



	The Welsh NHS Confederation response to the Health and Social Care Committee's scrutiny of the Legislative Consent Memorandum ("the LCM") on the Tobacco and Vapes Bill ("the Bill")
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Date	24 January 2025

Introduction

1. The Welsh NHS Confederation welcomes the opportunity to respond to the Health and Social Care Committee's scrutiny of the Legislative Consent Memorandum ("the LCM") on the Tobacco and Vapes Bill ("the Bill")
2. The Welsh NHS Confederation represents the seven Local Health Boards, three NHS Trusts (Velindre University NHS Trust, Welsh Ambulance Services University NHS Trust, and Public Health Wales NHS Trust), and two Special Health Authorities (Digital Health and Care Wales and Health Education and Improvement Wales). The twelve organisations make up our membership. We also host NHS Wales Employers.

Overall Views

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.

3. Our members, NHS leaders in Wales, agree with the 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.
4. Reducing smoking prevalence is a priority for our members. There is a high adult smoking prevalence in Wales which largely contributes to inequalities in life expectancy and healthy life expectancy. These are fundamentally attributable to circulatory and respiratory diseases and cancers caused by smoking.
5. Our members also support the Bill because they are concerned that rates of vaping amongst our young people are rising year on year, with some immediate negative impacts on well-being as well as unknown long-term impacts. Schools report significant impacts of vaping, including on behaviour, attendance, and mental wellbeing. Therefore, our members are supportive of the overall policy objectives, and the measures proposed are a vital part of the action needed to achieve a smoke-free Wales by 2030. Our

members have highlighted that the existing measures and resources are currently insufficient to achieve a smoke-free Wales.

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

6. Our members agree that the legislation sufficiently protects young people from vaping while supporting smokers to quit.
7. The legislation covers several important areas that are essential parts of the efforts to prevent young people from taking up vaping (e.g. packaging, flavours, point of sale measures). Our members support the proposed restrictions on advertising, packaging, and flavours of vapes in the Bill which they believe will support the prevention of uptake in vaping in children and young people. Also, our members are content that this comprehensive legislation would give Welsh Ministers a range of powers to take strong action to control the marketing, sale and provision of tobacco and vaping products to young people, but also allow adults who smoke to access products which allow them to reduce harm and be able to quit. It will be important to monitor the impact of the legislation once it is implemented to ensure it is achieving its aim and overall objective.
8. While supportive of the aims of the Bill, our members recognise that vaping is less harmful than smoking tobacco products, and that many smokers are choosing to use vapes to help and support them to quit smoking. Our members believe that these restrictions will still allow smokers to access vapes as a smoking cessation aid, whilst supporting the reduction of uptake of vaping in children and young people. Moreover, our members have emphasised the need to balance this with ensuring smokers can access effective smoking cessation tools. There are still gaps in the evidence about the relative importance of things like vape flavours and visibility of vapes in supporting tobacco smokers to quit. Therefore, our members suggest an approach whereby the UK Government and devolved administrations could rapidly implement changes pending publication of further evidence, as well as having very clear engagement and communications for the public regarding the risks and benefits of vape use and their use for tobacco cessation.

Impact on areas of devolved competence

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

9. Our members are generally supportive of the principle of Westminster legislating in areas that are devolved to the Welsh Government if sufficient engagement has been undertaken between the UK and Welsh Government and with relevant stakeholders, including public bodies like the NHS, about the impact that the legislation could have.
10. Our members emphasised that legislation can be developed centrally by the UK Government with devolved powers for the legislation to be implemented at a devolved

nations level if it fits with local policy and service structure and against a shared and adopted set of principles.

11. Moreover, our members have emphasised that tobacco is the single largest preventable cause of death globally, with an international treaty focused on joint action to reduce its impacts on health ([the World Health Organisation's Framework Convention on Tobacco Control - FCTC](#)). Given the scale and complexity of the issue, our members think it is essential for the UK Government and devolved administrations to work in partnership on behalf of all citizens when implementing legislation in line with the FCTC. This has practical and financial benefits for all administrations.

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?

12. Our members agree that the Bill and the goals set out in A Smoke-Free Wales and the Welsh Government's public health priorities adequately respects the devolved nature of public health policy.
13. Our members have highlighted that the UK Government and Welsh Government are working to support the requirements of the FCTC, and this Bill fully aligns to the goals set out in A Smoke-Free Wales and respects the devolved nature of public health policy. Tobacco control legislation implemented in a consistent way across the four nations of the UK has already been effective in driving down smoking prevalence.
14. Furthermore, our members' understanding is that the legislation has been developed in collaboration with the devolved nations and has the support of all four Chief Medical Officers. Thus, consistency of legislation will be of real benefit in combatting the harm caused by tobacco to the health of people across the UK.

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?)

15. Our members agree that there are areas where greater collaboration with other UK nations is necessary, and Wales should consider developing additional, specific measures.
16. Our members state that it is positive to see that the four nations are aligned on this legislation. Historically each of the UK nations has implemented slightly different tobacco control initiatives and there will be a continued need to learn from each other and consider how innovative approaches might be relevant for Wales.
17. Also, our members have suggested that it is important that there is consistency in the application of this legislation across the UK to maximise the impact of this legislation. It is also essential to consider inequalities in smoking rates. There is evidence that smoking rates are higher in some groups including people living in more deprived areas, people with mental health conditions, and people from the LGBTQ+ community. Higher rates of

smoking in specific groups contributes to health inequalities. It is therefore important that consideration should be given to inequalities in smoking rates amongst different groups in society.

18. Furthermore, our members have suggested the need for a more targeted and effective approach to smoking cessation. This involves tailoring interventions based on the specific needs of different demographics and geographical areas, while also capitalising on opportunistic interventions within existing healthcare settings. Robust staff training, particularly in mental health units, is paramount, alongside consistent enforcement of smoke-free legislation across all relevant settings. Additionally, equitable distribution of funding and resources across all regions of the UK is essential to maximise the impact of smoking cessation interventions.
19. Ultimately, most hospital sites should already be smokefree in line with NICE guidance, however there is lots of variation between different NHS organisations. Making the existing rules a legal requirement should help to make the NHS a pro-quitting environment and remind patients, visitors, and staff about the harms of second-hand smoke. However, NHS organisations like health boards and trusts will need guidance and support to implement this effectively. Our members have highlighted that smokefree policies are most effective when they are paired with advice and support on quitting smoking.

Tobacco

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;**
- 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;**

20. Our members agree with both the above proposals.
21. Smoking prevalence among young people has been increasing in England, indicating there is still the need for action if we are to create a smoke-free generation. Increasing the age of purchase is likely to be effective in reducing prevalence, as shown by UK Government modelling and from [analysis of the impact of raising the age of purchase from 16 to 18 in 2007](#). Falls in smoking amongst children and young people in Wales has been inconsistent in recent years, suggesting new approaches, such as this legislation, is required. Proxy sales are prohibited under current legislation, and our members support maintaining this in the proposed new legislation. However, this needs to be accompanied by effective action to stop the growth of illegal tobacco markets that may continue to be accessed by young people, particularly in the most deprived areas.
22. The [prevalence of smoking amongst adults \(16+\) in Wales](#) was [13% in 2022-23](#). However, rates amongst 18–24-year-olds (17% in 2021-22) are typically higher. The rate for weekly smoking amongst [15-16-year-olds in 2019-20](#) was 9%. This suggests late

adolescent and young adulthood are a critical time for smoking initiation and measures that prioritise and sustain action amongst this cohort should be a priority. Therefore, our members agree that this legislation would send a strong message that tobacco is not a 'normal' consumer product. Denormalisation has consistently been recognised as a key factor in achieving Wales's goal of reducing smoking prevalence below 5% and our members expect this legislation would have an impact on smoking prevalence across the entire population, not just those directly affected.

23. Furthermore, the tobacco industry has a long track record of using product innovation to minimise or mitigate the impact of legislation on smoking prevalence and uptake (recently, for example, in [introducing new products to reduce the impact of the ban on menthol flavouring in cigarettes](#)). Our members suggest the legislation should anticipate these tactics by defining tobacco products in broad terms. This approach reflects that adopted in other tobacco legislation (e.g. The Tobacco and Related Products Regulations 2016) that has been successful in reducing the prevalence of tobacco use.

Vaping and other nicotine products

Your views on proposals to:

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

24. Our members agree with all the above proposals (from 'a to f').

25. Our members are aware that concern have been growing amongst professionals and parents locally about the rise in availability and visibility of vapes in our communities and the impact on young people in relation to nicotine addiction, school attendance and behaviour. The current range of flavours, colourful products and adverts are clearly aimed at a wider market than current smokers trying to quit and are highly attractive to young people and people who have never smoked. Also, a significant proportion of children and young people are aware of promotion of vaping, with [only one in five children](#) saying that they never see e-cigarettes being promoted. In addition, vapes are not risk free and we still don't fully understand the long-term effects of vaping on our population. Therefore, our members are in favour of a robust range of measures to address these issues.

26. Moreover, a ban on promotion of vapes and nicotine products would be consistent with the ban on advertising and promotion of tobacco products, which was [prohibited](#) in the UK in the Tobacco Advertising and Promotion Act 2002. Smoking rates in children and young people have [fallen](#) since bans on tobacco advertising and promotion were implemented. Therefore, our members believe that banning advertising, promotion, and sponsorship agreements for vapes and nicotine products could help to reduce the prevalence of vaping in children and young people.
27. Additionally, our members have emphasised that regulation is a key tool to helping reduce harm. This is a key area where further consultation and research is needed to ensure that powers are deployed in ways that benefit public health. Also, regulations on point-of-sale display will be a matter for each nation and are not defined in legislation. It could certainly be the case that requirements could be to put products out of sight in a similar way to tobacco.
28. However, our members think it is important to consider potential unintended consequences of the legislation and get a balance that ensures adult smokers wishing to quit can still access vapes if they choose. Our members suggest the following considerations:
- An approach whereby the UK Government and Devolved Administrations could rapidly implement further restrictions or changes e.g. in response to a change in level of risk, industry innovations exploiting a loophole in the law or evidence of unintended consequences.
 - There may be specific areas where less restrictive options could be considered e.g. a controlled number of vape flavours to be allowed if this will have benefits to people wanting to quit smoking and there is a comprehensive package of measures otherwise in place to reduce attractiveness to young people. However, our members strongly support the policy direction around vape control.
 - Ensure clear communications for the public regarding the risks and benefits of vape use, their use for tobacco cessation and the reasons for any restrictions placed. This may help to mitigate unintended consequences such as inhibiting smokers from accessing vapes as a quit aid.
29. Furthermore, licencing would be another tool in the box for enforcement agencies to take swift and decisive action against rogue businesses and take greater control of the market. This has long been needed for tobacco and is now needed to limit the explosion in the number of places selling vapes, many of whom have limited experience of selling age restricted products.
30. For the 'g' proposal, in principle, our members support this but there are some concerns. Our members are in support of action to de-normalise vaping in spaces where children and young people may be influenced. However, our members are not familiar with the evidence base for this proposal, and this would need to be considered further. In addition, based on our members' experiences with implementing smoke-free hospital sites, as well as the use of vapes for smoking cessation purposes, they can foresee several challenges in implementing and enforcing vape-free spaces.

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?

31. Our members agree that the proposed restrictions on advertising, packaging, and flavours is sufficient to prevent uptake among young people while maintain access for smokers using vapes for harm reduction. Our members have stated that the proposed restrictions appear to be comprehensive and based on evidence where possible. However, our members suggested it will be important to monitor and evaluate the impact of the legislation as it is implemented to ensure these aims are met. The evidence collected in this way should be used to inform any future changes or amendments.

Enforcement

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.

32. Our members, in principle, support the enhancement of enforcement measures.
33. Furthermore, our members are aware that FPNs are considered a helpful tool for Trading Standards colleagues. However, local authorities anecdotally do not feel they have sufficient powers to prevent similar shops re-appearing following any enforcement action, or similar offences taking place in similar locations.

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

34. Our members have stated that there are potential challenges they foresee for the enforcement of these regulations in Wales.
35. Our members have stated there are already challenges for Local Authorities with regards to resources and capacity. This is evident in relation to existing smoke-free legislation where there are difficulties enforcing on hospital sites. Without sufficient support for enforcement, our members are concerned it will be difficult to meet the policy objectives.
36. Furthermore, it is important that funding reaches the right part of the system to establish an enforcement workforce to ensure the regulations are followed. Also, this funding needs to long-term to be able to establish a sustainable approach.