



Comisiynydd Plant Cymru
Children's Commissioner for **Wales**

Ymateb i Ymgynghoriad / Consultation Response

Date / Dyddiad: 24.01.2025

Subject / Pwnc: Legislative Consent Memorandum – UK Tobacco and Vapes Bill

Background information about the Children's Commissioner for Wales

The Children's Commissioner for Wales' principal aim is to safeguard and promote the rights and welfare of children. In exercising their functions, the Commissioner must have regard to the United Nations Convention on the Rights of the Child (UNCRC). The Commissioner's remit covers all areas of the devolved powers of the Senedd that affect children's rights and welfare.

The UNCRC is an international human rights treaty that applies to all children and young people up to the age of 18. The Welsh Government has adopted the UNCRC as the basis of all policy making for children and young people and the Rights of Children and Young Persons (Wales) Measure 2011 places a duty on Welsh Ministers, in exercising their functions, to have 'due regard' to the UNCRC.

This response is not confidential.

Introduction – the Children’s Commissioner for Wales’ position on Vaping.

Every child in Wales has the right to the best possible health, under Article 24 of the United Nations Convention on the Rights of the Child (UNCRC). Over several years, and increasingly since the pandemic, we’ve been hearing concerns about an issue which carries a risk of long-term harms to health for children and young people – the use of e-cigarettes / vapes.

Concerns about e-cigarettes / vapes are raised with me by children and young people, and the adults who care for them, at most of the visits and engagement meetings I attend.

Due to the potential long-term harms to health, including the nicotine content of some devices, vaping carries a risk of harm and addiction for children and young people. There is also evidence that it is impacting children and young people’s education and wellbeing.

Children and young people are rightly highly concerned about the health impacts, the availability and prevalence of e-cigarettes / vapes. Professionals who work with children and young people have provided us with an insight into the reality of how children are using vapes and the effect it’s having on these young lives

What do we know?

Data from the [School Health Research Network \(SHRN\) survey](#) of secondary school ages young people shows that, in 2023:

- Over a quarter (25.7%) of young people reported having ever tried an e-cigarette (up from 20.5% in 2021). 45.4% of year 11s have tried vaping.
- 7% of young people reported current (at least weekly) use of e-cigarettes (up from 5.4% in 2021)
- 15.9% of year 11s vape at least weekly (up from 13.6% in 2021).

In their [survey of 12,524 secondary school children in Autumn 2023](#), Action on Smoking and Health (ASH) Cymru found that 24% had tried vaping, and 7% report being regular vapers.

Some of the other concerning findings from this survey are that:

- 92% of all current vapers use a vape that contains nicotine
- 55% of all current vapers reported using vaping products that are highly likely to be illegal, unregulated products that contain over 600 puffs
- 45% of all current vapers say they cannot go the whole school day without vaping
- 42% of all learners said vapes are easy to get hold of
- 57% say that vaping is common in their year group
- While 37% of current vapers also reported being current smokers; 22% of current vapers reported to be never smokers

What do young people tell us?

In March 2024, we conducted a small focus group with 19 young people in years 8 to 13 at a school in North Wales. Here are some key messages from that session:

What influences young people to vape?

- “There is easy access to vapes – can get them from vape shops and 24 hour shops“
- Young people told us they are influenced by – the colour of packaging; packaging marketed to children; advertising towards children; appealing flavours; school and peer pressure; media; price; easy access; smell; older people pressuring younger; ‘it’s cool’, ‘you get a rush’; ‘fads’; ‘to fit in’; ‘to relieve stress’
- “Young people want more pressure from government on making change”

Do you think young people see vaping as harmful?

- “Harms of vaping not published enough”
- “Young people see vaping as safe alternative to smoking”
- “Some know the risks but ignore them; others do know the risks but do it anyway”. One young person said this is “because of the colours”
- “No one knows the long term effects of vaping as it’s so new”
- “Yes, but not HOW harmful”

What do you think adults understand about vaping?

- “Vaping and its effects aren’t published to people enough to fully understand effects”
- “parents don’t know their children vape and if they do they are unaware of its risk on their children”
- “some [adults] encourage it”
- “Some parents are clueless how addicted their child is”
- “not enough”
- “children know more as they’re around it more”
- “Yes adults know but not how many or how often”

As well as this session with young people, I heard from school staff and professionals working in addiction services. They told me several concerning things including:

- Children coming to secondary school from primary schools addicted to vaping
- Some children are leaving lessons 2 or 3 times to vape.
- Young people walking out of mock exams as not able to cope for that length of time without vaping
- Young people not exhaling so can vape in the classroom

- Young people using high strength nicotine vapes
- 16/17 year olds not getting asked for ID and buying illegal vapes. Young person can buy them at a higher price due to 'risk'. 600 puff vape for £1 or £2
- We were told that the local authority's policy is that there is an automatic exclusion if a young person is found with a vape. We would hope for a more supportive approach.
- New THC Vapes becoming available – these look like normal vapes but have cannabis in. there were also concerns of other harmful drugs being put inside vapes and provided to children.
- Young people accessing snus (a tobacco product used by placing in the mouth, illegal to be sold in the UK) as a nicotine replacement as schools were cracking down on vape use in schools.
- Nicotine replacement therapy – we heard examples of pharmacies where young people were not able to access this therapy for help to give up vaping, whereas they were offered it for help to give up smoking .

I will now turn to the committee's specific questions.

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.

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

- The legislation will protect more young people from vaping. This legislation is welcome and urgently needed.
- While vaping is an effective cessation tool for adult smokers, it is vital that we restrict advertising and tackle any continued expansion of use among the general population of adults, outside of smoking cessation. Vaping should be culturally acceptable as a cessation tool for adults, but beyond that should not be attractive to non-smokers and should not be promoted as such.

Impact on areas of devolved competence

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

- Where there is a clear public health benefit to children and young people in Wales, that improves on the situation currently in Wales without the need for separate Welsh legislation, legislation that covers England and Wales may be the most efficient way to achieve this. Therefore, in this instance, and with the Senedd being formally consulted via the LCM mechanism, I am in favour of it to ensure it is introduced swiftly and allows

the Welsh Government to take forward supportive measures within their competence alongside this Bill.

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?

- The Bill does support the goals of *A Smoke-Free Wales*. Particularly, a ban on sales of tobacco products to anyone born after 1st January 2009 will assist Welsh Government in phasing out smoking.
- It is essential that those policies in Wales which are more progressive than in England are protected, and that there is no reason why Wales could not go further in the future. Proposals for banning smoking on school grounds, hospital grounds and playgrounds for England would bring those policies in line with Wales, which is welcome and helpful to enforcement in Wales when there is a united position across England and Wales.

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?)

- Wales should always strive to lead and innovate when it comes to public health measures – we have a long history of leading on implementing public health measures. Where there is opportunity to work with other UK governments in the interest of children's public health, such as in this instance, this should be grasped by Welsh Government.

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;

- I am fully supportive of these measures, and particularly welcome the offence of buying products for others born on or after 1st January 2009 as this was unclear in the UK Government's original proposals.

Vaping and other nicotine products

Your views on proposals to:

- ban vaping products and nicotine products from being sold to under 18s

- ban advertising, promotion and sponsorship agreements for vapes and nicotine products;

- provide regulation-making powers to regulate the flavours, packaging, and other product standards of vapes and nicotine products;
- provide powers to regulate the display of vapes and nicotine products, empty retail packaging and their prices;
- ban the presence of vape and nicotine product vending machines;
- 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;
- 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.

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?

- I am fully supportive of these proposals. As mentioned earlier, it is vital that vaping products are not attractive to anyone other than in the context of smoking cessation for adults. These measures would tackle sales to children and young people, and address many of the factors that make these products attractive.
- There is evidence that young people identify flavours as a key factor in choosing e-cigarettes. Cancer Research UK's qualitative study found that young people's main criteria for purchase were flavour and ease of use (CRUK, September 2023). It is clear to me that flavoured products will be more attractive to children and young people and so I agree with their restriction.
- Simply, vaping products should be made as unattractive to children and young people as possible. A study from 2023 (Moodie et al) showed that colour, as well as branding and flavour, enhanced the appeal of the products:

Colour was most frequently mentioned and discussed by participants when discussing the appeal of packaging. Pack colour helped signal taste, as it matched the flavour, and also product type, with brightly coloured packs linked to disposables. Brightly coloured packs were also seen as appealing to young people and the products designed for, and targeted to, children and young people

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.

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

- I do not have a specific response to this question, but would highlight Welsh Minister's duty of due regard to children's human rights under the Rights of Children and Young Persons (Wales) Measure 2011. Action to protect children's human rights to the best possible standard of health is justified by that Measure.

Submitted by:

A handwritten signature in black ink that reads "Rocio Cifuentes". The signature is written in a cursive style with a horizontal line underlining the name.

Rocio Cifuentes MBE

Children's Commissioner for Wales