FROM THE MINISTER OF HEALTH

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Dear Keith,

Thank you for your invitation to provide further oral briefing on the Westminster Tobacco and Vapes Bill on 18 April. Bryan Dooley, Head of Health Improvement Policy Branch will attend with Karen Oldham, Health Improvement Policy Branch.

The Legislative Consent Memorandum was laid with the Assembly Business Office on the 26 March 2024. We understand that the 2nd reading of the Bill at Westminster will be on the 16th April, and we hope that the remaining Bill timetable will become clearer at that point.

In addition, please see attached at Annex A of this letter the written briefing the Health Committee also requested, which we hope will provide the key information requested in advance of officials' appearance.

Yours sincerely

Robin Swann MLA

Minister of Health

RESPONSE TO HEALTH COMMITTEE REQUEST FOR INFORMATION RELATING TO UK GOVERNMENT TOBACCO AND VAPES BILL

A background to the Bill and a summary of its policy objectives.

1. In June 2022, UK Government published a review[1] of their progress towards smokefree 2030 targets. The review, by Dr Javed Khan, set out a number of recommendations to help achieve that ambition, including a smokefree generation approach and restrictions on packaging and flavours that made vaping attractive to children.

2. In October 2023, UK Government announced its intention to create a smoke free generation in England by stopping children who turn 15 this year (or younger) from ever legally being sold cigarettes.

3. The key UKG proposals in relation to e-cigarettes include restricting flavours, plain packaging and bans on point-of-sale displays. There are already similar measures in place in relation to tobacco products.

4. Subsequently, devolved administrations were asked if they wished to be included in a UK wide consultation in respect of the measures and our Permanent Secretary provided agreement (in conjunction with DAERA Permanent Secretary as the proposals on restricting sales of disposable vapes were included in the consultation). The consultation ran from 12 October 2023 to 06 December 2023 with the caveat that the consultation outcome would be used to inform the decisions of incoming Ministers in NI on return of the Executive and Assembly.

5. In the publication of the consultation response on the 29 January[2], UKG, Scotland and Wales committed to a number of legislative measures and Health Ministers in Scotland and Wales agreed in principle to inclusion in a UK wide Bill, subject to the necessary legislative consent. The return of the NI Assembly, and slight delay in the drafting of the Bill, has allowed for a review of Northern Ireland's position. Soon after

[1] https://www.gov.uk/government/publications/the-khan-review-making-smoking-obsolete
[2] https://www.gov.uk/government/consultations/creating-a-smokefree-generation-and-tackling-youth-vaping/outcome/creating-a-smokefree-generation-and-tackling-youth-vaping-consultation-government-response#:~:text=The%20consultation%20feedback%20shows%20widespread,need%20to%20change%20warning%20notices.

taking office, Minister Swann indicated his support for NI inclusion to UKG, subject to the necessary consent from the Executive and the Assembly. Minister Swann then sought and obtained Executive support for such inclusion. The Bill was introduced at Westminster on 20th March 2024[3]. A legislative consent memorandum was laid with the NI Assembly Business Office on 26 March 2024[4].

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

7. The Bill has the full support of all UK CMOs and there is strong advocacy and support across the medical profession, representative bodies, and charities.

Policy Objectives of the Bill

Smokefree Generation

8. There is a UK wide desire amongst government, public health professionals and the voluntary sector to address the significant harms caused by smoking. The focus in the UK Government command paper[5] is to prevent nicotine addiction before it starts and therefore to ultimately create a smoke-free generation. Smoking cessation services will continue to support current smokers to quit.

9. In recognition of the extraordinary harms caused by smoking, the UK Government have proposed legislation in respect of age of sale which will make it an offence for anyone born on or after 01 January 2009 to be sold tobacco products. The emphasis will be on the sales offence along with any proxy purchasing by adults on behalf of children. These measures are in line with measures originally brought forward in New Zealand (but with a subsequent change of government an intention to repeal the measures was announced) and recommendations of the Khan Review from 2022. There is no intention to criminalise smoking. The intention is for a gradual phasing out of tobacco use, but the measures proposed have the advantage of not introducing restrictions on people who already can legally smoke (which would be the effect if we were to raise the age of sale from 18 to 21). Rather the impact would only be felt when children currently 15 and under (who are not currently legally permitted to be sold tobacco) turn 18.

[3] https://bills.parliament.uk/bills/3703
[4] http://www.niassembly.gov.uk/assembly-business/legislation/legislative-consent/legislative-consent-memorandums/tobacco-and-vapes-bill/
[5] https://www.gov.uk/government/publications/stopping-the-start-our-new-plan-to-create-a-smokefree-generation

10. Smoking causes a considerable strain on our health services and is a major cause of health inequalities. Our 10 Year Tobacco Control Strategy[6] is currently in an extension period pending completion of a successor strategy. A review[7] of the current Strategy published in September 2023 showed that:

- In 2019/20 there were 38,617 smoking attributable hospital admissions in Northern Ireland which was an 18% increase on the number in 2010/11 (32,607).
- Between 2010-16 and 2014-20, the most-least deprived inequality gap in relation to lung cancer incidence remained at a similar level across the period, with the incidence rate in the most deprived areas around two and a half times the rate seen in the least deprived areas.
- The latest official statistics show that death rates from smoking attributable causes have decreased between 2009-13 and 2017-21 in Northern Ireland and in the most and least deprived areas. However, the inequality gap has increased slightly over the period, with death rates in the most deprived areas double the rates seen in the least deprived areas.
- Smoking caused around 2,200 deaths a year in the 2017-21 period.
- Hospital treatment for smoking related conditions in Northern Ireland in 2019/20 was in the region of £218 million.

11. The NI Audit Office recently completed an audit of our smoking strategy activity[8] and have commented on the seemingly disproportionate expenditure on smoking cessation versus prevention. Our recent strategy end review similarity recommended that a new strategy should seek to identify opportunities in relation to smoking prevention. The proposed measures on age of sale would help address such issues.

Vaping

12. In addition, the Bill aims to further address the marketing of vapes towards young people and children. Whilst vaping can play a role in supporting smoking cessation for some people, there has been increased targeting of the youth market with confectionary flavouring and cartoon imagery. Rising levels of youth vaping have become an increasing concern locally and across the UK, despite the ban on sales to under 18s.

[6] https://www.health-ni.gov.uk/sites/default/files/publications/health/tobacco-control-10-year-strategy.pdf
[7] https://www.health-ni.gov.uk/sites/default/files/publications/health/doh-tobacco-control-strategy-review.pdf
[8] https://www.niauditoffice.gov.uk/publications/tackling-public-health-impacts-smoking-and-vaping

13. 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 (World Health Organisation, WHO). The UKG command paper relating to these proposals 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.

An outline of the provisions that are proposed to be extended to Northern Ireland.

14. The headline provision relates to the tobacco smokefree generation measures, and it is proposed that, with the agreement of the respective devolved administrations through legislative consent, this will apply UK wide. This would mean that, subject to the necessary agreements to the Bill, from 1 January 2027 it would be an offence to sell tobacco to anyone who turns 15 this year (or younger) and, in keeping with current age of sale measures, there will be accompanying offences in relation to failure to display compulsory signage and proxy purchasing.

15. In relation to e-cigarettes the Bill will introduce a number of measures which will be commenced 2 months after Royal Assent. For Northern Ireland these include:

- Provision of regulation making powers for the Department to introduce age of sale restrictions (age 18) in respect of non-nicotine vapes (similarly as currently applies to nicotine vapes).
- Provision of regulation making powers for the Department to introduce a ban on the free distribution of both nicotine and non-nicotine vapes to under 18s.
- Provide regulation making powers for the Department to extend the free-distribution ban (to under 18s) to other nicotine products.
- Provision of regulation making powers for the Department to regulate retail displays of nicotine products (and non-nicotine vapes)
- In relation to e-cigarettes product standards issues such as flavours, content and packaging, the Bill confers regulation making 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 indicated that further consultation will take place in relation to such measures.

- Part 5 of the Bill provides the Secretary of State with UK wide regulation making powers in relation to potential extension of e-cigarette notification systems to non-nicotine vapes and other nicotine products. The existing legislation in this area (set out in the Tobacco and Related Products Regulations 2016) concerns provisions on notification, reporting and vigilance requirements. In particular, producers are currently required to notify before placing **nicotine containing** vaping products and refill containers on the UK market. The Medicines and Healthcare products Regulatory Agency (MHRA) publishes all notifications for Great Britain on an ECIG portal and they are notified on EU-Common Entry Gate in respect of Northern Ireland.

- Part 5 also provides the Secretary of State with regulation making powers to amend existing provisions in relation to the information that must be notified or supplied on non-nicotine vaping products and other nicotine products (to allow for new data requirements or remove current data requirements). It also provides a regulation making power to allow for exceptions to the current duty to publish information (for example a notification might be removed where a fee has not been paid).

- Any future regulations under Part 5 may contain elements of transferred (consumer protection) matters for Northern Ireland and therefore consent may be required.

The reasons why the provisions should be extended and their effect.

Smokefree Generation

16. The Department has a strategic objective of a tobacco free society. While we have made good progress at reducing smoking prevalence, more needs to be done if we are to achieve that objective.

17. The Department hears repeated calls from the voluntary sector asking us to set a smoke-free (5% or less smoking prevalence) target date (we are currently the only part of the UK and Ireland not to have set such a date). We have committed to consider this as part of the development of the new strategy, but any such target cannot be achieved through words alone- we need robust actions. There is also

considerable support for a raised age of sale for tobacco, and we have also committed to considering that as part of the successor strategy development.

18. We know that legislative measures make a difference. In England when the age of sale for tobacco changed from 16 to 18 it led to a 30% reduction in smoking prevalence for 16–17-year-olds. A number of legislative initiatives (both locally and UK wide) have also aimed to reduce youth smoking rates including bans on displays of tobacco, standardised packaging and bans of sales from vending machines. These initiatives have been accompanied by a drop in smoking prevalence since 2010. Amongst over 16s the rates have dropped from 24% to 14% and amongst under 16s, the rates have dropped from 8% to 2%.

19. Modelling also suggests the proposed measures can make a difference. In England, it is forecast that that, within 3-10 years of implementation, smoking rates among 14–30-year-olds could be half of current rates and close to 0% as early as 2040. Cancer Research UK recently predicted that based on current trajectory, NI is unlikely to achieve 5% smoking prevalence until the late 2040s with the most deprived areas not achieving this until after 2050.

20. Any such reduction in smoking prevalence will have significant public health benefits. **Over the last five years, approximately 12% of all deaths in NI can be attributed to smoking.** We also know that up to two thirds of smokers will die directly as a result of smoking and their deaths will come prematurely with UKG estimates showing that those who start smoking as a young adult are losing an average of 10 years of life expectancy.

21. Smoking is a major cause of health inequality. In NI, the smoking prevalence rate in the most disadvantaged areas is consistently between 2-3 times the rate in the least disadvantaged areas. This manifests in health outcomes-
the incidence of lung cancer is 2.5 times higher in the most deprived areas as the least deprived areas. Smoking attributable death rates in our deprived areas are double those in the least deprived areas.

22. Smoking increases the risk of more than 50 serious health conditions, including 70% of lung cancer.

23. In 2019/20 NI hospitals spent £218m treating smoking related conditions. The same year there were 38,617 smoking attributable hospital admissions.

24. Nicotine is highly addictive. Many smokers want to stop but find it incredibly difficult to do so. There are significant advantages in an approach that aims to stop that addiction before it starts.

25. The smoke-free generation proposals will not make it illegal to smoke at any age, but they will reduce access to tobacco and in time, and in conjunction with educational initiatives it is hoped that will further demoralise smoking behaviour.

Vaping

26. There is a significant local appetite for legislative change in respect of e-cigarettes amongst stakeholders and parents. The report of the smoke free consultation (see section below), which was published in January 2024, showed 75.6% of respondents in NI supported a restriction on vape flavours (46% in all of UK). In the same consultation when asked '*Which option do you think would be the most effective way to restrict vapes to children and young people?'*, 85.3% in NI supported a restriction on the display of vapes – that is to be kept behind the counter and not to be displayed, similar to tobacco products – (68.5% in all of UK). When asked '*Which option do you think would be the most effective way for the UK Government and devolved administrations to restrict the way vapes can be packaged and presented to reduce youth vaping?*', 66% in NI supported prohibiting the use of all imagery and colouring and branding (standardised packaging) for both the vape packaging and vape device (45.8% in all of UK). 90.4% in NI were in favour of restricting the sale and supply of disposable vapes (79.3% in all UK).

27. 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%.

28. 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.

29. 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.

30. In relation to non-nicotine vapes, there is growing data of young people using non-nicotine vapes. According to ASH, in 2023 in GB, 51% of 11–17-year-olds who currently vape said it always contained nicotine; 30% sometimes and 9.5% never (10% did not know).

31. The risks of inhaling additives for flavours, and the long-term effects of vaping are as yet unknown. However, the principal 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 (as there are currently no age restrictions). 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. We are also aware of challenges in relation to enforcement in determining whether products are nicotine free.

32. Whilst there have been no significant concerns raised about the provision of free samples of vapes and nicotine products to children locally, this is a legal loophole as our current age restrictions only apply to sales. Free distribution has been used as a marketing technique in other areas of the UK and may be used more widely should local sales reduce as a result of a more regulated retail environment.

33. In relation to displays of vaping and nicotine products, 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. Analysis of data by Imperial College London concluded that the proportion of children reporting that they had seen vapes on display in shops had increased from 2018 to 2022. Meanwhile the likelihood of children noticing cigarettes in shops has decreased (which has also resulted in a decrease in numbers buying cigarettes).

34. In recent years we have seen the emergence of new nicotine products, in particular nicotine pouches, on the market. These products are not currently subject to any age restrictions. In NI, we have existing powers to apply age of sale restrictions to these products but not to restrict displays, free samples to under 18s, packaging, or flavours. The proposed measures will provide local powers to regulate displays and free-samples to under 18s (and would enable UKG to bring forward measures on flavours and packaging UK wide).

35. In relation to packaging and flavours, there is strong support for restrictions to stop what appears to be clear marketing towards children. Packaging of vapes often use childlike cartoon imagery and branding. Similarly, flavours are often confectionary, or fruit based, with descriptors aimed at young people. Research suggests that standardised packaging would decrease the appeal to young people without the reducing its appeal among adult smokers. Local research by the Public Health Agency found that 77% of young people agreed that flavours and colourful packaging used for vapes makes them appealing.

The reasons for using a UK Parliament Bill rather than an Act of the Assembly

36. Whilst the matters in question fall within the competence of the NI Assembly, there are a number of compelling reasons for NI's inclusion in this Bill. These include:
    a. To progress NI primary legislation would be time consuming and it is likely that bringing forward local measures would result in a delay (versus the provisions immediately available in rest of the UK) due to other pressures on this small administration and also the strong possibility that litigation by the Tobacco Industry will be directed at NI if we bring forward our own primary legislation on these issues. If there are such delays, NI's population would be at a disadvantage in terms of progressing significant public health measures which will deliver benefits to individuals, the health service and the economy.

    b. Whilst these are transferred matters, the overwhelming public support for the measures in NI, expressed through the consultation published in January

2024, underpins the rationale to seek the same provision as the other devolved administrations in respect of the opportunity for inclusion in the Bill. There is likely to be considerable public criticism if the NI Assembly were to reject this opportunity.

c. There is a clear efficiency in inclusion in UK wide legislation that would allow for the NI Assembly's time to be spent on local measures that do not have an immediate alternative legislative vehicle available.

d. Given the significance of these public health matters, along with the public support, there would appear to be little to gain in insisting on taking forward separate primary legislation when that poses a risk that we will not be able to implement measures at the same speed as England, Scotland and Wales.

The implications of not extending the provisions to Northern Ireland.

37. NI will be at considerable disadvantage in public health terms if these measures do not apply here. In addition, the Republic of Ireland are currently considering the responses to their consultation on broadly similar proposals. There is a risk that Northern Ireland will be left behind while all our nearest neighbours take further legislative action to address the serious risk posed by tobacco use and the escalation of youth vaping rates.

38. While smoking prevalence rates across the UK are broadly comparable, current data shows that NI rates are slightly higher than those for England and Wales (14%, 12% and 13% respectively). NI rates are slightly lower than Scotland (15%) and also the Republic of Ireland (18%). However, in 2015-2019, the smoking attribute death rate in NI was 242 deaths per 100k of the population, this was significantly higher than the rate in England where there were 212 deaths per 100k of the population.

39. Treating smoking related conditions is a considerable strain on our health service and on broader society. The British Heart Foundation estimates that smoking costs NI society £400m annually.

40. In relation to youth vaping, there is a risk that without further measures to reduce youth appeal, vaping rates here will continue to rise.

41. In addition, there is a risk that if Northern Ireland is the only UK (and possibly UK and Ireland) region without such restrictions, the market here will be flooded with unrestricted vaping products in the absence of other outlets. This would of course make the existing challenges even greater.

Whether the proposed provisions in the UK Bill will give delegated authority to a UK Department to exercise powers in delegated legislation.

42. In relation to the headline measures relating to the sale of tobacco, i.e. making it an offence to sell to those born on or after 1 January 2009), the Bill proposes to directly amend NI legislation particularly the Health and Personal Social Services (N)) Order 1978 to amend current age of sale provisions in relation to tobacco age of sale. In addition a number of other amendments to NI legislation will be necessary to reflect the new regime. These are detailed at Clause 48 of the Bill and include: The Children and Young Persons (Protection from Tobacco (NI) Order 1991, The Police (NI) Act 2003, The Smoking (NI) Order 2006, The Tobacco Retailers Act (NI) 2014.

43. The Bill also includes regulation making powers, exercisable by the Department of Health (NI), to restrict tobacco offences to sale by retail (subject to the draft affirmative resolution procedure) and make provision about the displays of warning statements in retail premises and on vending machines (subject to the negative resolution procedure).

44. The former provision, regulation-making powers to restrict tobacco offences to sale by retail, is thought necessary because the current age of sale provisions in the Bill will apply in all settings. As the age of sale rises year-on-year, it may in future become more appropriate to restrict the offences to retail sales (rather than also applying to sales by wholesalers and manufacturers) given that so many more people will be unable to legally be sold tobacco. Regulations could be made in future which would exclude from the age restriction someone working for a retailer who is purchasing stock for the business from a wholesalers or manufacturer, for example. The latter provision, about the displays of warning statements in retail premises and on vending machines, provides a power to specify the size and appearance of mandatory warning statements in retail establishments.

45. In relation to the vaping provisions, the Bill proposes to amend The Health Miscellaneous Provisions Act (NI) 2016 to provide **local regulation making powers exercisable by the Department of Health** (NI) in relation to:

- Power to regulate non-nicotine vapes age of sale i.e. offence to sell to under 18s (draft affirmative resolution procedure).
- Power to restrict nicotine offences to sale by retail (draft affirmative resolution procedure)- similar to power for tobacco described at paragraph 44.
- Power to prohibit free distribution of vapes and nicotine products to under 18s (draft affirmative resolution procedure).
- Power to regulate displays of vaping and nicotine products (draft affirmative resolution procedure).
- Power to extend restricted premises orders (draft affirmative resolution procedure)- this allows for the current definition of a tobacco, nicotine or non-nicotine vape offence to be amended so as to add other related offences that would then count towards a restricted premises order (ie a temporary ban on sales of such products).
- Power to make consequential provisions.

46. Part 4 of the Bill provides the Secretary of State with regulation making powers in relation to product requirements i.e. packaging, content, and flavours. It is envisaged that any such regulations will apply to the whole of the UK. Depending upon the nature of any future regulations, these **may** concern transferred functions relating to consumer protection and/or public health. Accordingly, clause 67 sets out that the Secretary of State must obtain consent where regulations relate to matters falling within the legislative competence of the Northern Ireland Assembly.

47. Within Part 4, Clauses 58-60 are reinstatements of existing provisions (set out in the UK Children and Families Act 2014) relating to tobacco product requirements, while clauses 61-63 provide similar new regulation making powers in relation to product requirements for vaping and nicotine products. The consent mechanism at clause 67 reflects that which was previously established by the Children and Families Act 2014, namely that consent to future regulations would be sought from The Executive Office (TEO) in Northern Ireland where matters are transferred. Part 4 also includes supplementary provisions, including regulation making powers to allow the Secretary of State to confer enforcement functions on relevant enforcement authorities and to enable the relevant national authority to take over enforcement of a particular description or case. Provision is also included to allow for any regulations, made

under the powers in Part 4, to bind the Crown (i.e. the requirements must also be met when products are sold on the Crown Estate).

48. Part 5 of the Bill provides the Secretary of State with UK wide regulation making powers in relation to potential extension of e-cigarette notification systems to non-nicotine vapes and other nicotine products. The existing legislation in this area (set out in the Tobacco and Related Products Regulations 2016) concerns provisions on notification, reporting and vigilance requirements. In particular, producers are currently required to notify before placing **nicotine containing** vaping products and refill containers on the UK market. The Medicines and Healthcare products Regulatory Agency (MHRA) publishes all notifications for Great Britain on an ECIG portal and they are notified on EU-Common Entry Gate in respect of Northern Ireland.

49. Part 5 also provides regulation making powers to amend existing provisions in relation to the information that must be notified or supplied (to allow for new data requirements or to remove current data requirements). It also provides a regulation making power to allow for exceptions to the current duty to publish information (for example a notification might be removed where a required notification fee has not been paid). At present we cannot remove products from the national notification system if they are found to be non-compliant. This new power allows regulations to be made in future so that in certain circumstances products may be removed from the notification scheme, through non-payment of a fee or not having met the required product standards.

50. Any future regulations under Part 5 may contain elements of transferred (consumer protection) matters for Northern Ireland and therefore consent may be required. To retain consistency with Part 4, that consent role for any future regulations has been allocated to The Executive Office.

51. Part 6 includes a number of general provisions related to regulation procedure, transitional provisions and commencement etc. and is therefore considered as engaging the legislative consent process.

Consultation

52. The UK wide consultation was published on the 12 October and closed on 6th December 2023.

53. The results of the public consultation were published on 29 January 2024[9].

54. There was particularly strong support for the measures from people in NI. The consultation received 27,025 responses from individuals and 1,221 were from NI. This made up 4.5% of the total responses (from individuals) which represents a proportionately high response in terms of the NI population. In relation to individual responses: The summary below relates to individual responses:

- 62.5% of UK respondents reported they were in favour of the smoke-free generation (age of sale) proposal, **with the highest support coming from NI - 79%** (second highest was Scotland with 65.5% supporting the proposal). Support was similarly much higher in NI for the other proposals.
- **75.6% in NI supported a restriction on vape flavours** (46% in all of UK – 52% of all UK responses disagreed).
- In relation to display of vapes and when asked *Which option do you think would be the most effective way to restrict vapes to children and young people*? **85.3% in NI supported a restriction on the display of vapes – that is to be kept behind the counter and not to be displayed, similar to tobacco products** – (68.5% in all of UK).
- When asked *Which option do you think would be the most effective way for the UK Government and devolved administrations to restrict the way vapes can be packaged and presented to reduce youth vaping?* **66% in NI supported prohibiting the use of all imagery and colouring and branding (standardised packaging) for both the vape packaging and vape device** (45.8% in all of UK).
- Whilst not included in this Bill, **90.4% in NI were in favour of restricting the sale and supply of disposable vapes** (79.3% in all UK).

Any ongoing discussions between the Department and Westminster where a position(s) has not been finalised

55. There has been extensive dialogue with UK Government prior to introduction of the Bill and the draft Bill, as published, reflects the agreed position.

Any financial, human rights and equality implications (including Article 2 of the Protocol on Ireland/Northern Ireland)

[9] https://www.gov.uk/government/consultations/creating-a-smokefree-generation-and-tackling-youth-vaping/outcome/creating-a-smokefree-generation-and-tackling-youth-vaping-consultation-government-response

56. The smokefree generation proposals will likely come with some additional costs in terms of communications. We will engage with local enforcement authorities (district councils) and the Public Health Agency in the coming weeks, but it is expected that because an enforcement regime for age of sale provisions already exists, there will be minimal uplift required in terms of funding.

57. UK Government is of the view that the Bill is compatible with the Convention of Human Rights. There is no evidence to suggest that the smokefree generation policy will have a significant impact on people living in rural areas. As smoking prevalence is higher in more deprived areas, it may have more of a positive impact on health in deprived rural areas. The policy will not have a direct impact on existing smokers and as a result, this policy is not expected to directly impact adults already living with protected characteristics or in more deprived areas. However, it is likely to ensure that future generations in these groups will have lower smoking rates and therefore improved health outcomes and reduce health inequalities related to deprivation. Overall, DHSC does not assess this policy to have a negative impact on any protected characteristic or other groups assessed.

58. The policy proposals are considered to be compliant with age discrimination legislation (Equality Act 2010 and ECHR Article 14) as there is an objective and reasonable justification behind them – the reduction of harm from smoking to individuals and public health, which data and the consultation support.

59. In addition, our local rural screening and S75 screening (not yet published) confirms the same conclusion as the Department for Health and Social Care (DHSC) i.e. that there is no significant impact.

60. In respect of Article 2 of the Windsor Framework, no diminution of rights has been identified.

Regulatory impact

61. Locally, the costs to hospitals alone of treating smoking attributable conditions are over £200m annually. The British Heart Foundation have estimated that the costs of tobacco use to NI society are approximately £400m annually. It is therefore expected that in the longer term there will be considerable economic advantage to society as a whole.

62. UK government have completed a UK wide impact assessment[10] which is summarised (paragraphs 61-66) below.

63. Smoking places a significant cost on society. ASH estimates that the total costs of smoking in England are £17 billion per year. Uplifting this estimate based on the relative size of the population in England compared to the whole of the UK, the government estimates the costs of smoking to the UK to be around £21 billion per year. This includes a £17 billion loss to productivity per year through smoking related lost earnings, unemployment, and early death, as well as costs to the NHS and social care sector of £2.3 billion and £1.3 billion respectively.

64. In relation to costs, the analysis shows the overall reduction in tobacco consumption **over 30 years** in the UK is expected to reduce profits for tobacco retailers by £2,291m, and for tobacco wholesalers by £506m. It is expected that tobacco retailers will incur familiarisation costs of £9m, costs due to increased time to check people's IDs of £117m and costs to put up new signage in shops of £0.2m. These costs are in 2027 prices.

65. The reduction in tobacco consumption would also reduce the amount of tobacco duty collected by HMRC. It is estimated that the cumulative reduction in tobacco duty receipts over 30 years in the UK would be £26,061m. However, this reduction in the tobacco duty revenue represents a transfer from the government collecting this tax to the people in society previously paying the tax. The people that no longer take up smoking because of this policy benefit from an increase in the amount they can spend on other goods and services and the government loses an equal amount. Therefore, this reduction in tax revenue does not make society as a whole better or worse off.

66. In relation to financial benefits, the analysis showed, that over **30 years**, the expected benefits in the UK accrued from the health benefits of a reduction in the number of people taking up smoking would result in monetised quality-adjusted life years (QALYs) gains from fewer deaths of £480m. There will also be wider societal benefits, including productivity gains of £24,588m, reduced healthcare usage costs of £3,263m, reduced social care usage costs of £1,955m, and reductions in fire costs associated with smoking of £1,029m. These benefits are in 2027 prices. The benefits

[10] https://assets.publishing.service.gov.uk/media/65f9bd0a9316f5001164c351/tobacco-vapes-bill-impact-assessment.pdf

of the policy will continue beyond 30 years and increase in size due to the nature of the policy option.

67. From 2066 onwards the benefits are estimated to outweigh the costs, including the loss in duty revenue, and over a longer time period the benefits are estimated to be significantly higher than the costs. For example, the policy is estimated to provide a total net benefit of over £60 billion by 2100. With the new legal age of sale, local authorities would need to check the same number of businesses, and the government expects it to take the same amount of time to investigate any potential offences. Local authorities may incur some additional costs to familiarise themselves with the new law, but do not expect this to be a significant cost.

68. To discourage non-smokers and young people from taking up vaping and to raise revenue to help fund public services, the government has introduced a new excise duty on vaping products. Registrations and approvals for the tax will start from 1 April 2026, and the tax will take effect from 1 October 2026. To support the role vapes can play in helping smokers give up cigarettes, tobacco duty will also be increased to maintain the financial incentive to choose vaping over smoking. The government published a consultation on the design of the new duty on 6 March 2024.

69. In relation to the vaping provisions, the measures are primarily intended to reduce youth access and appeal. The sale of such products to under 18s is already prohibited so there will be an impact felt by those already making illegal sales. However, there are also expected to be general costs eg. in relation to familiarisation and to implement display bans. A regulatory impact assessment will therefore be completed in relation to any future regulations progressed under the powers.

70. DHSC note in their Impact Assessment that the main benefits are expected to be health related but as there is limited evidence on the health harms of vaping, it has not been possible to qualify the health benefits from a reduction in the number of children taking up vaping. However, evidence from Canada suggests that for every young person not taking up vaping the health benefits to the individual could be over £14k.

Any rural impact:

71. None expected.

Any data protection implications.

72. None expected.

The timescale for finalising and laying the memorandum, and the latest date by which the Legislative Consent Motion needs to be debated in plenary and the sequencing of events to coincide with the Westminster timetable.

73. The Bill was introduced to Parliament in Westminster on 20th March 2024. 2nd stage reading has been confirmed as 16th April. At that stage the Westminster timetable will become clearer. As things stand, we are estimating that allowing 20 working days for Health Committee to report (not counting recess), and a further 3 weeks to schedule and debate, that the earliest the legislative consent motion could be debated in the NI Assembly is the 20th May and we will schedule accordingly. We are conscious that this may have to be reviewed subject to confirmation of Westminster timetabling. We would therefore be grateful for Health Committee reporting at the earliest possible point.

Yours sincerely

Robin Swann MLA
Minister of Health