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20 February 2024

Dear Clare,

Thank you for your letter of 16 January 2024 on behalf of the Health, Social Care and Sport Committee further to the evidence regarding the public health impact of vaping and nicotine vapour products following the oral evidence session on Tuesday 14 November 2023.

An answer is provided below to each question posed in your letter:

**1. The Committee asks the Scottish Government what specific steps it is taking to tackle the significant increase in vaping amongst young people?**

Our Tobacco and Vaping Framework: Roadmap to 2034, published in November 2023, sets out our plans to tackle youth vaping in Scotland. The Framework provides details on how, where appropriate, we will do that in collaboration with United Kingdom Government and the other Devolved Governments. We know that by working together on these issues we can provide a more powerful, consistent voice. The actions set out in the Framework are wide ranging and include actions to restrict the marketing of vapes (including flavours; packaging and display that can be attractive to young people); actions to ban single use vapes; and actions to widen awareness to the risks of vaping.

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For example, in December 2023 our 'Take Hold' marketing campaign educated parents, carers and children about the dangers of vaping and increased the awareness of the harms and risks of nicotine addiction. An evaluation of the campaign has shown the success of this approach and we would gladly share this detail with the Committee.

**2. Specifically, what is being done to gain a better understanding of trends in vaping amongst young people across different socio-economic groups differ noticeably from the corresponding trends in youth smoking.**

Currently the Health and Wellbeing Census, the Health Behaviour in School Aged Children (HSBC) survey and Growing Up in Scotland data are used to provide evidence on these measures. The data collected can be broken down to look at socio-economic groups, or more specifically the Scottish Index of Multiple Deprivation. These are robust, well established surveys with good sample sizes that support better understanding of trends in vaping.

As part of the Tobacco and Vaping Framework we committed to reviewing the indicators used to monitor trends in youth vaping and youth smoking. A short life expert working group will oversee the introduction of indicators to track progress towards 2034. This group will report by the end of the first year of the implementation plan.

**3. The Committee seeks assurances that, once available, the findings and outcome of Public Health Scotland's current investigation into how often the question of whether people vape is being asked in clinical settings will be shared with the Committee. The Committee would also appreciate an outline of what the Scottish Government is doing to encourage healthcare professionals to pose this question routinely in paediatric settings specifically.**

Outputs from the Public Health Scotland investigation will be shared with the Committee in due course.

Scottish Government officials have regular meetings with the Royal Colleges, including the Royal College of Paediatric and Child Health (RCPCH), on a variety of public health matters, including vaping. We will pose this question to them when we next meet.

**4. The Committee notes in evidence that there remain significant gaps in available data – both in terms of collecting and monitoring, particularly as this relates to young people. We request an update from the Scottish Government as to how it plans to increase availability of relevant data to provide a clearer picture of overall trends in this area and whether any consideration has been given to launching a targeted survey to provide an accurate, comprehensive and up-to-date picture of rates of vaping among children and young people?**

Following the publication of the Tobacco and Vaping Framework in November 2023, we established an Indicators Working Group to oversee the introduction of indicators to track progress towards our 2034 target. The Working Group is currently discussing possible

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avenues to gather reliable data on vaping prevalence and trends among children and young people. This group will report by the end of the first year of the implementation plan.

- 5. As noted by Professor Banks, available data shows a similar picture with respect to rates of vaping in Scotland to that seen internationally. The Committee would be keen to understand what the Scottish Government is doing to gain a better understanding of international models of best practice models for data gathering and to apply these wherever appropriate.**

Our 2023/24 Programme for Government outlined our commitment to take action to reduce vaping among non-smokers and young people and to tackle the environmental impact of single-use vapes, including consulting on a proposal to ban their sale and other appropriate measures.

Scottish Government analysts have developed a living evidence database to ensure that all actions are based on the latest international evidence. They have recently published three peer reviewed key findings evidence briefings on:

- Health harms of vaping: [Vaping – Health harms: evidence briefing - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultations-policies/vaping/vaping-health-harms-evidence-briefing-2023-24/)
- Role of vaping as a gateway to tobacco smoking: [Vaping as a gateway to smoking – evidence briefing - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultations-policies/vaping/vaping-as-a-gateway-to-smoking-evidence-briefing-2023-24/)
- Effectiveness of vaping as a smoking cessation tool: [Vaping – Effectiveness as a cessation tool: evidence briefing - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/consultations-policies/vaping/vaping-effectiveness-as-a-cessation-tool-evidence-briefing-2023-24/)

Furthermore, analysts have engaged with colleagues from Public Health Scotland, academics and international experts to discuss ongoing research and upcoming publications and gather a better understanding of vaping among children and young people.

- 6. The Committee seeks assurances that adequate and dedicated resources will be found within Public Health Scotland to address this issue with the level of priority it needs and to monitor effectively the public health impact of vaping in both the short, medium and long term.**

Public Health Scotland recognises the need to have adequate and dedicated resources to cover both tobacco and vaping. Following resources being re-deployed during the pandemic PHS has been re-building resource around this, some of which will be dedicated and some will be shared to cover the wide range of public health issues within PHS's remit.

The Health Behaviours Analysis Team, within PHS have responsibility for monitoring health behaviour statistics and are investing the ability to add further data to this dashboard.

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Additionally, the Scottish Government provides annual data through the Scottish Health Survey on vaping and other health behaviours.

- 7. The Committee would also ask the Scottish Government what plans, if any, it has to appoint a dedicated team focused on vaping and NVPs to inform the future development of policy in this area; or if it plans to continue to address policy in this area as part of the wider remit of the Tobacco Control Team.**

The Scottish Government Tobacco Control Team are responsible for a wide range of issues relating to Tobacco and Nicotine Products – including prevention, cessation, enforcement, education, registration and legislation. There are currently have no plans to create a dedicated Nicotine Vaping Products team, however this will keep this under review as part of wider resourcing reviews.

## **Illicit Products**

- 8. Based on the evidence it has heard, the Committee is concerned that there appears to be no real mechanism for policing illicit NVPs due to a lack of trading standards powers and a lack of incentive for HMRC to investigate illicit vaping products on the basis that, unlike tobacco products, they are currently not subject to excise duty. The Committee calls on the Scottish Government to provide further information about the extent of availability of illicit vaping products in Scotland.**

We meet regularly with The Society of Chief Officers of Trading Standards in Scotland (SCOTSS) and are content that available existing powers are sufficient to remove illicit vapes from the retail market. However, we recognise concerns that resources available at a local authority level may impact on the use of these powers.

- 9. The Committee calls on the Scottish Government to outline what work it is undertaking to improve policing and control of illicit NVPs and what, if any, discussions it has had with the UK Government with a view to more effectively tackling the cross-border aspects of trade in these products.**

We continue to support strong national and local alliances to tackle the availability and sale to under-18s of illicit tobacco and vapes through engagement and funding of SCOTSS.

Regulations are in place across the UK to ensure minimum standards for the safety and quality of e-cigarettes, including bans on certain ingredients and restrictions on nicotine strength. All e-cigarette and e-liquids containing nicotine must be notified to the Medicines and Healthcare Products Regulatory Agency (MHRA) before they can be sold in the UK.

We meet regularly with HMRC, who work alongside Border Force to take action to tackle the import of illicit tobacco and vaping products at the border.

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We also meet on a regular basis with UK Government and will continue to work with the UK Government, alongside Welsh Government and the Northern Ireland Assembly, over joint approaches where appropriate.

**10. With reference to the evidence of Professor Britton, the Committee also asks the Scottish Government what, if any, discussions it has had with the UK Government on implementing an excise duty on vapes and vaping products similar to the excise duty on tobacco products.**

As set out in our Tobacco and Vaping Framework, it would not be within devolved competence to introduce a new duty on vapes.

Scottish Government has worked closely with the UK Government and other devolved nations on the recent consultation on Creating a Smoke Free Generation and Tackling Youth Vaping. This consultation covers a range of measures to reduce the appeal and availability of vapes to children.

The consultation response sets out that the UK Government is considering options on affordability, and believes there is a strong case for taking action. Options could include a new duty on vapes while ensuring that there is a significant differential between duty on vapes and duty on tobacco products.

**11. Can the Scottish Government provide more information on recorded breaches of the Health (Tobacco, Nicotine etc and Care) (Scotland) Act 2016 in relation to Nicotine Vapour Products?**

We work closely with the Society of Chief Officers of Trading Standards in Scotland (SCOTSS) on The Enhanced Tobacco Sales Enforcement Programme (ETSEP) to provide more rigorous enforcement of existing legislation.

SCOTSS have advised that in relation to NVP's, Local Authorities have under ETSEP, recorded 79 breaches which have resulted in a Fixed Penalty Notice to be issued in the current financial year.

In addition, there were 57 breaches in 2022-23. These are for a range of breaches under the devolved legislation including:

- A responsible person that allowed a sale by an under 18
- The sale of an NVP to a person under 18
- Carrying on an NVP business without being registered
- Failure to operate an age verification policy.

**12. The Committee calls on the Scottish Government to set out what measures it is taking to improve the enforcement of existing regulations around NVPs and to outline what, if any, actions we can expect to see over the coming year to improve enforcement of existing regulations in this area.**

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The purchase of vaping products is age restricted. It is illegal to sell to, or buy them for, anyone under the age of 18. We work closely with SCOTSS on ETSP to provide more rigorous enforcement of existing legislation.

Following disruption to visits during the pandemic, Trading Standards are working hard across Scotland to enforce existing legislation on the sale of tobacco and vaping products to under 18s.

Officers are using every tool at their disposal - including fixed penalty notices - to ensure retailers are not selling tobacco or vaping products to under 18s. We will also continue to engage with UK Government on the financial implications for Scotland of any new spending announcements made for enforcement.

**13. The Committee notes that the Scottish Government is contributing to a UK wide consultation on vaping and would welcome further updates on progress towards future regulation in this area.**

The response to the four nations consultation on creating a smokefree generation and tackling youth vaping has now been published ([Creating a smokefree generation and tackling youth vaping - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/creating-a-smokefree-generation-and-tackling-youth-vaping)).

As set out in our letter to the committee of 29 January 2024, we have committed to legislation via a UK-wide Bill to change the age of sale legislation and to provide powers within the bill to legislate on vape flavours, display, packaging, and other measures.

The Bill will:

- take measures to change the age of sale for all tobacco products, cigarette papers and herbal smoking products whereby anyone born on or after 1 January 2009 will never legally be sold tobacco products alongside prohibiting proxy sales, and changing warning notices;
- introduce regulation making powers to restrict flavours, point of sale and packaging for vaping products (nicotine and non-nicotine) as well as other consumer nicotine products; and
- introduce new FPNs for England and Wales with a penalty of £100 where it is believed an offence has been committed in relation to age of sale legislation for tobacco and vapes (nicotine and non-nicotine) and regulate to extend provisions to other consumer nicotine products. These powers already exist in Scotland.

Separately, the UK Government, Scottish Government and Welsh Government intend to introduce legislation to ban the sale, supply and importation of disposable vapes.

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**14. Given the rise in youth vaping and taking account of the evidence it has heard, the Committee also welcomes the Scottish Government’s commitment to consider a ban on single-use disposable vapes, widely viewed as a key driver of increased youth uptake. With that said, the Committee questions whether such prohibition measures will be sufficient on their own to tackle the increase in youth vaping, or if a broader package of measures will be necessary to tackle other drivers and, as outlined by Dr Garth Reid in evidence, to ensure any legislation to ban disposables is ultimately successful.**

The 4-nations consultation on smoking and vaping aligned with our goal of tackling the environmental impact of single use vapes. Alongside a ban on the sale of single-use vapes, the consultation considered if any other measures are required to ensure the policy is effective in improving environmental outcomes, reflecting our PfG commitment. The Scottish Government recognises a broader package of measures is necessary to address youth vaping – these are set out in the Tobacco & Vaping Framework published in November 2023.

Scotland was the first UK nation to commit to consulting on a proposed ban on single use vapes, and we are pleased to see the consensus that has formed on the need for prompt action. Our aim is to implement a ban at the earliest opportunity, to ensure the health and environmental benefits are realised as soon as possible. The Minister for Green Skills, Circular Economy and Biodiversity, Lorna Slater will now work to introduce legislation.

**15. If the Scottish Government is actively considering a broader package of measures to tackle the issue, the Committee would be interested to understand what these might include and how they might be effectively coordinated with one another.**

Our Tobacco and Vaping Framework: Roadmap to 2034, published in November 2023, also sets out our strategic plans to tackle youth vaping in Scotland.

Actions we have already taken include:

- In January 2024, we laid an SSI in Parliament. These commencement regulations enable provisions within the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 to be enacted, including the ability to tighten rules on the advertising and promotion of vaping products.
- We are working as part of the [CivTech process](#) to renew our Tobacco and Nicotine Vapour Product Register. This work seeks to create a streamlined digital solution which will improve access to guidance, training and support enforcement.
- In December 2023 our ‘Take Hold’ marketing campaign educated parents, carers and children about the dangers of vaping and increased the awareness of the harms and risks of nicotine addiction.

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Any further measures we take will need to balance having the biggest impact on youth vaping while ensuring vapes continue a tool available for adult smokers to support cessation.

Additionally, alongside the ban on single use vapes, further UK-wide legislation is being introduced to tackle youth vaping which will introduce regulation making powers to restrict flavours, point of sale and packaging for vaping products (nicotine and non-nicotine) as well as other consumer nicotine products.

**16. The Committee also notes from evidence that marketing of NVPs, including campaigns that are seemingly deliberately targeted at children, is seen as a key driver of increased youth vaping. The Committee is aware that many of the legislative competences related to marketing and enforcement of trading standards are reserved, and therefore reiterates its support for the Scottish Government in contributing to the current UK-wide consultation on vaping.**

**Alongside this UK-wide activity, the Committee would welcome further detail of any actions the Scottish Government would intend to take that fall within devolved competences and how it will ensure that such actions are appropriately coordinated with action at a UK-wide level.**

The marketing of vapes, which appears to be aimed at younger groups, is completely unacceptable. We have been working on action to address this as a priority and are considering next steps.

Whilst we have been working closely across the four nations on this issue, our 2022 consultation on [tightening the rules around the advertising and promotion of vaping products](#) sets out actions that we can take within devolved competence.

This consultation aimed to strike a balance between protecting children and adult non-smokers from the potential harms of vaping, whilst providing existing adult smokers with the information they need to make an informed choice on cessation.

The response to the consultation has been published and we are now considering next steps as a priority alongside the work to introduce the Tobacco and Vaping Bill in UKG.

Any action that we seek to take will build on the regulations that are already in place to restrict the marketing, promotion and sale of vaping products to under-18s.

**17. As previously highlighted, the Committee is aware that the 2016 Act provides Scottish Ministers with powers to regulate displays and promotions. Given the evidence it has heard that many vaping products are deliberately marketed to be attractive to children, the Committee calls on the Scottish Government to set out what plans it has, if any, to utilise these powers and over what timeframe as well as how Scottish Government action in this area will be effectively coordinated with planned action at a UK-wide level.**

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In January 2024 we laid an SSI in Parliament on the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 - [The Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016 \(Commencement No. 6\) Regulations 2024 \(legislation.gov.uk\)](#).

These commencement regulations will enable provisions to be enacted in future and we are currently considering next steps on these issues.

We will respond to the committee with a further update in due course.

**18. The Committee would also be interested to understand to what extent, if any, the Scottish Government considers that the Internal Markets Act and the market access principles within it are likely to constrain its capacity to take the actions it considers appropriate to address the issue of youth vaping in Scotland.**

A number of the options consulted on in the recent UK-Wide consultation to tackle youth vaping, including a ban on disposables and restrictions on product packaging & flavours, would result in restrictions being placed on the sale of across the UK. Future regulation on these issues would likely fall within the scope of the UK Internal Market Act (IMA).

Under that Act, goods that meets regulatory requirements in one part of the UK can be sold in any other part, without having to adhere to the relevant regulatory requirement in that other part (mutual recognition). There is also a prohibition on direct or indirect discrimination based on treating local and incoming goods differently (non-discrimination). The Act provides for limited exclusions from these rules, based on individual policy areas.

Scottish Government is keen to pursue a four nations approach, where possible, on issues related to vaping. This would reduce regulatory divergence across the UK and remove issues associated with the application of the IMA.

However, there may be instances where regulatory alignment on actions related to vaping is not possible. Whilst it is relatively common for regulations across the four nations to make provisions regarding the sale, importation and production of products, the operation of the IMA can make this very difficult.

Given this, where this is divergence in policy on vapes across the four nations on these issues, an exclusion from the effect of the IMA would likely be needed to provide certainty that we could deliver on policy commitments in Scotland. Other aspects of the regulation of vapes, such as the regulation of retail displays and the age at which they can sold, can be taken forward without any significant impact arising from the IMA.

**19. Finally, with reference to evidence above from Professor Emily Banks, the Committee calls on the Scottish Government to outline what action it is taking to monitor and address ongoing innovations by the vaping products industry that might undermine the effectiveness of existing and future regulation in this area.**

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The Tobacco and Vaping Framework launched in November 2023, sets out our roadmap to a Tobacco-Free Scotland 2034 and outlines decisive action to ensure we hit our goal. This will provide direction for next ten years, and will also allow us to be responsive to innovation in novel nicotine and tobacco products which are, and will continue to be, an unfortunate reality.

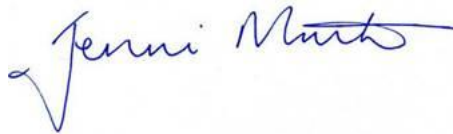
Unlike previous plans, Scottish Government is taking a more responsive approach to this framework, departing from 5-year reviewed action plans. Instead, we have set an overarching Framework, with work being underpinned by shorter action-focused 2-year implementation periods. This approach will allow for flexibility, developing and adapting actions to react to an ever-evolving area, and ongoing product development.

The recent four nations consultation also acknowledged there are other consumer nicotine products in the UK, such as nicotine pouches. The response sets out our commitment across the four nations to bring forward regulations to extend all proposed restrictions to other nicotine products (for example, pouches), and include and other consumer nicotine products in the scope of future regulations to restrict flavours, point of sale display and packaging and product presentation.

This will mean all consumer nicotine products are covered under a similar regulatory framework. Before any regulations are made, there would be an assessment of the impact of the proposed legislation and further consultation.

I hope that you find this response helpful, and I look forward to working with you in the future on this important issue.

Yours sincerely,



**Jenni Minto MSP**

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