive smoking ban*

The IA explores the relationship between smoking and ill-health; it could consider the relationship between smoking, mental health, alcohol and drug addiction. 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 IA's light-touch equalities assessment appears not to consider that due to its highly addictive nature, tobacco demand can be very inelastic, particularly for those in lower socioeconomic groups. As smoking prevalence falls, as forecast in the IA, there should be discussion on what this could mean for supply. This should include price implications, as any higher prices would disproportionately affect people from lower socioeconomic groups. People from more deprived communities face greater



barriers to quitting and are more likely to smoke,<sup>5</sup> which could be exacerbated by stress-related hardship and smoking being prevalent among friends and family.<sup>6</sup>

The IA must explore the unintended consequence of the proposals creating 'black markets' for the sale of tobacco to those under legal age, as well as an increase in the rate of those purchasing cigarettes when overseas. For example, those above legal age may exploit this by bulk buying cigarettes to sell to those under legal age. The IA does not consider the possibility of family members and friends offering cigarettes to those under legal age, or that people who would be under the legal age in the UK, may purchase tobacco products abroad (e.g., on holiday or duty-free purchases from airports) and bring these back, either for recreational use or 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 whether this will be the case. With the proposed ban being somewhat unprecedented globally, it seems speculative to assume minimal impact would be the case. The IA needs to have considered the behavioural impacts on tourism (both the level of inbound tourism 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. The IA must discuss the potential impacts given the extension of the policy to Northern Ireland and the consideration of divergence in policy between there and the Republic of Ireland.

#### *Vaping policies*

The IA notes only an initial assessment of the wider impacts of the vaping policies has been provided at this stage, but some policies will be implemented by the Bill. The Department intends to produce more-detailed analysis in future IAs of the policies brought forward via secondary legislation.

The IA must discuss the potential creation of 'black markets' for restricted vape flavours as there could be potential for 'black market' vapes to include more harmful ingredients.<sup>7</sup> With regards to other unintended consequences, there is limited assessment of any risk of the vape policies, hampering tobacco use reduction. The IA should explore impacts on adults using vapes to quit.

The IA should explore how the disposal of vending machines and prohibited vape flavours would interact with DEFRA's proposal to reform the UK producer responsibility system for waste electricals. The IA should discuss how disposal of existing, non-compliant vape stock could be conducted that limits the environmental impacts. The disposal of existing vape packaging and changes to presentation of packaging could yield significant costs to businesses, which the IA has omitted.

The IA's equalities assessment uses data across four different sources including the ONS and ASH, over 2021 and 2022. The equalities assessment breaks down vaping

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<sup>5</sup> [https://ash.org.uk/uploads/ASH-Briefing\\_Health-Inequalities.pdf](https://ash.org.uk/uploads/ASH-Briefing_Health-Inequalities.pdf)

<sup>6</sup> <https://ash.org.uk/uploads/HIRP-Low-income-households.pdf?v=1652365229>

<sup>7</sup> <https://www.bbc.co.uk/news/health-65614078>

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 incomes of those with more inelastic demand for vapes and whether cost-pass through (e.g. potentially higher costs to manufacturers of changing vape packaging) and the reduction in supply of vapes, will disproportionately affect specific groups. The IA should consider that restricting vape flavours may make vaping less enjoyable, which could increase cigarette cravings and make specific groups more vulnerable to relapse.

The IA states it is unaware of any evidence to suggest vaping policies would have a significant impact on those in rural areas. However, it would be useful 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. The competition assessment notes that the impacts in this area would vary between the different policies. It highlights that restricting vape flavours could result in manufacturers that specialise in specific flavours that could become prohibited, being forced to exit the market, which would limit the number of suppliers. The focus of the IA is on in-person sale of vapes, with limited discussion of online sales. The competition assessment should discuss the potential restructuring of the market, to a stronger online presence, because 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 data sources such as the Smoking, Drinking and Drugs use among Young People Survey and ONS' Adult Smoking Habits in the UK, which can be used to monitor smoking and vaping prevalence. However, the IA does not provide a monitoring and evaluation plan (MEP), stating it is still in development. The MEP must be provided and set out how the Department intends to isolate the impacts of policies, e.g. how would a reduction in deaths and disease be attributed to one policy and not external factors.

### Regulatory Policy Committee

For further information, please contact [regulatoryenquiries@rpc.gov.uk](mailto: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](http://www.gov.uk/rpc). To keep informed and hear our views on live regulatory issues, subscribe to our [blog](#). A Committee member did not participate in scrutiny of this case to avoid a potential conflict of interest.