

FROM THE MINISTER OF HEALTH

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Dear

Liz,

WESTMINSTER TOBACCO AND VAPES BILL – PROPOSED LEGISLATIVE CONSENT MOTION

I wish to advise you about a proposed Legislative Consent Motion which, subject to Executive agreement, will ask the Assembly to agree to the inclusion of a number of provisions, that deal with transferred matters, within the Tobacco and Vapes Bill which we have been advised is due to be introduced in Parliament the week commencing 19th February 2024.

Whilst these are clearly matters that fall within the legislative competence of the NI Assembly, I believe that there is a compelling case for our inclusion in this Bill. Not least the speed with which this will allow the measures to be brought forward here and the significant public health benefits in doing so. UK wide consultation on these proposals has shown overwhelming support – particularly from the people of Northern Ireland, and in the absence of a compelling reason otherwise, I believe we should be afforded the same public health benefits from this legislation as the rest of the UK. This timely legislative vehicle would negate the immediate need for local primary legislation on these matters and would therefore provide opportunities for the Assembly to focus on other the significant backlog of issues that now need addressed. I believe there would be considerable public criticism if we were to reject this opportunity.

In October 2023, UK Government announced the intention to create a smoke free generation in England by stopping children who turn 14 this year (or younger) from ever legally being sold cigarettes. Additionally, the announcement included a number of proposals in relation to e-cigarettes aimed at addressing rising youth vaping rates across the UK. These include restricting flavours, plain packaging and bans on point-of-sale displays. There are already similar measures in place in relation to tobacco products.

Health Ministers in Scotland and Wales were asked for their views on UK wide application of the Bill and have already agreed in principle, subject to the necessary legislative consent. The return of the Assembly has permitted a review of Northern Ireland's position, and I have indicated my support to UKG, for inclusion on the same basis as the other Devolved Administrations, subject to the necessary consent from the Executive and the Assembly.

Note that recently publicised UKG plans to restrict the sale of disposable e-cigarettes do not fall under the provisions of this Bill.

The Bill also has the full support by all UK CMOs and we fully expect there to be strong advocacy and support across the medical profession, representative bodies and charities.

Tobacco age of sale

The current legal age of sale for tobacco is 18. The Westminster Bill will make it an offence for anyone born on or after 01 January 2009 to be sold tobacco products. These measures are in line with measures originally brought forward in New Zealand (but with subsequent government there announcing intention to repeal the measures) and recommendations of the Khan Review from 2022. There is no intention to criminalise smoking. The policy intention is for a gradual phasing out of tobacco use, and the measures proposed have the advantage of not introducing restrictions on people who can already legally smoke (which would be the effect if we were to simply raise the age of sale from 18 to 21). Rather the impact would only be felt when children currently 14 and under (who are not currently legally permitted to be sold tobacco) turn 18. The Bill will also make the necessary age-related changes in respect of existing compulsory retail signage and proxy purchasing offences.

I believe that these proposed measures offer a huge public health opportunity. Tobacco use is a leading cause of health inequalities in Northern Ireland with the lung cancer incidence rate in the most deprived areas around two and a half times the rate seen in the least deprived areas. Smoking rates in the most deprived areas are typically almost 3 times the rate in the least deprived areas and children of smokers are subsequently more likely to smoke themselves.

The Department has held a long-standing strategic aim for a tobacco free- society. In recent years neighbouring jurisdictions have set smoke-free target dates. We have yet to do so, and stakeholders have been critical of the absence of such a target. I believe such ambitious targets, while commendable, are only meaningful if accompanied by clear and robust plans to support their achievement. Whether our objective is a tobacco free society or achieving a smoke-free target date, I believe a generational approach to eliminating tobacco use offers a groundbreaking means by which to address this key public health threat for young people and future generations.

E-cigarettes/vapes

There is a significant local appetite for legislative change in respect of e-cigarettes amongst stakeholders and parents. Recent Young Person Behaviour and Attitude Survey (YPBAS) data showed that a fifth of young people have used an e-cigarette at least once (21%). Those in the older year groups were more likely to report ever having used, with findings ranging from 6% of those in Year 8 to 44% of those in Year 12. Overall current e-cigarette use rose from 5.7% (in 2019) to 9.2% in 2022, however amongst Year 12 pupils, the growth in current use has been particularly concerning with reported current use rising from 11.7% to 23.6%.

Whilst e-cigarettes may have a role to play in helping people to stop smoking, the long-term harms of continued use are unknown. The Institute of Public Health has taken forward a rapid review of evidence on our behalf (still in draft) and early findings point to a lack of firm evidence on health harms, but reliable evidence that vaping does act as a gateway to tobacco smoking amongst young people. This substantiates our view that measures to address the appeal of these products to children are justified.

The consumption of nicotine in children and adolescents has deleterious impacts on brain development, leading to long-term consequences for brain development and potentially leading to learning and anxiety disorders (WHO). The UKG command paper relating to these proposals also notes that there are also some health risks associated with the other ingredients in vapes. For example, propylene glycol and glycerine (components of e-liquids) can produce toxic compounds if they are overheated. The long-term health harms of inhaling colours and flavours are unknown, but they are certainly very unlikely to be beneficial.

In addition, there are growing concerns about social and educational harms of vaping with increasing numbers of post-primary school children at risk of disciplinary action including suspensions as schools attempt to deal with the numbers vaping on school premises.

In relation to e-cigarettes the Bill will introduce a number of measures:

- **Provide powers to introduce age of sale restrictions (age 18) in respect of non-nicotine vapes (similarly as currently applies to nicotine vapes).** There is considerable debate about the scale and nature of long-term harms of vaping, including non-nicotine vapes. Ultimately, the risks of inhaling additives for flavours, and the long-term effects of vaping are yet unknown. However, the principle reason for regulating non-nicotine vapes in line with nicotine vapes is to address potential loopholes relating to nicotine vapes. In the absence of these measures, retailers could continue to market their shop window with colourful and apparently child-friendly non-nicotine vapes, and non-nicotine flavours targeted at children could be used to promote the habit of vaping among children. There are also flavoured non-nicotine vape liquids available that are designed to have a nicotine 'shot' added by the user, allowing companies to circumvent any future regulatory approach to flavours. These loopholes may make any new regulations on nicotine vapes ineffective.
- **Provide powers to introduce a ban on the free distribution of both nicotine and non-nicotine vapes to under 18s.** At present our regulations in relation of age of sale of e-cigarettes covers sales of *nicotine* vapes only so this would address a potential legal loophole). The loophole is likely to be widely exploited as a marketing technique should local sales reduce as a result of a more regulated retail environment.
- **Provide powers to extend the free-distribution ban (to under 18s) to other nicotine products.** We are aware of the possibility of emerging nicotine products and already see wide availability of nicotine pouches. Such products have the potential to result in a nicotine addiction in young people.
- **Provide powers to regulate retail displays of nicotine products (and non-nicotine vapes)** i.e. similar to current tobacco provisions. We are we are conscious of public concerns about the visibility of these products alongside displays of sweets and confectionary in shops. We believe that a ban, similar to that for tobacco displays, is justified in order to reduce the appeal to children and young people.
- In relation to **e-cigarettes product standards issues** such as flavours and packaging, the Bill confers powers on the Secretary of State to bring forward UK wide regulations with the consent of the devolved governments. Such regulations would allow for restrictions on flavours and packaging in relation to all e-cigarettes (both


nicotine and non-nicotine). A UK wide approach is considered necessary in respect of these measures to ensure that enforcement action is able to be taken in respect of products from across the UK without any ambiguity about which region's regulations apply. UKG have announced plans to consult further on the detail of packaging and flavour restrictions. Restrictions on packaging and flavours are already in place in relation to tobacco.

It is anticipated that the majority of the Bill's provisions will commence two months after it receives Royal Assent. The age of sale provisions for non-nicotine vapes would commence after 6 months and the tobacco age of sale proposals would come into effect on 1 January 2027.

A copy of the Bill has been shared with the Departmental Solicitor's Office (DSO) and OLC have advised on drafting.

I will, of course, continue to keep you updated on the Executive decision and on all developments with the Bill. I look forward to working with the Health Committee on this issue.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Robin Swann', is written over the 'Yours sincerely' text.

Robin Swann MLA
Minister of Health