

Written evidence submission from JTI UK

I am writing to draw your attention to the extensive use of delegated powers in the Tobacco and Vapes Bill ahead of the Committee's consideration of the Bill.

As you will be aware, a first version of this Bill was introduced in the last Parliament but fell because of the 2024 General Election. In considering the first version of the Bill, the Hansard Society argued ([15 April 2024](#)):

"The genesis of the delegated powers in the Bill – dating back a decade - tells an important story about the way in which incomplete policy-making processes are used by Ministers to seek 'holding' powers in a Bill, only for that precedent to then be used to justify further, broader powers in subsequent Bills. This 'creeping' effect in the legislative process undermines parliamentary scrutiny of ministerial action."

The 2023-2024 version contained 32 new or amended delegated powers. The current version before Parliament contains more than twice the original – 66 new or amended delegated powers, of which 15 are Henry VIII powers, according to the Delegated Powers Memorandum. Whilst many of these are repeated powers for the governments of the devolved nations, they still represent a significant suite of new powers for Ministers, both UK and devolved. Despite being a long Bill – with 170 Clauses and 21 Schedules – it still lacks sufficient detail to require such an extensive suite of delegated powers.

The Government argues that this Bill will bring most of this regulation into one piece of legislation, 'tidying up' the legislative framework and that many of the delegated powers already exist. It argues that such delegated powers will grant Ministers the ability to be flexible and future-proof tobacco and nicotine-control, responding to changing circumstances in the marketplace and amongst developing views on tobacco and nicotine control. It also argues that most of the important regulations will be introduced under the affirmative procedure allowing for parliamentary scrutiny and that there is already the inclusion of a statutory consultation with stakeholders.

Our view differs significantly. Parliament has regularly debated and agreed ever more stringent regulation of tobacco and nicotine-based products. This has indeed led to a complex regulatory framework spanning multiple pieces of primary legislation. Whilst many existing statutes are amended by the Bill, only two pieces of legislation are actually repealed.

The Bill represents a significant transfer of legislative powers from Parliament to the executive: new powers, extended powers, and the removal of restrictions in order to confer broader discretions on ministers to decide how to legislate. All of this with little indication or constraint on how this or future governments may exercise the powers to regulate matters from product development to sale, and free from the detailed scrutiny that Parliament would apply to primary legislation. This goes far beyond a supposed 'tidying up' of previous legislation and power.

The Bill virtually excludes Parliament from having any meaningful role in the scrutiny of tobacco control regulation in the future. The proposed powers encompass almost the entire product cycle for future tobacco and other nicotine products with regulations on:

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| • testing | • registration | • advertising |
| • product safety | • warning statements | • smoke-free places |
| • packaging | • displays | • vape-free places |
| • features | • distribution and discounts | • fixed penalty notices and offences and |
| • contents and flavours | • sponsorship | • future products. |
| • ingredients | • brandsharing | |

The Bill contains sub-delegation of powers, skeleton clauses introducing criminal offences and disguised powers to extend legislation through guidance. It does not simply transpose existing powers into a single Bill but has rewritten them to remove proportionality tests and specific restrictions and safeguards on the authority of the executive without recourse to Parliament.

The full impact of the proposed powers cannot be determined without a full understanding of the proposed regulations, which of course have not yet been published for Parliament to consider. Further detail on a range of areas should be added to the face of the Bill, so that they can be subject to the appropriate level of parliamentary scrutiny.

Some specific examples are provided in the Appendix to this letter.

Future tobacco control measures under these powers will only be subject to limited parliamentary scrutiny, under which delegated legislation is unamendable, and rarely voted against in either House. Perhaps anticipating criticism about the extensive use of delegated powers, most of them, as outlined in the Delegated Powers Memorandum, are to be subject to consultation ("any persons the Secretary of State considers it appropriate to consult") ahead of the drafting of regulations and then to be implemented under the affirmative resolution procedure.

We consider this a greatly inferior alternative to full parliamentary scrutiny and debate by Parliament in both Chambers and Committees that would apply to primary legislation. In our view, it is not appropriate to confer on the executive such broad-ranging discretion with such a significant potential economic impact, free from the full parliamentary scrutiny it deserves.

We would urge the Committee to recommend that:

- The 'flexibility' justification for powers should be challenged for powers which should rightly – and have historically – been considered in full by Parliament as primary legislation.
- More detailed limitations on how delegated powers may be exercised, particularly when known and matched with current government commitments, should be included on the face of the Bill.
- The sub-delegation of powers, skeleton clauses and disguised powers to extend legislation through guidance should all be challenged and subject to further scrutiny.

- Previous proportionality tests and limitations on powers that the Bill has removed should be reinstated.
- Sunset provisions should be included for the broadest powers, so that Parliament can consider again at a certain point in the future whether they should be re-delegated to the executive.

We hope that this correspondence is helpful to the Committee
in its deliberations.

Appendix

Extension of powers:

- Clause 45 grants the Secretary of State the power forever more to extend the proposed generational ban on tobacco products to any other new product in the future with only minimal scrutiny by Parliament.
- Part 5 grants the Secretary of State significant powers to regulate products, packaging and content of tobacco products. Whilst some of these existed previously, they dramatically extend the authority of Ministers to cover a range of areas in ways that are detailed. For instance, powers to be conferred under Clause 91 on contents and flavours may have significant consumer impacts, but these will only be subject to the limited parliamentary scrutiny of secondary legislation. Further details of the Government's intentions for the use of these powers should be on the face of the Bill, in order to place limits on their use.
- Powers under Part 5 are extended to all vaping and nicotine products now and into the future, without any assessment being conducted about how these powers will be exercised, potentially on products that have not yet been invented. Further details on how these powers may be used should be on the face of the Bill.
- Clause 89 extends the Secretary of State's powers to regulate retail packaging to cigars and pipe tobacco products, having been excluded from standardisation under The Standardised Packaging of Tobacco Products Regulations¹ and other regulations. This power is being extended without any full assessment or justification for their inclusion having been provided.

Sub-delegation of powers:

- Clause 104 and Schedule 1, paragraph 10 allow legislative powers to be sub-delegated through regulations conferring broad discretions on other organisations and bodies, for instance, allowing local authorities to develop licensing conditions without any scrutiny by Parliament.

Proportionality tests and restrictions removed from previous powers:

- Part 7 permits the Secretary of State and the devolved Ministers to designate by regulations anywhere that is open to the public as smoke-free, including outdoor areas. This builds upon the restrictions introduced under the Health Act 2006. However, the 2006 Act included a proportionality test requiring the Secretary of State to apply the test of the risk of a person inhaling "significant quantities of smoke" when deciding where to designate as smoke-free. This test has been removed, apparently with the intention of permitting ministers to designate areas in a disproportionate manner.
- Powers granted under Section 94 of the Children and Families Act 2014 on packaging etc. 'may' only be made if the Secretary of State believes that it will reduce the risk of harm to the health or welfare of people aged under 18. This Bill abolishes the Section 94 powers in the 2014 Act and re-enacts them in clause 89, extended to cover not just tobacco products but vapes and nicotine products more generally. The health condition/restriction is removed, so that

ministers may regulate packaging for other reasons, without those reasons being subject to full parliamentary scrutiny.

New powers lack clear limits and more detail should be on the face of the Bill:

- Part 7 of the Bill seeks to extend smoke-free places and also make them vape-free places. After some public debate, the Government announced that it would not currently be seeking to extend smoke-free areas to pub gardens, outdoor restaurant seating and other areas. Instead, Ministers would be “given powers to extend the indoor smoking ban to specific outdoor spaces - with children’s playgrounds and outside schools and hospitals all being considered, subject to consultation” (DHSC press release, 5 November 2024).

28 April 2025

¹ 2015 No.829

- Amendments tabled during the Committee stage of the Bill in the House of Commons by both the Official Opposition and the Liberal Democrats sought to match ministerial statements with the detail in the Bill, specifying precisely which places the Secretary of State has power to designate as additional smoke-free places (children's playgrounds, outside schools and hospital grounds) in England on the face of the Bill. The Government opposed all such amendments, resistant to adding the detail to the face of the Bill and retaining the powers to extend areas further at its discretion with limited scrutiny by Parliament.

Skeleton clauses introducing criminal offences:

- There are many examples throughout the Bill of Ministers being granted the powers to create a range of criminal offences and set a maximum penalty. These have the potential to have a significant impact on small and large businesses, and on the lives of individuals. It has long been recognised that new criminal offences should generally be set out in detail in primary legislation and subject to full parliamentary scrutiny.

Disguised powers to extend legislation through guidance:

- Schedule 1, paragraph 9 allows ministers to extend their delegated regulation-making powers by issuing supplementary guidance that licensing authorities must have regard to. This effectively could grant ministers the powers to impose further regulatory obligations free from scrutiny by Parliament.