**Briefing paper on the evidence supporting increasing the age for sale for tobacco from 18 to 21 in England (T21)**

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## Summary

1. This paper sets out the rationale and justification for raising the age of sale for tobacco to 21 (T21) in England.

2. Raising the age of sale is justified because it is:

**Needed**

- Smoking is uniquely addictive and lethal and therefore stricter regulation than for other consumer products is ethical and proportionate.
- T21 would reduce smoking rates by 30% among 18-20 year olds, a total of 109,000 in year one.

**Wanted**

- T21 is supported by the majority of the public, including children under 18 and small tobacco retailers.

**Workable**

- If paired with the introduction of a mandatory "Challenge 25" rule for retailers as in Scotland, and supported by English tobacco retailers, the burden of enforcement would be reduced rather than increased.

## Introduction

3. Introduction of what in the US is called T21 (Tobacco 21) spread rapidly in US states followed publication in 2015 of a report by the Institute of Medicine[1] (IoM), commissioned by the Food and Drugs Administration. This concluded that increasing the age of sale to 21 would *"lead to substantial reductions in smoking prevalence and thereby prevent considerable numbers of smoking-attributable deaths, including lung cancer deaths, and poor maternal and child health outcomes.",* while increasing still further to 25 would be likely to be considerably smaller.
In December 2019 the US Government instituted 21 years as the minimum age of sale by Federal law. It is now under consideration in England.

4. The uniquely harmful impact of tobacco and smoking, and a global recognition of the need for strict regulation, is enshrined in the WHO Framework Convention on Tobacco Control (FCTC). The treaty, which over 180 countries including the UK have committed to uphold, includes an obligation to restrict the supply of, and demand for, tobacco.

5. The UK is a world leader in implementation of the FCTC, having banned advertising, put tobacco out of sight in shops and required packaging to be standardised with large graphic health warnings, as well as providing help for smokers to quit and having high rates of taxation to reduce affordability. However, policy measures already in place have not been sufficient to end smoking, and youth uptake remains a significant problem.[2]

6. As Parties to the FCTC we are encouraged to implement measures beyond those required by the FCTC and its protocols.[3] Increasing the age of sale, as part of a comprehensive tobacco control strategy, is an important policy measure which can help deliver a smokefree generation and a Smokefree society by 2030 in line with the ambition of our government, supported by the public, and civil society.

7. Tobacco manufacturers recognised the importance of this age group, to quote Philip Morris (1986)[4] *"Raising the legal minimum age for cigarette purchaser to 21 could gut our key young adult market (17-20) …"* But we need to do more than show that tobacco companies believed it would damage their business, to prove that increasing the age of sale for tobacco from 18 to 21 (T21) is justified.

**Why T21 is ethical and proportionate**

8. Raising the age of sale is not about criminalising smoking, it is about restricting access, making it illegal for an adult to *sell* cigarettes to, or procure cigarettes for, young people under the age of 21. This is an important distinction.

9. Increasing the age of sale for cigarettes is proportionate and justified because smoking is addictive and uniquely harmful and it would reduce uptake and so save thousands of lives. Tobacco is the only legal consumer product which kills when used as intended, causing the death of more than 200 people a day in the UK.[5] Consequently, it is accepted that smoking requires a unique regulatory response to minimise the burden of preventable death and disease it inflicts on society. Examined on its own merits it is proportionate to raise the age of sale to 21, because of the unique harm caused by smoking.

10. According to the 2012 Surgeon General's Report, *"Of every 3 young smokers, only 1 will quit, and 1 of those remaining smokers will die from tobacco-related causes."*[6] On average, cigarette smokers die 5 years younger than non-smokers, 10 years for lifelong smokers. Additionally, for every person who dies because of smoking, 30 people are living with a serious smoking-related illness. [7] [8]

11. Tobacco dependence is an addictive disorder that typically starts before the brain has matured, almost exclusively starting before the age of 21, and with substantial uptake between 18 and 20 years. Between 2014 and 2018 around 1 in 5 young people had ever smoked by the age of 18, while an additional 1 in 10 young adults had ever smoked between the ages of 18 and 20. (Ever smokers are people who are currently smokers or who have ever smoked regularly for a year or more.) [9]

12. Surveys show that 69% of adult smokers in England want to quit and an even bigger proportion, 75%, regret ever having started smoking.[10] Two thirds of young people who try smoking will go on to become regular smokers. [11] In 2020 slightly more than one in three smokers in England tried to quit.[12] Relapsing back to smoking is common and on average it takes smokers 30 attempts before they successfully quit.[13]

13. Legal arguments that smoking is a "human right" have failed in the English and Scottish courts.[14] [15] [16] On the proportionality of regulations requiring plain standardised packaging, the judgement concluded that, *"there is a significant moral angle which is embedded in the Regulations which is about saving children from a lifetime of addiction, and children and adults from premature death and related suffering and disease. I therefore reject the Claimants' case that the Regulations are disproportionate."* [Para 36 page 22][17]

***18 is not a fixed age at which a child becomes an adult***

14. Adolescence and young adulthood is a period of cognitive, psychosocial, neurobiological, and physical development, all of which heighten the risks of tobacco initiation, continued use, and dependence. [18] And this is not just about smoking. It is now accepted that the late teens through the early 20s (ages approximately 18 to 26) are a distinct period of life known as young adulthood, where young people may still need support and protection. For example statutory provision in England in terms of social care for care leavers has been extended in recent years from 18 to 25.[19]

15. The idea that at 18 one automatically acquires the full set of all rights possessed by all adults is factually incorrect: there are already exceptions. Activities prohibited to under 21s include adopting a child, driving a large passenger vehicle or heavy goods vehicle, and supervising a learner driver.[20]

16. The previous increase in the age of sale from 16 to 18 did not result in a corresponding increase to the age limit for other activities which are allowed at 16 or 17 years of age. These include getting married, joining the armed forces, consenting to lawful sexual intercourse, and holding a driving licence. [20]

**T21 would significantly reduce smoking prevalence among young adults**

17. UCL modelled T21 in England based on the evidence from the US and the UK. The evidence from the US is that raising the age of sale from 18 to 21 immediately reduced smoking prevalence in 18-20 year olds by at least 30%.[21] [22] This is very similar to the impact when the age of sale in England was increased from 16 to 18 in 2007. This led to a reduction of 30% in smoking prevalence in people aged 16 and 17 years, partly by reducing uptake and partly by promoting cessation,[23] and also had a sustained impact.[24]

18. Around 364,000 young people between the age of 18 and 20 currently smoke in England and around 59,000 take up smoking in that age range each year.[25] It is estimated that implementation of T21 would lead to an immediate 30% reduction in the number of smokers from 364,000 to 255,000 in year one. [26] An estimated 54,500 of these would have lost an average 5 years life expectancy, ten years if they carried on smoking for all their lives.[27] After year one 18,000 new smokers a year would be prevented. Together this would create a significant reduction in smoking prevalence which would move through the age cohorts over time.

19. These calculations were based on conservative assumptions that the effect on cessation would only occur in year one, in subsequent years the impact would only be on uptake; and there would be no impact on smoking behaviour outside the age range 18 to 20. A Department of Health analysis of the Health Survey for England found that around three quarters of young smokers aged 16 to 24 had started smoking before the age of 18, which means that a quarter had started aged 18 or over. [28]

20. In addition the US Institute of Medicine (IoM) concluded that if the age of sale were increased to 21 *"the largest proportionate reduction in the initiation of tobacco use will likely occur among adolescents 15 to 17 years old."* The rationale for this was that smoking is a contagious habit,

and the age increase will protect younger children from exposure to older pupils in school who smoke and whose behaviour they may want to imitate. The gap will also remove a potential source of supply within schools.[29] [30] [31]

21. The IoM investigation also concluded there would be additional benefits from the 'declarative' effect of T21, which would help to change norms about the acceptability of smoking, although this might take time. And last but not least that it would lead to a reduction in smoking rates among young mothers, who are the age cohort most likely to smoke during pregnancy, with immediate benefits to the health and wellbeing of both babies and the unborn child.

22. Smoking during pregnancy is the leading modifiable risk factor for poor birth outcomes including stillbirth, miscarriage, and sudden infant death. Just under a third of pregnant women in England aged under 20 were smoking at their booking appointment and delivery, compared to around one in ten pregnant women overall.[32] As well as being more likely to smoke in the first place, younger mothers were less likely to quit before or during pregnancy.

**T21 is supported by the public, including young adults and tobacco retailers**

23. The Government's Smokefree 2030 ambition is supported by 74% of the population in a large public opinion survey of over 10,000 adults, backed up by high levels of support for a wide range of government action. Raising the age of sale to 21 is supported by 63% of English adults, with only 15% opposed, including those aged 18-24 who would be most affected by this policy (54% supported and 24% opposed).[33] A survey of young people aged 11-18 found very similar results (59% supported and 14% opposed). [34]

24. Support for tobacco regulations grows after measures are implemented, particularly among smokers. In 2015, after the law was passed prohibiting smoking in cars carrying children but before it was implemented, only 40% of smokers supported the legislation. A year later, after it had come into effect, it was supported by 74% of smokers. [35]

25. Raising the age of sale to 21 also has majority support among small retailers, with 52% of over 500 independent tobacco retailers surveyed in 2019 saying they supported the policy, compared to 39% who opposed. [36]

**T21 would not be more difficult to enforce than current age restrictions**

26. Raising the age of sale would not increase the difficulty of enforcement. In fact, if coupled with simple additional regulatory changes it could reduce the burden of tobacco enforcement work for trading standards officers, for example:
    - Giving powers to trading standards officers to issue on the spot fines.
    - Introduction of mandatory 'Challenge 25' regulations for all Age Restricted products as is the case in Scotland. [37] Retailers in England are encouraged to implement this voluntarily, but that allows for inconsistencies which undermine its effectiveness as a compliance and enforcement tool.

27. A new policy like this would need a public consultation, and comprehensive communication to retailers before being implemented. The lesson from the increase from 16 to 18 and Smokefree laws is that such public consultation helps raise awareness and make regulations like this, which

require public support to succeed, much easier to enforce when they are implemented. A review of the first year of implementation of the smokefree laws in England[38] found that:

- 98% of all premises and vehicles inspected in the first 9 months were smokefree, complying with the requirements of the law.
- 87% of all premises and vehicles are displaying the correct no-smoking signage.
- 81% of business decision makers thought the law was 'a good idea'.

28. The majority of independent tobacco retailers already support increasing the age of sale to 21 which will help ensure compliance. Independent tobacco retailers are also strongly supportive of strengthening Challenge 21 and Challenge 25 schemes (net agree 78%, net disagree 14%) and 71% strongly agreed on having a tobacco licence which could be removed if retailers break the law (net agree 84%, net disagree 9%, neither agree/disagree or don't know 7%)[36]

29. Other complementary legislative changes would be required including prohibiting proxy purchase of tobacco for smokers under 21, and considering prohibiting staff under 21 from selling tobacco (as is the current requirement in Scotland for sales by under 18 year olds).

**Conclusion**

The smoking epidemic is a unique historical phenomenon, which has become an anachronism. It had a beginning, and it needs to be brought to an end. We do not need to argue that there is something specific to 21 in relation to tobacco in order to establish a case for moving toward a smokefree generation. We need only to show that raising the minimum age for tobacco purchase to 21 is proportionate, will be effective, and does not breach any basic human rights. It is clear that it passes all three tests.

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