

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HEALTH & SOCIAL CARE

INTRODUCTION OF AN ENABLING LAW TO REGULATE VAPES

The States is asked to decide:-

Whether, after consideration of the Policy Letter entitled “Introduction of an Enabling Law to Regulate Vapes,” dated 8th April 2024, it is of the opinion:-

1. To agree that a framework to legally define vapes and regulate their importation, advertisement, sale, supply and consumption should be implemented through the creation of an enabling Law.
2. To agree that the enabling Law includes powers for Ordinances to be made to create offences in relation to the importation, advertisement, sale, supply and consumption of vapes.
3. To agree than an Ordinance be enacted under the enabling Law:
 - a) introducing a ban on the sale and supply of vapes to individuals under 18 years old by making it a criminal offence;
 - b) prohibiting the advertisement of vapes in or on premises where they are sold or supplied by making it a criminal offence;
 - c) introducing a licence scheme for vape sellers that is similar to the licence scheme for tobacco products;
 - d) prohibiting the importation, sale and supply, including the free supply, of disposable vapes, by making it a criminal offence, subject to exemptions such as those set out in paragraphs 4.17 to 4.20 of this policy letter; and
 - e) giving the Committee *for* Health & Social Care power to make regulations to prescribe exemptions, exceptions and defences in relation to the relevant offences where appropriate.
4. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

The above Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

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INTRODUCTION OF AN ENABLING LAW TO REGULATE VAPES

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

8th April, 2024

Dear Sir

1 Executive Summary

- 1.1 The Committee *for* Health & Social Care's ('the Committee') ambition to support islanders to live healthier lives through a greater focus on prevention and early intervention in health and care is set out in its Policy Letter entitled 'A Partnership of Purpose: Transforming Bailiwick Health and Care' (Billet d'État XXIV of 2017).¹
- 1.2 The Committee is under resolution of the States of Deliberation ('the States'), through the Guernsey and Alderney Tobacco Control Strategy 2015-2020 (Billet d'État VII of 2015),² to develop a work programme to move towards the regulation and control of vapes.
- 1.3 The Committee has consulted with the Principal Committees of the States and received widespread support for the regulation of these products.
- 1.4 The Committee recommends an enabling Law is introduced to achieve this. The enabling Law will set out a framework to legally define vapes, including vape paraphernalia, and regulate their importation, advertisement, sale, supply and consumption. It should allow the Committee to make exemptions to those provisions where appropriate and provide for the creation of offences. The Committee's proposals align with the policy behind tobacco control legislation.

¹ [A Partnership of Purpose: Transforming Bailiwick Health and Care](#)

² [Guernsey and Alderney Tobacco Control Strategy 2015-2020](#)

- 1.5 Whilst vapes have become an important harm reduction tool for many **adults** who smoke, nicotine itself remains an addictive substance and the potential long-term risks of vaping remain unknown, particularly in children.
- 1.6 In 2022, 38% of secondary age students surveyed as part of the Guernsey Young People's Survey³ reported that they had tried vaping and 10% recorded vaping regularly. These data are concerning, and the Committee is equally perturbed by the targeted marketing of vapes to children which is reminiscent of cigarette marketing to children. The Committee cannot foresee a reduction in youth vaping in the absence of regulatory action.
- 1.7 With an enabling Law in place, the Committee recommends addressing the most important concerns in the first instance, namely the exposure and availability of vapes to young people. The Committee proposes a focused programme of work to:
- Prohibit the sale and supply of vapes to under 18s;
 - Prohibit display and advertising of vapes at premises where they are sold or supplied;
 - Introduce a licence scheme for the sale of vapes; and
 - Ban disposable vapes.
- 1.8 The Committee is aware of the significant environmental harms created by disposable vapes and while not part of its mandate, it is pleased that its recommendation to ban them on health grounds, bar a small number of exemptions, will produce secondary benefits to the environment and reduce the resource and costs currently associated with their disposal.
- 1.9 The proposals are supported by the Substance Use Technical Team (SUTT). The SUTT includes membership from Public Health Services, Primary Care, Specialist Mental Health Services, Guernsey Police, Guernsey Prison and the Health Improvement Commission. It is the steering group that oversees the implementation of the Combined Substance Use Strategy for Guernsey and Alderney 2021-2026.⁴

2 Strategic alignment

- 2.1 The Committee's ambition to support islanders to live healthier lives through a greater focus on prevention and early intervention in health and care is set out in its Policy Letter entitled 'A Partnership of Purpose: Transforming Bailiwick Health and Care.' This principle is fundamental to public health policy and a

³ [The Guernsey Young People's Survey 2022](#)

⁴ [Combined Substance Use Strategy for Guernsey and Alderney 2021-2026](#)

tenet of various health strategies and conventions affiliated with Health and Social Care and the States, outlined below.

Extant Resolution of the States of Deliberation

- 2.2 The Committee is under resolution of the States, through the Guernsey and Alderney Tobacco Control Strategy 2015-2020, to develop a work programme to move towards the regulation and control of vapes.

Combined Substance Use Strategy for Guernsey and Alderney 2021-2026 and the Government Work Plan

- 2.3 While the Guernsey and Alderney Tobacco Control Strategy 2015-2020 has been superseded by the Combined Substance Use Strategy (CSUS) for Guernsey and Alderney 2021-2026, the regulation of vapes remains part of the CSUS.
- 2.4 The CSUS is included in the Committee's plan of work set out in the Government Work Plan 2023-2025.⁵

The Children & Young People's Plan and the United Nations Convention on the Rights of the Child

- 2.5 The Children & Young People's Plan 2023-2026,⁶ debated by the Assembly in July 2023, sets out that, "children and young people should have the highest possible standards of physical and emotional health and grow up in places and spaces that enable them to be healthy, active and thrive."
- 2.6 The United Kingdom (UK) formally extended its ratification of the United Nations Convention on the Rights of Children⁷ (UNCRC or 'the Convention') to Guernsey and Alderney in December 2020. In doing so, the States made a commitment to act, so far as possible, in a manner compatible with the Convention in all States strategies and policies.
- 2.7 The Convention is the most widely ratified treaty in history and is considered by UNICEF to be the most complete statement of children's rights ever produced. Article 24 of the UNCRC sets out that parties recognise "the right of the child to the enjoyment of the highest attainable standard of health."

⁵ [Government Work Plan 2023-2025](#)

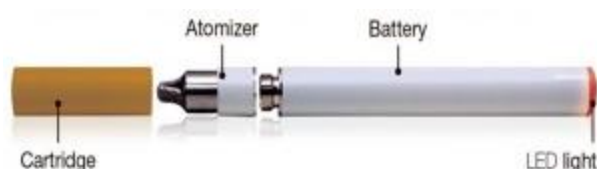
⁶ [Children and Young People's Plan 2023-2026](#)

⁷ [United Nations Convention on the Rights of the Child](#)

3 What are vapes?

- 3.1 Vapes were developed in China in the early 2000s as an alternative to smoking tobacco or for use as a smoking cessation aid. They are battery powered devices that heat a solution containing nicotine (most of the time), flavourings and other additives (sometimes called 'e-liquid' or 'e-fluid') which the user inhales via an aerosol or vapour. The development of vapes has been rapid. First generation models introduced in China were basic and manufactured to resemble cigarettes, complete with an LED light that lit up when used. These products, known as 'cig-a-likes,' are pictured below. Vape pens, mods or tanks, and pod models are now widely sold and are increasingly sophisticated compared with their 'cig-a-like' predecessors which are no longer widely available.

Figure 1: First generation 'electronic cigarette.'



- 3.2 Vapes **do not contain tobacco**. It is the toxic components of tobacco that cause the respiratory illness, cardiovascular disease, cancer and premature death seen in smokers. It is for this reason that Public Health authorities both locally and in the UK maintain that they are likely to be approximately 95% safer than tobacco products, such as cigarettes. Vapes have become a popular stop smoking aid - they provide smokers with a 'cleaner' form of nicotine – and Public Health Services supports their use in **adults** as a harm reduction measure to smoking or as a smoking cessation aid for this reason. Indeed, the National Institute for Health and Care Excellence (NICE) recommends their inclusion as an option to treat tobacco dependence in **adults**.⁸ Guernsey's stop smoking service Quitline provides free rechargeable vape starter kits to adults alongside specialist nurse support in line with this guidance.
- 3.3 However, whilst vapes have become an important harm reduction tool for many adults who smoke, nicotine itself is an addictive substance and the potential long-term risks of vaping remain unknown, particularly in children. In 2022, 38% of secondary age students surveyed reported that they had tried vaping and 10% recorded vaping regularly. This compares with 26% and 2% from the same survey undertaken in 2019. While future surveys will inform whether these increases are maintained they nonetheless present a worrying

⁸ [NICE - Tobacco: preventing uptake, promoting quitting and treating dependence](#)

picture, and the Committee cannot foresee a reduction in youth vaping in the absence of regulatory action. It is with this in mind, and recognising that the long-term effects and potential harms of vaping remain unknown in young people particularly, that the Committee proposes a regulatory framework for vapes through the introduction of an enabling Law.

- 3.4 The Committee is further concerned by the targeted marketing of vapes to children. The use of colour, flavourings and the availability of products at a cheaper price point, namely disposable vapes, is reminiscent of tobacco industry initiatives to encourage the uptake of smoking in young people. Indeed, tobacco companies have been investing in and developing their own vape brands for some time.⁹ Public Health Services will monitor the need for the establishment of a service to support young people quitting vapes.

4 An enabling Law for the regulation of vapes

- 4.1 Tobacco control policy provides a well-established, successful blueprint to address these concerns. The Committee therefore proposes primary legislation for vapes that is equivalent to The Tobacco Products (Enabling Provisions) (Guernsey) Law, 2010 ('the Tobacco Law'). Broadly, this legal framework defines tobacco products and enables the States to regulate their importation, advertisement, sale, supply and consumption and to create offences for when prohibitions are breached. These legal powers have served islanders well; legislation prohibiting smoking in indoor public spaces and wide-ranging bans on tobacco advertising, among other things, have been enacted under the Tobacco Law. Indeed, the Committee's Policy Letter entitled "Prohibition of Smoking in Vehicles Carrying Children, and Growing Tobacco," dated 8th April 2024 proposes creating new criminal offences for adults who smoke in a car with a child present using existing powers under the Tobacco Law.
- 4.2 The Committee had originally considered regulating vapes by asking the States to deem nicotine a 'regulated ingredient,' under the Tobacco Law, with the legal effect thereafter of nicotine products being considered tobacco products. However, the fast paced evolution of vapes, particularly the appearance on the market of disposable vapes that are considered 're-chargeable disposable,' or 're-fillable disposable' would prove challenging to draft under tobacco control legislation and pose a risk that future product developments would not be captured. Non-nicotine vapes similarly would not have been captured. The recent change to the way a Projet de Loi is granted Royal Assent¹⁰ further supports the change in the Committee's recommended approach to legislative

⁹ [Investment in the vaping industry](#)

¹⁰ From 29th February 2024, the ratification of Bailiwick Projects have been made by His Excellency the Lieutenant-Governor in the Bailiwick.

drafting.

4.3 Guernsey currently benefits from some of the UK regulatory measures on vapes, such as print media advertising, and the Committee is therefore only proposing legislation under the enabling Law to resolve problems that currently exist locally. The enabling Law will, however, enable further robust regulation in the future when needed. In the first instance, the Committee recommends addressing the most important concerns, namely the exposure and availability of vapes to young people. The Committee proposes:

- An age of sales ban of vapes to under 18s;
- Prohibition of display and advertising in or on premises where vapes are sold or supplied;
- The introduction of a licence scheme; and
- A ban on disposable vapes.

Age of sales ban of vapes to under 18s

4.4 The Committee is aware that one of the most effective measures in reducing the availability of vapes to children is to prohibit their sale or supply to individuals under the age of 18 years. This is commensurate with legislation that governs other dangerous substances, such as tobacco and alcohol. In line with policy behind The Tobacco Products (Guernsey) Ordinance, 2014 ('Tobacco Products Ordinance') and The Children and Young Persons (Control of Intoxicating Liquor) (Guernsey) Law, 1986, and to support the efficacy of an age of sales ban, the Committee also recommends an offence be created for the proxy supply of vapes to children.

4.5 Equivalent legislation exists for England, Scotland, Wales, Northern Ireland and in Jersey. The Isle of Man Government recently introduced the Vaping Products Bill 2023¹¹ which similarly introduces an age of sale ban and a proxy sales offence on the island.

4.6 The Committee further recommends, so to close any potential avenues to circumnavigate the age of sales ban, that the sale of vapes cannot be undertaken by an individual under the age of 18 years unless each individual sale is authorised by an adult employed at that retail outlet. This measure is also consistent with the policy behind tobacco and alcohol legislation.

Prohibition of advertising vapes

4.7 The Committee shares the concern of many in the community about the

¹¹ [Vaping Products Bill 2023](#)

targeted marketing of vapes to children through colourful packaging and the flavouring of products. This is reminiscent of the marketing of tobacco products to children for which the States has already enacted prohibitive legislation. The exposure of vapes to children in Guernsey is considerable in some retail outlets – colourful products, in bubble gum and milkshake flavours, can be seen at the eye level of young children, up and down aisles and around the till area in some establishments.

- 4.8 The Committee has consulted with St James' Chamber to consider the extent and complexity of legislative drafting that would be required to regulate the vape product itself and its packaging and has reached the conclusion that the most pragmatic and shortest route to reduce the visibility of these products to children is through prohibitive advertising measures in and on premises where vapes are sold or supplied. The enabling Law will, however, enable regulation of packaging at a later date.
- 4.9 The advertisement of tobacco products in or on retail premises where those products are sold is prohibited under section 25(1) of The Tobacco Products Ordinance in conjunction with the Tobacco Advertising (Guernsey) Law, 1997, subject to a few narrow exceptions and exemptions in the Tobacco Products (Exceptions, Exemptions and Defences) (Guernsey) Regulations, 2014. This includes the display of tobacco products or their prices. The Committee proposes that similar measures are introduced for vapes. Placing legislative requirements on the local retailer, rather than a manufacturer in an outside jurisdiction, provides greater ability to ensure compliance with the regulatory requirements and is less challenging should prosecution be required. This approach works seamlessly for tobacco products through a licensing scheme set out in the Tobacco Products Ordinance and administered successfully by the Office of Environmental Health & Pollution Regulation (OEHPR) and the Committee further recommends that this scheme is extended to vape sales premises under the new enabling Law.
- 4.10 The Committee believe it would be reasonable to consider an exemption to some advertising prohibitions for retail outlets that only sell vapes. For example, with an age of sale ban in place, the Committee may be minded to provide an exemption for the display of vapes where under 18s are prohibited from entering the premises, and alongside any other conditions it believes necessary. This would be commensurate with the exemption that allows the display of tobacco in enclosed places where children are not permitted access, as set out in regulation 5 of the Tobacco Products (Exceptions, Exemptions and Defences) (Guernsey) Regulations, 2014.

Introduction of a licence scheme

- 4.11 Licensing schemes enable government to maintain a register of establishments

that sell a given product and for those establishments to be audited against regulatory requirements, with enforcement action available to secure compliance if and when required.

- 4.12 The Committee recommends the implementation of such a scheme, not least because it is aware of the findings by Trading Standards authorities that one in five shops in Scotland had been selling vape products to children,¹² with similar findings of sales to minors discovered in other areas.^{13, 14} The UK does not administer a retail licence scheme for tobacco or vape products and while it is not possible to conclusively determine that the above findings are because of this, the Committee is confident that the existence of its tobacco licensing scheme, alongside the important work undertaken by Guernsey Border Agency and others, helps to ensure compliance with the requirements set out in law. The Committee further notes that the significant problem of counterfeit products seen in the UK is not experienced locally.
- 4.13 The Committee proposes that the licence scheme for vapes be administered by the OEHPR who advise that many vape sellers are likely already part of the existing licensing regime for tobacco. The Committee understands that the tobacco licensing scheme was implemented on a similar standing, because most tobacco sellers also sell food items and are therefore already inspected by the OEHPR to ensure their compliance with food safety standards under The European Communities (Food and Feed Controls) (Guernsey) Ordinance, 2016. This means it is currently possible to cover the new scheme without the need for additional resources.
- 4.14 As is the case with the existing tobacco licence scheme, the Committee proposes that it is given power by Regulations to set licensing fees for vapes.

Ban on disposable vapes

- 4.15 Disposable vapes are those products which are 'ready to use' with pre-filled e-liquid and a charged battery. Once the e-liquid or battery runs out, they are disposed of because they cannot be re-filled or re-charged. However, some products are now available which have limited capacity to re-fill or recharge and can be known as 're-fillable disposable' or 're-chargeable disposable' vapes. Disposable vapes are manufactured in bright colours and they are available in sweet, enticing flavours. Due to their technical simplicity compared with mod or tank model vape products, they are cheaper to purchase.

¹² [One in five shops willing to sell vapes to under 18s](#)

¹³ [Trading Standards Wales](#)

¹⁴ [Trading Standards South West](#)

- 4.16 The lower price point of disposable vapes and the novel 're-chargeable/re-fillable disposable' versions makes them more affordable to children. Given the investment of tobacco companies in the vape industry, the Committee considers the appearance of cheaper vape products on the market reminiscent to cigarettes being available in packets of ten (a standard packet of cigarettes contains twenty cigarettes). The States banned cigarettes being sold in individual packets of ten, and banned importation of those packets, because they were more affordable to children and the Committee recommends that the importation and sale of disposable vapes (including those considered to be 're-chargeable/re-fillable disposable' vapes) be prohibited too, subject to a small number of exemptions set out below.
- 4.17 As explained in paragraph 3.2, NICE recommend that vapes are considered an option to treat tobacco dependence in adults and Quitline provides free rechargeable vape starter kits to adults alongside specialist nurse support on this basis. The Committee therefore recommends that the smoking cessation service be given an exemption from the ban on disposable vapes.
- 4.18 The Committee further wishes to exempt the adult in-patient facility for the Specialist Mental Health Service, known as Crevichon Ward, within Les Oberlands service area at the Princess Elizabeth Hospital site. The prevalence of tobacco smoking in mental health service users is often higher than the general population and the use of vapes supports the smokefree environment on and within the grounds of Crevichon Ward.
- 4.19 Prison populations too ordinarily have a higher prevalence of smoking than that seen in the general population and it is a credit to the Committee *for* Home Affairs and its operational teams that the health and wellbeing of the prison population and staff at Les Nicolles have been improved since the successful implementation of its smokefree policy in 2013. The smokefree status of the prison has, in part, been achieved by the availability of disposable vapes to prisoners and while the Committee is aware that non-disposable vapes are now used at Les Nicolles, it considers it appropriate that an exemption be applied so that disposable vapes could be used to maintain the smokefree status and harmony within the prison if and when needed.
- 4.20 It is possible that other appropriate exemptions exist or may arise from time to time. For example, providing for a 'personal allowance' of disposable vapes for individuals entering the island would avoid any unreasonable burden on the operations of Guernsey Border Agency against its wider responsibilities. The Committee therefore recommends that it be given powers by Regulations to provide for exemptions to the ban.
- 4.21 The Committee is aware of the significant environmental harms created by these products and while not part of its mandate, it is pleased that its

recommendation to ban these products on health grounds, bar a small number of exemptions, will produce secondary benefits to the environment and reduce the resource and costs currently associated with their disposal.

5 Compliance with Rule 4

- 5.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 5.2 In accordance with Rule 4(1), the Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not be put into effect.
- 5.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions have the unanimous support of the Committee.
- 5.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee under its public health function and responsibility to the welfare and protection of children.
- 5.5 Also in accordance with Rule 4(5), the Committee consulted on a wide range of regulatory measures with the Policy & Resources Committee, the Committee *for* Economic Development, the Committee *for* Education, Sport & Culture, the Committee *for* Employment & Social Security, the Committee *for* Environment & Infrastructure, the Committee *for* Home Affairs and the States' Trading & Supervisory Board. The Committee's proposals are supported by the Substance Use Technical Team.

Yours faithfully

A H Brouard
President

T L Bury
Vice-President

M P Leadbeater
A D S Matthews
A Snowdon

G A Oswald
Non-States Member