



# Safonau Masnach Cymru Trading Standards Wales

## Legislative Consent Memorandum for the Tobacco and Vapes Bill

Trading Standards Wales (TSW) represents the twenty local authority Trading Standards Services across Wales and provides a strategic leadership role for the service. The organisation acts under the auspices of Public Protection Wales with a view to promoting the continuous improvement of Trading Standards, striving for consistency of approach whilst enhancing consumer protection.

The remit of the services is wide and through the enforcement of EU, UK, and Welsh Government legislation, they serve to ensure a fair-trading environment for both consumers and reputable businesses. This is done through a variety of means including, enforcement, advice to businesses, mediation, and awareness-raising across a broad range of issues.

### Overall views

1. Your overall views on the policy objectives of the Bill to introduce measures to stop people from ever starting smoking and becoming addicted to tobacco products, as well as introducing measures to reduce youth vaping.

**The measure would create a two-tier age system for tobacco whereby someone born in 2008 would be legally able to purchase tobacco products whilst someone born in 2009 would not. Having a two-tier age system means that young people could still obtain cigarettes from older friends or family members that smoke and, it is unlikely that any parties would report each other to the authorities as both would face legal consequences in doing so.**

**We do not think it is realistic to believe that in the future, 30, 40, or 50 year old adults who are purchasing tobacco products would be challenged about their age and asked to prove they were born before January 2009.**

**The measures do not include a strategy for dealing with the impact that this legislation would have on the illegal tobacco/vapes market.**

**Despite the benefits of the measure, questions need to be asked as to whether a tobacco control policy that adopts an aggressive prohibitionist approach towards consumers is the most effective means of achieving a tobacco free future. Welsh Government needs to examine closely the reasons why this health measure was unsuccessful in New Zealand and repealed in February 2024 despite receiving support from academics, clinicians, local communities and the general public.**

2. Do you think the legislation sufficiently protects young people from vaping while supporting smokers to quit?

**It is felt that legislation alone will not achieve this. There needs to be an emphasis on education and tackling illegal 'underground' sales once the legislation comes into force. This cannot be undertaken without adequate local authority resourcing.**

**It is accepted that vapes are a tool to assist people to stop smoking tobacco products but they are also seen as being 'cool' by young people and so as long as people are vaping, whether to aid quitting or not, they will still be seen as attractive to young people and, therefore, there is a risk of addiction from an early age.**

#### **Impact on areas of devolved competence**

3. Do you support the principle of Westminster legislating in areas that are devolved to the Welsh Government?

**It is felt that this question is political in nature and as such is not one for officers to respond to. The key issue here in our view is that the legislation is fit for purpose. However, where there is a border with England, it makes sense for there to be a national approach to this, rather than a devolved approach where confusion may be experienced with substantially different approaches adopted on each side of the border.**

4. How does the Bill align with the goals set out in A Smoke-Free Wales and the Welsh Government's public health priorities? Does it adequately respect the devolved nature of public health policy?

**It does align with the goals set out in 'A Smoke-Free Wales'.**

#### **Reducing Smoking Rates:**

- **'A Smoke-Free Wales', the Welsh Government's strategy, sets a target for Wales to become smoke-free by 2030. The Tobacco and Vapes Bill directly supports this by implementing stricter measures around tobacco use and vaping, thus working toward reducing smoking rates across the population, including through measures that target youth and vulnerable groups.**

#### **Protection of Children and Young People:**

- **Both the Welsh Government's public health priorities and 'A Smoke-Free Wales' place a strong emphasis on preventing the uptake of smoking and vaping among young people. The Tobacco and Vapes Bill may help to address this by introducing controls on the sale of vaping products, prohibiting flavoured products that appeal to youth, and enforcing age restrictions.**
- **This directly aligns with Wales's focus on protecting the next generation from the harms of nicotine addiction.**

#### **Promoting Public Health Education and Awareness:**

- **The Bill's provisions to regulate tobacco and vape products and increase public awareness can also support the Welsh Government's goals of promoting public health through education. This includes campaigns about the risks of smoking and vaping and the benefits of quitting, in line with strategies to support people in making healthier choices.**

### **Addressing Disparities:**

- **The Tobacco and Vapes Bill could also help reduce health inequalities, which is a priority for the Welsh Government. Smoking rates are often higher in disadvantaged communities, and by controlling access to tobacco and vaping products, the Bill may help address these inequalities.**

**While the Bill aligns with the goals of ‘A Smoke-Free Wales’ and Welsh public health priorities, there may be areas where it needs to balance UK-wide regulations with local needs. It could be argued that aspects of the Bill such as regulations that affect the production, taxation, or importation of tobacco or vaping products could undermine Wales’s autonomy over health policy. However, if the Bill is crafted with clear consultation and cooperation with devolved administrations, it should respect the Welsh Government’s role in health policy.**

**In conclusion, the Tobacco and Vapes Bill generally aligns with the goals of ‘A Smoke-Free Wales’ and the Welsh Government’s public health priorities, particularly in reducing smoking rates, preventing youth uptake, and supporting cessation. The Bill also respects the devolved nature of public health policy by complementing Welsh priorities and collaborating with broader UK regulations, ensuring a coherent approach to tobacco control in Wales. However, in order to achieve the objectives of the Wales smoke free strategy, this legislation must be just one of multiple interventions designed to meet that aim. Legislation will only tackle the supply side of the issue and, without parallel interventions and resource to tackle demand, success will be much less likely.**

5. **Do you think there are areas where greater collaboration with other UK nations is necessary, and/or should Wales consider developing additional, specific measures? (e.g. to consider inequalities in smoking rates across different demographics in Wales, including socio-economic and regional disparities?)**

**Yes, Wales should consider developing additional, specific measures in the tobacco and vapes Bill to address inequalities in smoking rates across different demographics, including socio-economic and regional disparities. Smoking rates are disproportionately higher among certain groups, including people from lower socio-economic backgrounds, those living in deprived areas, and specific ethnic or age groups. Tailoring the Bill to address these inequalities could enhance its effectiveness in achieving Wales’s public health goals, particularly in reducing smoking rates and improving health outcomes for vulnerable populations. For example, targeted public health campaigns, regional and community-based interventions, access to smoking cessation services, engagement with local communities, youth smoking prevention and support for vulnerable groups.**

**Cross party support prioritising the health and wellbeing of the population is essential and the Government would need to commit to strengthening tobacco cessation services and the implementation of innovative smokefree strategies.**

**Integrating targeted measures in the tobacco and vapes Bill to address socio-economic and regional inequalities in smoking rates would significantly strengthen Wales’s efforts to reduce tobacco-related harm. By ensuring that interventions are specifically designed to meet the needs of vulnerable and high-risk populations, Wales can make substantial progress towards achieving its smoke-free 2030 goal. These measures would help to reduce health inequalities, improve public health outcomes, and ensure that all demographics benefit from tobacco control policies, regardless of their socio-economic status or geographic location.**

## Tobacco

6. Your views on proposals to:
- a) make it an offence to sell tobacco products, herbal smoking products and cigarette papers to anyone born on or after 1 January 2009;

**Please see response to Q.1**

- b) make it an offence for a person aged 18 or over to buy, or attempt to buy tobacco products, herbal smoking products and cigarette papers for someone who was born on or after 1 January 2009;

**We would query whether the legal age should increase in relation to proxy sales, otherwise it could be difficult to enforce in 10 years' time. At present, if a person aged 18 or over supplies a person under the age of 18 the offence is complete. Currently there are insufficient penalties to act as a deterrent and it is very difficult to get the evidence to prove proxy sale offences. It would be interesting to establish how many, if any, local authorities have prosecuted proxy sales.**

**The new aspects could make it very confusing and should ultimately read along the lines of "if a person born before January 2009 buys or attempts to buy someone born after January 2009 tobacco products, etc. then they commit an offence".**

**It is essential that this new Bill includes Nicotine products due to the increase in the number of young people using nicotine pouches that currently have no age restriction that applies to them. They should also be considered for proxy sales.**

7. Your views on proposals to:
- a) ban vaping products and nicotine products from being sold to under 18s  
**A. Yes, we support this**
  - b) ban advertising, promotion and sponsorship agreements for vapes and nicotine products;  
**A. Yes, we support**
  - c) provide regulation-making powers to regulate the flavours, packaging, and other product standards of vapes and nicotine products;  
**A. Yes, we support**
  - d) provide powers to regulate the display of vapes and nicotine products, empty retail packaging and their prices;  
**A. Yes, we support**
  - e) ban the presence of vape and nicotine product vending machines;  
**A. Yes, we support**

f) introduce powers to introduce a new and more robust registration scheme for all vapes and nicotine products. This scheme would also cover tobacco products and non-nicotine vapes;

**We find the wording in this question conflicting as reference is made to licensing rather than registration in Q.9. The Directors of Public Protection Wales have responded to an earlier Welsh Government consultation in relation to this matter, favouring the licensing approach, primarily due to the ability to impose strict conditions to a licence, which could and should include geographical location of premises.**

g) introduce powers to extend smoke-free laws so that they could also prohibit the use of vapes and heated tobacco products in specified areas where smoking is prohibited.

**TSW appreciates both the advantages and disadvantages of such a prohibition. It recognises that there will be certain situations where a ban on vaping could be problematic, for example, mental health settings, prisons, etc. It also recognises that vaping continues to be an aid to quitting tobacco and whilst it might well be viewed as anti-social, to inhibit its use could be counterproductive in terms of how the public construe the relative harms of vaping and tobacco smoking.**

8. Are the proposed restrictions on advertising, packaging, and flavours sufficient to prevent uptake among young people while maintaining access for smokers using vapes for harm reduction?

**Potentially. A collective, multi-faceted approach with partners such as Public Health Wales and Ash Wales is deemed essential. Any restrictions must be able to address the issues of supply and demand.**

#### **Enforcement**

9. Your views on proposals to provide enforcement authorities with the power to issue Fixed Penalty Notices of £200 for the underage sale, proxy sale, and free distribution of cigarette papers and tobacco, herbal smoking, vaping and nicotine products, breaches of age of sale notice restrictions and display restrictions, and FPNs of £2,500 for offences in connection with licensing.

**The sum of £200 is inadequate to act as a real deterrent. In terms of cost recovery, it can cost a local authority £40 to issue an invoice. Non-payment is unlikely to be pursued through the courts as the legal cost to the authority would significantly exceed the penalty to be recovered. There needs to be a stepped approach whereby the penalty increases with non-payment within a specified period, leading ultimately to prosecution if necessary. We find aspects of this question confusing as reference is made to licensing in this question whereas question 7 f) refers to a registration scheme.**

10. What potential challenges do you foresee for the enforcement of these regulations in Wales?

**Resources, both human and financial, test purchasing, capacity, repeat offending and inadequacy of civil penalty. As well as these there are inherent difficulties issuing PCNs including:**

**Limited enforcement powers** – Local authority officers may have limited powers to enforce penalties, especially if the violator refuses to pay or refuses to identify themselves

**Difficulty in locating Individuals** - If the penalty charge notice is issued to someone who cannot be readily identified it can be difficult to enforce the fine. Additionally, tracking down individuals who fail to pay the fine or do not provide accurate information can be time-consuming and costly.

**Safety Concerns** - In some cases, issuing penalty charge notices can put local authority officers at risk, especially if they are dealing with confrontational members of the public or are in locations where there is a heightened risk of violence or aggression.

**Training and Consistency of Enforcement** - Local authority officers need adequate training to ensure that they issue penalty charge notices correctly, consistently, and fairly. Without proper training, there is a risk that officers could make mistakes in issuing PCNs, leading to disputes or public backlash.

**Legal Challenges and appeals** - People who receive a penalty charge notice may challenge the fine, particularly if they feel it was issued unfairly. This can lead to an increased administrative burden on local authorities, which must then manage appeals and review cases. In some cases, the person may contest the charge in court, leading to additional costs and time for local authorities.

**Complicated or Unclear Rules** - If the regulations being enforced are unclear or poorly communicated, officers may issue penalty charge notices based on rules that are hard to justify legally, leading to disputes and potential legal challenges

**Increased Workload** - The process of issuing, tracking, and following up on penalty charge notices can be resource-intensive. Local authorities may face challenges managing the increased administrative workload, particularly if there are high volumes of PCNs issued.

**Cost of Enforcement** - The costs associated with issuing and enforcing penalty charge notices, including officer time, administrative support, and potential legal fees, can strain local authority resources. In some cases, these costs may outweigh the revenue generated by the fines.

Submitted on behalf of the Chair of Trading Standards Wales, Jacqui Thomas

Date: 24<sup>th</sup> January 2025