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Critiquing the generational tobacco ban

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Summary

- The UK government is proposing a generational ban on tobacco sales to anyone born after 2008, prohibiting adults from buying tobacco for the first time in British history.
- The generational ban will create absurd situations, such as a 28-year-old being deemed capable of purchasing tobacco, while a 27-year-old is not.
- The ban will drive a black market for tobacco, which will reduce government revenue and bolster criminal gangs.
- The likely trajectory of a generational tobacco ban is full prohibition across all age groups well before the legal smoking age encompasses the entire population.
- Bhutan's tobacco prohibition, the only example in the modern era, led to smuggling and a flourishing black market while smoking among minors remained common.
- The government's arguments for a ban, such as the preferences of smokers to quit and healthcare costs, do not stack up. In fact, a large number of smokers are not actively trying to quit while smokers contribute far more to the state through tobacco duty than smoking costs the NHS.
- The emergence of e-cigarettes and other reduced-risk nicotine products is steadily diminishing the public's demand for traditional tobacco, rendering cigarettes increasingly redundant without the need for a ban.

The policy

The last 20 years have seen the UK government introduce increasingly coercive anti-smoking measures, including some of the world's highest tobacco taxes. Despite strongly discouraging smoking, the government has always respected the right of adults to consume tobacco and has always pursued policies that are, at least nominally, evidence-based.

The policy of incrementally prohibiting the sale of tobacco represents a departure from these principles. Under plans laid out by the Sunak government, nobody born after 2008 will ever be allowed to buy any tobacco product, including cigars, pipe tobacco, snuff and even cigarette papers. This would mean that in a decade's time, a 26-year-old would be able to legally buy cigarettes, but a 25-year-old would not. Eventually, tobacco sales would be subject to total prohibition. The New Zealand government legislated for a similar ban in 2022 but its impact has yet to be seen as it has not taken effect.

Arguments for a generational ban

Most smokers start when they are ‘young’

Anti-smoking campaigners have traditionally argued that most smokers have their first cigarette when they are too young to make a rational choice. They used to say that two-thirds of smokers started before they were 18, but this is no longer true and so the rhetoric has changed. Announcing the generational ban at the 2023 Conservative Party Conference, Rishi Sunak said: ‘People take up cigarettes when they are young. Four in five smokers have started by the time they are 20.’ Although this is true, it masks the important fact that most smokers now start when they are 18 or older, at an age when they are deemed legally competent.

Does the government think people aged between 18 and 20 are not capable of making an informed choice about smoking? If so, does it think the same about drinking, voting and marriage? Perhaps the government does not think adults are ever old enough to smoke. If so, it should explain why. Alternatively, the government may believe that people are capable of making a decision about smoking when they are 21 but not before. If so, why is it not simply raising the smoking age to 21?

Most smokers wish they had never started

In its October 2023 policy paper ‘Stopping the start’, the government says: ‘Three-quarters of current smokers would never have started if they had the choice again’ (DHSC 2023). The implication is that smoking is an essentially involuntary habit that smokers would prefer not to pursue.

The source of this statistic is a survey commissioned by Public Health England (2021). Economists are generally sceptical about stated preferences, especially when social desirability bias is likely to affect the way people answer a question. If so many smokers wish they had never started, why haven't they quit? Quitting is clearly possible. Of all the people in Britain who have ever smoked, 69% no longer do so (ONS 2023). At the least, one would expect these smokers to have a strong desire to quit and to make regular attempts to do so. However, the survey found that 43% of respondents either 'don't want to ever stop smoking' or 'think I should stop smoking but I don't really want to'. Only 20% of respondents expressed a strong desire to quit, although most had no intention of doing so in the next three months.

When asked why they wanted to quit smoking, the most common reason was 'to improve my physical health' (55%) but this was closely followed by 'to save money' (52%). 'Social pressures' such as the 'stigma around smoking' were also mentioned by 15% of those who wanted to quit. But the high price of cigarettes is almost entirely due to taxation and the negative social attitudes towards smoking are partly the result of government campaigns (such as the NHS's 'If you smoke, you stink' advertising campaign). These inducements have been deliberately constructed to make smokers want to stop smoking. To argue by analogy, if a mugger threatens you with a knife, you may choose to hand over your wallet, but this choice has been forced upon you.

Cost to the NHS

In his speech, Sunak said: 'Smoking places huge pressures on the NHS and costs our country £17 billion a year.' This figure comes from the pressure group Action on Smoking and Health (ASH) and was cited in the Khan Review commissioned by the Department of Health in 2022. Khan claimed that the £17 billion that smoking supposedly costs England 'dwarfs the £10 billion income from taxes on tobacco products' (Khan 2022: 4), but this is to compare apples with oranges. The £10 billion (plus VAT) the government receives in tobacco duty is real money, whereas most of the £17 billion cost is made up of intangible costs and private costs to smokers. No less than £13.2 billion of it comes from lost productivity, including lost earnings as a result of premature death. These are not costs to the government, or to wider society, and cannot be compared to tax revenues.

The reality is that smokers pay far more in tobacco duty than they cost the state in healthcare while nonsmokers cost the state more, on average, in both healthcare and social security payments. Numerous studies have confirmed this. For example, a study published in the *New England Journal of Medicine* found that 'smoking cessation would lead to increased health care costs' (Barendregt et al. 1997). A study from Finland found that smokers' lifetime healthcare costs were €4,700 lower than those of nonsmokers (Tiihonen et al. 2012). A study from the Netherlands found that 'lifetime health expenditure was highest among healthy-living people and lowest for smokers' (van Baal et al. 2008). There is no economic case for the generational ban. It can only be made on paternalistic grounds.

Arguments against a generational ban

Personal liberty

Regulation of tobacco in Britain has always been underpinned by the assumption that informed adult consumers have the right to smoke: my body, my choice. The generational ban will overturn this fundamental freedom for the first time in British history. This requires a more substantial debate about the relationship between the state and the individual than the government has allowed in its short public consultation. The ban infantilises one cohort of adults, discriminates on the basis of age and raises issues of intergenerational unfairness. Even people who have no intention of ever buying tobacco may feel discriminated against if someone a few years older than them has a right that has been withheld from them.

Grey market

In the short term, the ban will seem merely an absurd ruse that will baffle tourists, inconvenience retailers, and have little impact on cigarette consumption. In 2030, 22-year-olds will be able to buy any tobacco product, while 21-year-olds will be allowed to buy none. Underage smokers will continue obtaining cigarettes illegally, as they do now, while young adults will obtain their cigarettes from older friends. It is unlikely that many people will feel guilty about buying tobacco for consenting adults. This will lead to a grey market in sales between friends that will gradually expand as the years go by.

Black market

In the longer term, people born after 2008 may find it increasingly difficult to find people who will buy them tobacco, especially if the government bans proxy purchasing (as it has proposed). For adults captured by the generational ban, all roads lead to black-market tobacco. Largely due to the UK's high rates of tobacco duty, the illicit tobacco trade is already booming. According to official figures from HMRC (2023), which are likely to be underestimates, one in nine manufactured cigarettes and one in three hand-rolled cigarettes were bought illegally in 2021–22.¹ A further 4 % were bought abroad. If these cigarettes were sold legally in the UK at full price, HMRC would have raised an extra £2.2 billion (plus VAT) (*ibid.*). As the black market grows, tobacco tax revenues will decline, criminal gangs will become richer and more powerful, and, paradoxically, children will find it easier to access cheap cigarettes.

The march towards full prohibition

In theory, the total prohibition of tobacco will take around 100 years under Sunak's plan. In practice, it is almost certain that anti-smoking groups will demand a 'level playing field' once the absurdities of the two-tier age system become manifest. It is likely that within ten years, the sale of cigarettes, and possibly all tobacco products, will be completely illegal. This will hand the whole of the tobacco market to criminals and unleash the full consequences of prohibition.

The disastrous effects of alcohol prohibition in the USA are well known. They include widespread criminality, disrespect for the law, harm to health from unregulated products and falling tax revenues. In the modern era, the only country to introduce tobacco prohibition is Bhutan (in 2004). Academic research has shown that this led to 'smuggling and a thriving black market' (Givel 2011: 309). Fifteen years after the ban took effect, 22% of Bhutanese 13–15-year-olds were tobacco users, and 17% were smokers (WHO 2020: 10–11). Among this age group, the World Health Organization reports that 'prevalence of current cigarette smoking increased continuously from 2009 to 2019' (*ibid.*: xviii). The ban was lifted in 2021.

1 For the reasons why these may be underestimates, see Christopher Snowden, 'How Many People Actually Smoke?' *The Critic*, 26 September 2023 (<https://thecritic.co.uk/how-many-people-actually-smoke/>)

Bhutan is not Britain and its experience with prohibition does not necessarily show that Sunak's ban will lead to an increase in underage smoking, but those 13–15-year-olds had never known legal tobacco and, by the logic of the UK government, should have been Bhutan's first 'smoke-free generation'. They proved to be anything but.

A further case study is South Africa, which completely banned the sale of tobacco during its COVID-19 lockdowns in 2020–21. Despite this prohibition leading to cigarette prices more than doubling, only 8% of smokers quit during this period, and the ban was 'largely unsuccessful in preventing smokers from purchasing cigarettes on the illicit market' (van den Zee et al. 2023: 328).

Further considerations

It is often said that 'prohibition doesn't work', but this is a statement that requires a caveat. Prohibition doesn't work *when there is significant demand for the product*. Supporters of a generational ban argue that there will be very little demand for tobacco among people born after 2008 in the future because if they are prevented from smoking when they are young, they will never smoke at all. This is naive. The same argument was used to raise the smoking age from 16 to 18 in 2007. It was assumed that if people did not smoke before the age of 18, they would never start. That law has been well enforced but it has not created a 'smoke-free generation'. Instead, most smokers now start between the ages of 18 and 24. Some adults clearly want to smoke tobacco, and that is unlikely to change in the future. A smoke-free generation is no more likely than a cannabis-free generation.

A more plausible claim is that e-cigarettes and other low-risk nicotine products are driving down smoking rates so rapidly that demand for tobacco will soon be minimal. This may be true but, if so, it raises the question of why a generational ban is considered necessary. Why not allow cigarettes to become obsolete through market forces? The problem with this argument is that the government is threatening to not only ban cigarettes but to also clamp down on safer alternatives to smoking. It wants to include heated tobacco in the generational ban and has proposed new bans on e-cigarettes, including a ban on disposable vapes and a ban on e-cigarette flavours. Many smokers will feel they have nowhere to go but the black market.

Conclusion

Prohibition has a bad name for a good reason. The generational ban on tobacco is very likely to create all the social, economic and legal problems associated with alcohol prohibition, albeit incrementally at first. The government is essentially opening a new front in the war on drugs and leaving future governments to deal with the consequences.

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