CONSIDERATE POUCHERS

Memorandum on the Alcoholic Drinks and Drugs Control Laws (Amendment) Bill, 2026 (National Assembly Bill No. 63 of 2026)

To the Clerk of the National Assembly, for the attention of the Departmental Committee on Administration and Internal Security.

23 November 2026

Considerate Pouchers is a consumer advocacy group for adults who use nicotine pouches, many of them former smokers.

We ask the Committee to remove nicotine pouches from clause 51 and to regulate them as nicotine products under a dedicated framework: sales to adults aged 18 and over only, a maximum of 20 mg of nicotine per pouch, risk-based taxation, no flavour bans, and no penalties for adult consumers.

Clause 51 punishes users more harshly than sales to children

The proposed section 14A(1) provides that a person shall not "manufacture, sell, offer for sale, use, advertise, promote or distribute" shisha or nicotine pouches, and section 14A(2) makes it an offence to "allow, promote, facilitate or encourage" their use. The penalty is a fine of up to KSh 5 million, up to ten years in prison, or both.

An adult using a pouch at home would face the same maximum penalty as a smuggler. As far as we are aware, no other provision in the Tobacco Control Act punishes an adult for consuming a lawful-age product in private. Under clause 52 of the same Bill, selling tobacco to a child carries a fine of up to KSh 500,000 or up to one year in prison, so the Bill would punish an adult's private use of a smokeless product ten times more severely, in prison terms, than selling cigarettes to a child. Section 14A(2) is also broad enough to cover a doctor or pharmacist who advises a smoker to switch.

The Memorandum of Objects and Reasons states that the Bill "does not contain any provisions limiting any fundamental rights or freedoms." We respectfully suggest that a ten-year prison term for personal use needs to be assessed against Article 24 of the Constitution.

A nicotine pouch is not a tobacco product

On 5 November 2026, the Leader of the Majority Party told the House: "Vapes are nicotine pouches" (Hansard, 5 November 2026, p. 34). They are different products. A vape heats a liquid that the user inhales. A pouch is placed in the mouth, contains no tobacco leaf, is not burned or heated, and produces no smoke or vapour, so there is no second-hand exposure.

Clause 49 would redefine "tobacco product" to include any product "containing nicotine from any source" used by "sucking," which brings pouches inside tobacco law. The Bill exempts approved cessation products only from its definition of "nicotine product," while the ban in section 14A applies to all "nicotine pouches" with no such exemption, so even a licensed cessation pouch could fall under a ten-year prison term. Clause 48 renames the law the Tobacco and Nicotine Control Act, and clause 49 adds a separate definition of "nicotine product", so the Bill itself treats nicotine products as a category of their own.

Parliament has already chosen regulation

In March 2026 the Senate passed the Tobacco Control (Amendment) Bill, 2024 (Senate Bill No. 35 of 2024), sponsored by Senator Catherine Mumma. That Bill, now before the National Assembly, regulates pouches with a maximum of 20 mg of nicotine per pouch and child-resistant and tamper-proof packaging. Bill No. 63 would ban outright a product the Senate voted to regulate, while that Bill is still under consideration in the same House. We urge the Committee not to pre-empt that process.

	Senate Bill No. 35 of 2024	National Assembly Bill No. 63 of 2026
Approach	Regulate	Ban
Nicotine limit	20 mg per pouch	Not applicable, all pouches banned
Packaging	Child-resistant and tamper-proof	Not applicable
Adult users	Can buy a regulated product	Up to KSh 5 million, ten years in prison, or both

Our recommended 20 mg cap is the same limit the Senate has already approved.

Other countries are moving towards regulation. The United Kingdom made the sale of nicotine products to under-18s an offence from October 2026 and gave ministers powers over strength, flavours and packaging. Austria is moving to sell pouches to adults through licensed outlets. Sweden has sold snus and pouches legally to adults for many years.

What the evidence shows

In the United States, the FDA reviews pouches before they can be sold and currently lists 67 authorised products. It has said that "adults who smoke cigarettes and would like to switch to a lower-risk alternative tobacco product will now have an expanded array of options". We Are Innovation's position paper "The Global Case for Nicotine Pouches" places cigarettes at 100 and pouches at 0.1 on its risk spectrum, 99.9% lower on that scale, and notes that Germany's BfR, the US FDA and the UK Committee on Toxicity recognise substantially reduced risks compared with cigarettes. A peer-reviewed analysis published in 2026 found that, of nine toxicants the World Health Organization has proposed for monitoring, five were between 97.7% and 99.9% lower in pouches than in cigarette smoke.

In Sweden, where pouches and snus are legal for adults, only 3.7% of adults smoked daily in 2025, while 15% used snus daily, according to the Swedish Council for Information on Alcohol and Other Drugs (CAN). CAN reports that daily smoking has fallen most among women and young adults, and Smokefree Sweden's report "Power in a Pouch" finds that female smoking has dropped by 49% since pouches were introduced in 2016. As smoking has fallen, Sweden has seen cancer and lung disease rates plummet. For Kenya, a 2024 modelling study, "Saving 600,000 Lives in Nigeria and Kenya," projected that integrating smoke-free alternatives into regulation could cut smoking-related deaths from about 8,000 to about 3,400 a year by 2060, saving roughly 184,000 lives.

Bans do not remove demand. In Australia, where nicotine vapes are sold legally only through pharmacies, 93% of people who vape obtain them from illicit sources. In Germany, where pouches cannot legally be sold, the federal drug commissioner said, in remarks reported this month, that people buy them abroad and shops sell them under the counter. Kenyan traders have already warned the Senate that bans would fuel illicit trade. France, the closest parallel to clause 51, has banned possession and use since 1 April 2026, yet one in four French adults smoked in 2024, according to Santé publique France. Consumer groups, including ours, have warned that criminalising pouch users has not reduced smoking there and has pushed demand underground.

Only a legal market can require an age check, a nicotine limit or a child-proof tin. In the United Kingdom, where more than 350,000 adults use pouches, Considerate Pouchers joined other consumer groups in the 20IsPlenty campaign for a 20 mg cap and enforcement against super-strength black-market pouches. A sensible cap keeps extreme products off the market while leaving adults a product strong enough to replace cigarettes.

Recommended amendments

Clause	Issue	Recommendation
51, proposed s.14A(1)	Prohibits the manufacture, sale, offer for sale, use, advertisement, promotion and distribution of nicotine pouches	Delete the words "or nicotine pouches"

51, proposed s.14A(2)	Makes it an offence to allow, promote, facilitate or encourage pouch use	Delete the words "or the use of nicotine pouches"
51, proposed s.14A(3)	A fine of up to KSh 5 million, up to ten years' imprisonment, or both, including for personal use	No textual change needed. Once subsections (1) and (2) are amended, the penalty applies to shisha only and adult consumers of nicotine pouches face no penalty
49, definition of "tobacco product"	Sweeps smoke-free oral nicotine products into tobacco law	Exclude nicotine pouches, which contain no tobacco leaf and are not burned or inhaled
49, new definition of "nicotine pouch"	Serves only the ban in s.14A and is unclearly drafted ("plant-based fibres derived from tobacco plant or synthetic nicotine")	Delete, redraft or move into the dedicated nicotine pouch framework
New framework	Pouches need clear and sensible rules, not a ban. The Senate's Tobacco Control (Amendment) Bill, 2024 already provides a basis	Regulate nicotine pouches as nicotine products through dedicated legislation or regulations: sale to adults aged 18 and over only; a maximum of 20 mg nicotine per pouch, risk-based taxation, quality standards, no flavour bans, no penalties for adult possession or use and enforcement aimed at sales to minors and illicit products.

Kenyan adults deserve the same chance to switch that Swedish adults have had. We ask the Committee to remove nicotine pouches from clause 51 and to regulate them with sensible limits instead.

Yours faithfully,

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