

TOBACCO AND VAPES BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

- These Explanatory Notes have been prepared by the Department of Health and Social Care in order to assist the reader of the Tobacco and Vapes Bill and to help inform debate on it. They do not form part of the Tobacco and Vapes Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Tobacco and Vapes Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Tobacco and Vapes Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Tobacco and Vapes Bill will be a landmark step in creating a smoke-free UK. It will:
 - a. create a smoke-free generation, gradually ending the sale of tobacco products across the country and breaking the cycle of addiction and disadvantage.
 - b. strengthen the existing powers to ban smoking in public places to reduce harms of passive smoking, particularly around children and vulnerable people.
 - c. ban vapes and nicotine products from being deliberately branded, promoted, and advertised to children to stop the next generation from becoming hooked on nicotine.
 - d. provide powers to introduce a licensing scheme for the retail sale of tobacco, vapes and nicotine products, extend the retail registration scheme in Scotland, and strengthen enforcement activity to support the implementation of the above measures.
 - e. the Bill sits alongside wider support across the health service to support smokers to quit.
- 2 The Bill modifies, amends, extends, and re-enacts several existing tobacco and vaping control measures to create a consistent legislative framework. These changes will help to ensure a consistent application of the law, close loopholes, improve readability and subsequent enforcement.
- 3 The Bill broadly seeks to align provisions across the UK, building on the existing legislative frameworks that apply.

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Policy background

Tobacco

- 4 Tobacco is a uniquely harmful product. It is accepted now that tobacco drives negative health outcomes. It remains the single most important entirely preventable cause of ill health, disability and death in the UK¹, causing around 80,000 deaths in the UK per year². In the UK, 11.9% of the population smoke which equates to around 6 million people³.
- 5 Smoking causes harm throughout people's lives, from a 47% increase in the chances of stillbirth⁴ to greater risk of dementia in older people⁵. Almost every minute someone is admitted to hospital because of smoking. Up to 75,000 GP appointments could be attributed to smoking each month – over 100 appointments every hour in England⁶. Smoking kills up to two-thirds of its long-term users⁷.
- 6 Non-smokers are exposed to second-hand smoke (passive smoking) which means that through no choice of their own many come to harm. Passive smoking is particularly dangerous for vulnerable people like children, pregnant women and those with pre-existing but usually invisible conditions such as heart disease, lung disease or asthma which may not be visible to the smoker. The measures introduced in 2007 to restrict smoking indoors had a significant public health impact. Evidence on the harm of from exposure to second-hand smoke is well established and because of its carcinogenic content there is no safe level of exposure.
- 7 Smoking drives socioeconomic and geographic disparities in health outcomes. Those living with mental health problems, the unemployed, and those on minimal incomes or living in deprivation are far more likely to smoke than the general population and 25.1% of adults with a long-term mental health condition smoke⁸.
- 8 230,000 households live in smoking-induced poverty⁹ and children of smokers are 3 times as likely to start to smoke, perpetuating the cycle of disadvantage¹⁰. In 2023 smoking prevalence was 14.6% in the most deprived decile, compared to 9.3% in the least deprived decile¹¹. 24.9% of people in accommodation rented through the local authority or housing association smoke, compared to 6.7% for people who own their house outright¹².

¹ OHID. Health Profile for England. 2021. Health Profile for England 2021 (phe.org.uk).

² Sum of the separate figures published for England, Scotland, Wales and Northern Ireland:

OHID. Local Tobacco Control Profiles – Smoking attributable mortality (new method). Directly standardised rate - per 100,000. 2021

³ ONS. 2024. Adult smoking habits in the UK - Office for National Statistics

⁴ Marufu et al. Maternal smoking and the risk of still birth: systematic review and meta-analysis - PMC

⁵ Livingston et al. Dementia prevention, intervention, and care: 2020 report of the Lancet Commission - The Lancet

⁶ Cancer Research UK. 2023. Ending smoking could free up 75,000 GP appointments each month

⁷ Banks et al. Tobacco smoking and all-cause mortality in a large Australian cohort study: findings from a mature epidemic with current low smoking prevalence | BMC Medicine | Full Text

⁸ Smoking Profile - Data - OHID (phe.org.uk). Smoking Profile - Data - OHID (phe.org.uk)

⁹ Blessing Nyakutsikwa et al. The effect of tobacco and alcohol consumption on poverty in the UK

¹⁰ ASH. 2024. Young people and smoking - ASH

¹¹ Smoking Profile – Data – OHID (phe.org.uk). <https://fingertips.phe.org.uk/profile/tobacco-control/data> Smoking Profile - Data | Fingertips | Department of Health and Social Care

¹² Smoking Profile – Data – OHID (phe.org.uk). Smoking Profile - Data | Fingertips | Department of Health and Social Care

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- 9 The harms created by tobacco financially burden the state and the NHS. In total, smoking costs the country £21.3 billion a year in England¹³. This includes an annual £18 billion loss to productivity, through smoking related lost earnings, unemployment, and early death, as well as costs to the NHS and social care of around £3 billion. This is equivalent to the annual salaries of around 500,000 nurses, 400,000 GPs, 450,000 police officers, or around 380 million GP appointments. Analysis has also found that long-term smokers are 7.5% less likely to be employed than non-smokers¹⁴. Comparatively, only £8.8 billion in tobacco duty was paid in 2023 to 2024¹⁵.
- 10 Cigarettes addict the most vulnerable. More than 4 in 5 smokers start before the age of 20¹⁶. Those who start smoking as young adults and cannot quit lose an average 10 years of life expectancy¹⁷. Most smokers know the risks of smoking and want to quit but are unable to due to the addictive nature of nicotine. Just 16.7% of smokers in England state they are not intending to quit smoking¹⁸.
- 11 Alongside measures to reduce the appeal, affordability and promotion of tobacco products, increasing the minimum age of sale can reduce youth smoking. When England and Wales raised the smoking age from 16 to 18, smoking prevalence in 16–17-year-olds fell by 30 per cent¹⁹. When US states raised the smoking age to 21, the chance of someone in that age group smoking fell by 39 per cent²⁰.
- 12 In England and Wales, the Children and Young Persons Act 1933²¹ introduced age of sale legislation for tobacco products and cigarette papers and The Children and Young Persons (Sale of Tobacco etc) Order 2007²² amended the legal age of sale from 16 to 18 years old in England and Wales. Currently, anyone who is under the age of 18 cannot be sold tobacco products in England and Wales. Existing legislation also prohibits proxy purchases, meaning it is illegal for adults to buy tobacco products on behalf of someone who is under 18.
- 13 The Tobacco and Primary Medical Services (Scotland) Act 2010²³ made it an offence in Scotland to sell tobacco products and cigarette papers to someone under the age of 18 and introduced requirements around age verification. An amendment to the Health and Personal Social Services (Northern Ireland) Order 1978²⁴ provided for restrictions on sales of tobacco and cigarette papers to anyone under 18 in Northern Ireland.
- 14 In addition to the age of sale requirements, a number of legislative tobacco control measures have been enacted by Parliament to protect children and the public from the harms of tobacco, including second-hand smoke, and to help smokers quit. The Health Act 2006²⁵ made provision for enclosed and substantially enclosed public places and shared workplaces to be

¹³ ASH. 2025. New figures show cost of smoking to society in England dwarfs tobacco tax revenue - ASH

¹⁴ ASH and Landman Economics. 2020. Smoking, employability, and earnings - ASH

¹⁵ HMRC. 2024. Tobacco Bulletin - GOV.UK (www.gov.uk)

¹⁶ Public Health England. 2015. Health matters: smoking and quitting in England - GOV.UK (www.gov.uk)

¹⁷ Royal College of Physicians. 2018. Tobacco Dependency Prelims_Layout 1 (rcp.ac.uk)

¹⁸ Adult smoking habits in the UK - Office for National Statistics

¹⁹ Fidler et al. Changes in smoking prevalence in 16–17-year-old versus older adults following a rise in legal age of sale: findings from an English population study - Fidler - 2010 - Addiction - Wiley Online Library

²⁰ Abigail, F. et al. 2019. Tobacco-21 laws and young adult smoking: quasi-experimental evidence - PMC (nih.gov)

²¹ <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

²² <https://www.legislation.gov.uk/uksi/2007/767/contents/made>

²³ <https://www.legislation.gov.uk/asp/2010/3/contents>

²⁴ <https://www.legislation.gov.uk/nisi/1978/1907/contents>

²⁵ <https://www.legislation.gov.uk/ukpga/2006/28/contents>

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smoke-free in England and Wales and set out the offence of smoking in a smoke-free place. The Health Act 2009²⁶ includes amendments to The Children and Young Persons (Protection from Tobacco) Act 1991 and the Tobacco Advertising and Promotion Act 2002²⁷ (TAPA) which make provision in relation to sales from vending machines, as well as prohibiting the display of tobacco products in the course of a business (subject to exclusions) and gives powers to regulate (not prohibit) the display of prices of tobacco products for England, Wales and Northern Ireland. The Smoking, Health and Social Care (Scotland) Act 2005²⁸ and the Tobacco and Primary Medical Services (Scotland) Act 2010²⁹ made equivalent provision for Scotland. TAPA introduced advertising and sponsorship restrictions in England, Scotland, Wales and Northern Ireland. The Children and Families Act 2014³⁰ made it an offence to purchase tobacco products or cigarette papers on behalf of a child under the age of 18, as well as amending smoke-free legislation to provide the Secretary of State, or the Welsh Ministers in relation to Wales, with the power to make regulations to provide for a private vehicle to be smoke-free when a person under the age of 18 is present. The Act also gives the Secretary of State the power to regulate tobacco packaging (to reduce the risk of harm to or promoting the health or welfare of children).

- 15 In Scotland, the smoking provisions of the Smoking, Health and Social Care (Scotland) Act 2005³¹ (the 2005 Act) and the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006³² came into effect in 2006 to prohibit smoking in wholly enclosed or substantially enclosed public places, including public transport and most workplaces. Under this legislation, it is an offence to smoke in no-smoking premises or to knowingly permit smoking in no-smoking premises. Similar provisions were enacted in Northern Ireland through The Smoking (Northern Ireland) Order 2006³³.
- 16 Recommendations to make smoking obsolete were considered in the 2022 independent Khan Review³⁴. The headline recommendation of the review was to progressively raise the smoking age of sale. The review also recommended a package of other measures to make England smoke-free. This included increasing smoke-free places to protect young people from second-hand smoke and de-normalise smoking, and the introduction of a tobacco licence for retailers to limit where tobacco is sold.
- 17 On 12 October 2023, a UK-wide consultation was published on Creating a smokefree generation and tackling youth vaping³⁵. The consultation was undertaken across all four parts of the UK and all devolved governments contributed to its development. The response was published on 29 January 2024.
- 18 In the consultation, over 63% of respondents agreed with the policy of introducing a new age of sale to ban the sale of tobacco to those born on or after 2009. There were also high levels of support to prohibit proxy purchases for anyone born on or after 1 January 2009, to include all tobacco products, herbal smoking products and cigarette papers within the scope of the policy

²⁶ <https://www.legislation.gov.uk/ukpga/2009/21/contents>

²⁷ <https://www.legislation.gov.uk/ukpga/2002/36/contents>

²⁸ <https://www.legislation.gov.uk/asp/2005/13/contents>

²⁹ <https://www.legislation.gov.uk/asp/2010/3/contents>

³⁰ <https://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>

³¹ <https://www.legislation.gov.uk/asp/2005/13/contents>

³² <https://www.legislation.gov.uk/ssi/2006/90/contents/made>

³³ <https://www.legislation.gov.uk/nisi/2006/2957/contents>

³⁴ <https://assets.publishing.service.gov.uk/media/62a0c3f38fa8f503921c159f/khan-review-making-smoking-obsolete.pdf>

³⁵ <https://www.gov.uk/government/consultations/creating-a-smokefree-generation-and-tackling-youth-vaping>

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and reflect the new age of sale in updated retail warning notices. Polling data also shows support for the policy. In a YouGov/ASH poll in April 2024, 71% of adults supported the goal of Britain being a country where no one smokes³⁶.

- 19 To create a smoke-free UK and to minimise the harms of smoking the Bill will:
- create a smoke-free generation by gradually ending the sale of tobacco products across the country, (including herbal smoking products and cigarette papers) so children born on or after 1 January 2009 will never be legally sold these products.
 - strengthen the existing powers on smoking in public places to reduce the harms of passive smoking, particularly around children and vulnerable people and
 - restate existing powers and requirements surrounding the packaging, displays and advertising of tobacco products and on the ban of snus.

Vaping and nicotine products

- 20 Vapes (also known as electronic cigarettes, e-cigarettes, electronic nicotine delivery system (ENDS), or vaporisers) work by heating a solution of water, flavouring, propylene glycol (or vegetable glycerine) and, typically, nicotine to create a vapour that the user inhales. The act of using a vape is often referred to as ‘vaping’. Devices tend to consist of a mouthpiece, a battery-powered heating element, a cartridge or refillable tank containing the liquid solution and an atomiser that vaporises the solution when heated. A vaping product includes a vaping device as well as a vaping substance.
- 21 Vaping is less harmful than smoking, the latest evidence found that in the short and medium term, vaping poses a small fraction of the risks of smoking³⁷. Vapes can be an effective tool in supporting addicted smokers to stop³⁸ - they contribute an extra 50,000 to 70,000 smoking quits per year in England³⁹. However, the health advice is clear, whilst vapes can be an effective quit aid for adult smokers, children and non-smokers should never vape.
- 22 Selling nicotine vapes to under 18s is illegal. Yet due to the branding and advertising of vapes to children, youth vaping has more than doubled in the past 5 years, with 25% of 11-15-year-olds having ever tried vaping as of 2023⁴⁰. Single-use (disposable) vapes are playing a significant role in the rise of youth vaping, with 54% of current vapers aged 11 to 17 in Great Britain using them – up from 7.7% in 2021⁴¹. This causes environmental harm by introducing pollutants into the natural environment, contaminating waterways and soil. A ban on single-use vapes will come into force for England, Scotland, Wales and Northern Ireland on 1 June 2025.⁴²
- 23 There are health risks associated with the ingredients in vapes. The active ingredient in most vapes (apart from nicotine-free vapes) is nicotine which, when inhaled, is a highly addictive drug. The addictive nature of nicotine means that a user can become dependent on vapes,

³⁶ ASH. 2024. 71% of adults support the PM’s ambition to stamp out smoking

³⁷ OHID. 2022. Nicotine vaping in England: 2022 evidence update - GOV.UK (www.gov.uk)

³⁸ Jamie Hartmann-Boyce. 2022. Electronic cigarettes for smoking cessation

³⁹ Beard, E. et al. 2019. Association of prevalence of electronic cigarette use with smoking cessation and cigarette consumption in England: a time-series analysis between 2006 and 2017 - Beard - 2020 - Addiction - Wiley Online Library

⁴⁰ NHS England. 2024 Smoking, Drinking and Drug Use among Young People in England, 2023 - NHS England Digital

⁴¹ Action on Smoking and Health. 2024. [Use-of-vapes-among-young-people-in-Great-Britain-2024.pdf \(ash.org.uk\)](https://www.ash.org.uk)

⁴² Department for Environment Food and Rural Affairs. 2025 <https://www.gov.uk/guidance/single-use-vapes-ban>

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especially if they use them regularly. Giving up nicotine can be very difficult because the body has to get used to functioning without it. Withdrawal symptoms can include cravings, irritability, anxiety, trouble concentrating, headaches and other mental and physical symptoms. Evidence suggests that in adolescence, the brain is more sensitive to the effects of nicotine, so there could be additional risks for young people than for adults⁴³. There are also some health risks associated with the other ingredients in vapes. For example, propylene glycol and glycerine (components of e-liquids) can produce toxic compounds if they are overheated. The long-term health harms of colours and flavours when inhaled are unknown, but they are certainly very unlikely to be beneficial.

- 24 Vaping is associated with over 300 hospital admissions per year (this also includes harms from unregulated and faulty products) in England⁴⁴, this remains substantially lower than smoking hospital admissions which rose to 408,700 in 2022-2023⁴⁵. The evidence on second-hand vaping is still developing and is less strong than smoking. The harm will be lower than smoking, but the degree of harm is unlikely to be 0%. A 2022 comprehensive review identified six studies assessing second-hand exposure to vaping. Overall, only prolonged exposures to heavy vaping resulted in increases in nicotine or potential toxicants in those exposed to second-hand aerosols⁴⁶. It is plausible that risks may be greater in more vulnerable groups.
- 25 In England and Wales, The Nicotine and Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015⁴⁷ and, in Northern Ireland, The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations (Northern Ireland) 2021⁴⁸ made it an offence to sell a nicotine vape to someone under the age of 18 and for someone to buy a vape on behalf of someone who is under the age of 18 - proxy purchasing. In Scotland the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016⁴⁹ similarly made selling a Nicotine Vapour Product to under 18s and proxy purchasing an offence.
- 26 The Tobacco and Related Products Regulations 2016⁵⁰ that came into force in May 2016 brought in product requirements for nicotine containing vaping products (described as electronic cigarettes in the regulations) including a requirement for health warnings on the packaging, limits on nicotine strength and restrictions on permitted ingredients in vape substances (a substance other than tobacco that is intended to be vaporised by a vape) across the UK.
- 27 The majority of vapes sold in the UK contain nicotine. However, many children are using non-nicotine vapes. In 2024 ASH reported⁵¹ that 5.3% of 11-17 year olds who currently vape said that they use non-nicotine vapes. Non-nicotine vapes are currently covered by The General Products Safety Regulations 2005⁵² (GPSR). The GPSR requires providers to ensure only safe products are placed on the market, together with any necessary warnings for safe use of the

⁴³ OHID. 2022. Nicotine vaping in England: 2022 evidence update - GOV.UK (www.gov.uk)

⁴⁴ NHS UK. 2024 Hospital admissions for vaping-related disorders - NHS England Digital

⁴⁵ <https://www.england.nhs.uk/2023/12/hospital-admissions-due-to-smoking-up-nearly-5-per-cent-last-year-nhs-data-shows/>

⁴⁶ OHID. 2022. Nicotine vaping in England: 2022 evidence update main findings - GOV.UK (www.gov.uk)

⁴⁷ <https://www.legislation.gov.uk/uksi/2015/895/contents/made>

⁴⁸ <https://www.legislation.gov.uk/nisr/2021/330/made>

⁴⁹ <https://www.legislation.gov.uk/asp/2016/14/contents/enacted>

⁵⁰ <https://www.legislation.gov.uk/uksi/2016/507/contents/made>

⁵¹ <https://ash.org.uk/uploads/Use-of-vapes-among-young-people-in-Great-Britain-2024.pdf?v=1725288402>

⁵² <https://www.legislation.gov.uk/uksi/2005/1803/contents/made>

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product. In Scotland, unlike the rest of the UK, the age of sale for non-nicotine vapes is currently regulated in the same way as nicotine vapes.

- 28 The Bill refers to nicotine products in order not only to capture nicotine pouches, but to ensure that future consumer nicotine products are also regulated without the need for further primary legislation. The consumer nicotine industry is highly adaptive and other non-medicinal nicotine products have entered the UK market in the form of pouches and soluble strips. There are currently no corresponding regulations setting a minimum legal age of sale, mandating health warnings, maximum nicotine levels or restricting advertising and promotion. Nicotine pouches come in varying degrees of nicotine strength, they are placed between the gum and the lip, and the nicotine is absorbed directly into the bloodstream through the membranes in the mouth. Consumer nicotine pouches can deliver levels of nicotine much higher than regulated vapes.
- 29 There are other potentially plausible delivery routes industry may explore (including absorption through tissues in the cheek, absorption through gels or creams, nasal inhalers, and more). These products are likely to be popular with young people and may be marketed towards them. Dry powder and nasal inhalers have the potential for very swift and strong nicotine delivery that greatly increases the potential for initiating dependence, especially in users under the age of 25. Some such potential products may fall under other existing legislation, but by regulating all consumer nicotine products, the Bill aims to protect children and young people from the harmful effects of nicotine addiction no matter the form in which it is delivered.
- 30 In 2022, the independent Khan review⁵³ recommended that the government ban cartoons or imagery on the packaging of vapes, review vape flavours and descriptions and prohibit vape companies distributing free vape samples.
- 31 In April 2023, the Youth Vaping: call for evidence⁵⁴ explored where the government could go further to protect children from the harms from vaping. It explored a range of issues, including regulatory compliance, the marketing, advertising and promotion of vapes, the role of social media, and the environmental impact of vaping. The call for evidence⁵⁵ found that the advertising, display, variety and packaging of vapes is enticing children and young people to start using these products. Some respondents even cited evidence⁵⁶ on the susceptibility of young people to vape advertising, including from adverts that were not designed to appeal to young people. However, the findings from the call for evidence⁵⁷ reiterated that vapes can be an effective way to help adult smokers quit smoking.
- 32 The UK-wide consultation published on the 12 October 2023⁵⁸ also asked questions about vape flavours, displays and packaging and received support for the introduction of regulations to achieve this and a YouGov/ASH survey in November 2023 found 75% of

⁵³ <https://www.gov.uk/government/publications/the-khan-review-making-smoking-obsolete>

⁵⁴ <https://www.gov.uk/government/calls-for-evidence/youth-vaping-call-for-evidence/youth-vaping-call-for-evidence>

⁵⁵ <https://www.gov.uk/government/calls-for-evidence/youth-vaping-call-for-evidence/youth-vaping-call-for-evidence>

⁵⁶ https://www.tobaccoinduceddiseases.org/Use-of-tobacco-and-e-cigarettes-among-youth-in-Great-Britain-nin-2022-Analysis-of_156459_0_2.html

⁵⁷ <https://www.gov.uk/government/calls-for-evidence/youth-vaping-call-for-evidence/youth-vaping-call-for-evidence>

⁵⁸ <https://www.gov.uk/government/consultations/creating-a-smokefree-generation-and-tackling-youth-vaping/outcome/creating-a-smokefree-generation-and-tackling-youth-vaping-consultation-government-response>

respondents supported banning names of sweets, cartoons and bright colours on vape packaging and 74% support restricting point of sale of vapes⁵⁹.

33 To stop vapes and consumer nicotine products (such as nicotine pouches) from being deliberately branded and advertised to children, and to ensure they are only available as a tool to help adult smokers quit, the Bill will:

- ban vaping products and nicotine products from being sold to under 18s and ban the free distribution of these products;
- ban advertising, promotion and sponsorship agreements for vapes and nicotine products mirroring impactful restrictions on tobacco;
- provide regulation making powers to regulate the flavours, packaging, and other product standards of vapes and nicotine products;
- provide powers to regulate the display of vapes and nicotine products;
- ban vape and nicotine product vending machines;
- introduce powers to introduce a new registration scheme for all vapes and nicotine products (this scheme would also cover tobacco products);
- introduce powers to extend smoke-free laws so that they could also prohibit the use of vapes and heated tobacco products in specified areas where smoking is prohibited.

Enforcement

34 Underage sale of tobacco, and more recently vapes, impacts upon public health. In 2023 to 2024, Trading Standards conducted over 650 tobacco test purchases in England and Wales, with an average failure rate of 19% resulting in an underage sale⁶⁰. Similarly, in 2023 to 2024, National Trading Standards identified that 26% of the 3,385 vape test purchases carried out with retailers in England resulted in an illegal sale⁶¹.

35 Those who commit an underage sale offence face a fine of up to £2,500 on conviction under the Children and Young Persons Act 1933⁶² and nicotine products under the Children and Families Act 2014⁶³. Pursuant to section 12A and 12B of the Children and Young Persons Act 1933⁶⁴,⁶⁵, where a business or individual has persistently committed age of sale offences, enforcement authorities can apply to a court for a restricted premises order or restricted sale order, to prohibit the business or individual from selling these products for up to 12 months.

36 A fixed penalty notice (FPN) is a notice giving an individual the opportunity to avoid prosecution for an alleged criminal offence in exchange for a payment of a fine. Individuals can, if they wish, choose not to pay the FPN and instead challenge the prosecution in court. FPNs are a well-established approach to enforce a range of regulatory offences, for instance

⁵⁹ ASH. 2023. Public support for Government action on tobacco in Great Britain - ASH

⁶⁰ Association of Chief Trading Standards Officers. 2024. Impacts and Outcomes Report 2023/24

⁶¹ National Trading Standards. 2024. Annual Report 2023-24.

⁶² <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

⁶³ <https://www.legislation.gov.uk/ukpga/2014/6/section/92>

⁶⁴ <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

⁶⁵ Added by the Criminal Justice and Immigration Act 2008 c. 4

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penalty notices for disorder (PND, a type of FPN) are already used as part of a suite of measures to enforce age of sale restrictions for alcohol.

- 37 The Proxy Purchasing of Tobacco, Nicotine Products etc. (Fixed Penalty Notice) (England) Regulations 2015⁶⁶ permit enforcement officers to issue FPNs for breaches of legislation prohibiting proxy purchasing of tobacco products and vapes. The Health Act 2006⁶⁷ introduced FPNs for breaches of the smoke-free premises legislation and the requirement to display no-smoking signs in smoke-free premises in England and Wales.
- 38 The Tobacco and Primary Medical Services (Scotland) Act 2010⁶⁸ introduced a registration scheme and FPN regimes for the age of sale and proxy purchasing offences relating to the sale of tobacco products, cigarette papers and vapes, and FPNs are regularly utilised to enforce age of sale legislation. These regimes will continue in Scotland irrespective of the measures in the Bill.
- 39 The Tobacco Retailers Act (Northern Ireland) 2014⁶⁹ introduced a registration scheme and FPN regime for the age of sale and proxy purchasing offences relating to the sale of tobacco products and cigarette papers, and FPNs are regularly utilised to enforce age of sale legislation. The Bill provides for the registration scheme in Northern Ireland to be extended to include vapes and other nicotine products and for the introduction of a retail licensing scheme that will be commenced in the longer term.
- 40 Under the current regime in England and Wales, when enforcement authorities wish to issue a fine for selling tobacco products or vapes to someone who is under 18, they are required to prosecute the individual or business and the individual or business must be convicted in a magistrates' court. This can involve a time-consuming court procedure and can be expensive. FPNs allow enforcement authorities to act more quickly and without involving the courts.
- 41 The October 2023 consultation⁷⁰ considered how to enforce the future restrictions on tobacco, vapes and other consumer nicotine products. The consultation asked respondents if they think FPNs should be issued for breaches of age of sale restrictions for tobacco products and vapes and 88.3% of respondents said yes. Of the respondents who answered the question on the level of FPN for underage tobacco sale, 44% were in support of a £200 FPN, 17.8% were in support of a £100 FPN and 38.3% were in support of another value. Similar levels of support were shown for the value of FPNs for underage vape sales.
- 42 In June 2022, the independent Khan Review⁷¹ recommended the government introduce a licensing scheme for the retail sale of tobacco to strengthen enforcement (prevent illicit and underage sales) and limit the availability of tobacco across the country.
- 43 A 2022 ASH survey⁷² found that 81% of retailers in England support the introduction of a tobacco licence, 9% opposed, 7% neither supported or opposed and 3% didn't know. In

⁶⁶ <https://www.legislation.gov.uk/ukxi/2015/936/contents/made>

⁶⁷ <https://www.legislation.gov.uk/ukpga/2006/28/contents>

⁶⁸ <https://www.legislation.gov.uk/asp/2010/3/contents>

⁶⁹ <https://www.legislation.gov.uk/nia/2014/4/contents/enacted>

⁷⁰ <https://www.gov.uk/government/consultations/creating-a-smokefree-generation-and-tackling-youth-vaping>

⁷¹ <https://www.gov.uk/government/publications/the-khan-review-making-smoking-obsolete>

⁷² <https://ash.org.uk/uploads/Retailer-research-report-online.pdf?v=1667303463>

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addition, a 2023 ASH survey⁷³ of the public found that in Great Britain, 83% of the public support tobacco retail licensing, making it the most popular intervention surveyed amongst adults.

- 44 The Bill will strengthen enforcement activity to prevent underage sales of tobacco and vapes by:
- providing enforcement authorities in England and Wales with the power to issue Fixed Penalty Notices of £200 for the underage sale, proxy sale, and free distribution of tobacco, vaping and nicotine products, display restrictions, and breaches of tobacco age of sale notice restrictions, and FPNs of £2,500 for offences in connection with licensing;
 - giving the Secretary of State and the Welsh Ministers regulation-making powers to change the amount of fixed penalties to ensure they remain proportionate;
 - updating the existing FPN regime in Scotland to extend it to capture all tobacco, vaping and nicotine products, and include free distribution of tobacco, vaping and nicotine product offences;
 - updating Northern Ireland legislation such that the existing FPN regime is extended to capture all tobacco, vaping and nicotine products, and include free distribution of tobacco, vaping and nicotine products and display offences;
 - setting out that it is a defence for retailers committing an age of sale offence that they took steps specified in regulations to verify that the prospective customer was of legal age, thereby supporting retailers to check either physical or digital ID;
 - providing powers to introduce a licensing scheme for the retail sale of tobacco products, herbal smoking products, cigarette papers, vaping and nicotine products in England, Wales and Northern Ireland, and expanding the retailer registration scheme in Scotland so that it captures retailers of all relevant products; and
 - retaining elements of the current enforcement approach for tobacco and vape regulations, including criminal fines, restricted premises orders and restricted sale orders for persistent offenders.

⁷³ <https://ash.org.uk/media-centre/news/press-releases/half-the-public-think-the-government-is-not-doing-enough-to-reduce-smoking-four-years-after-the-government-pledged-to-make-england-smokefree#:~:text=Raise%20the%20age%20of%20sale,%25%20support%2C%209%25%20oppose>

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Legal background

45 The relevant legal background is explained in the policy background section of these Notes.

Territorial extent and application

- 46 Clause 166 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 47 Part 1 of the Bill extends to England and Wales, Part 2 extends to Scotland and Part 3 extends to Northern Ireland.
- 48 Part 4 of the Bill extends to the whole of the UK and concerns oral tobacco products such as snus.
- 49 Part 5 of the Bill extends to the whole of the UK as this concerns product requirements and standards that will apply to products placed on the UK market.
- 50 Part 6 of the Bill extends to the whole of the UK as this concerns advertising and sponsorship requirements.
- 51 Part 7 of the Bill extends to the whole of the UK and includes provisions on smoke-free, vape-free and heated tobacco-free places in England, Wales, Scotland and Northern Ireland.
- 52 Part 8 of the Bill extends to the whole of the UK and includes standard provisions that help the legislation to function effectively.
- 53 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned. To the extent that the provisions of the Bill fall within the legislative competence of devolved legislatures, a Legislative Consent Motion will be sought.
- 54 See the table in Annex A for a summary of the position regarding territorial extent and application in the UK.

Commentary on provisions of the Bill

Part 1: Sale and distribution: England and Wales

Sale of Tobacco etc

- 55 Annex B illustrates examples of the tobacco products that are in the government's view in scope of each clause in Part 1. This is not intended to be an exhaustive list of products.
- 56 Part 1 extends to England and Wales.

Clause 1: Sale of tobacco etc

- 57 Clause 1 introduces a new age of sale restriction for tobacco products, herbal smoking products and cigarette papers. This clause makes it an offence for retailers to sell, defined as sell by retail as outlined in clause 47 (Interpretation of Part 1), tobacco products, herbal smoking products or cigarette papers to anyone who is born on or after 1 January 2009. This replaces the current age of sale restriction set out in the Children and Young Persons Act 1933⁷⁴ (the 1933 Act), as amended by The Children and Young Persons (Sale of Tobacco etc) Order 2007⁷⁵ which made it an offence to sell tobacco, herbal smoking products or cigarette papers to someone who is under the age of 18 in England and Wales. Tobacco products, herbal smoking products and cigarette papers were in scope of the 1933 Act and are also in scope of the new age of sale restrictions in this Bill.
- 58 Clause 47 (Interpretation of Part 1) sets out the scope of the age of sale restrictions by setting out the definition of tobacco products: "tobacco product" means a product consisting, wholly or partly of tobacco and intended to be smoked, sniffed, sucked, chewed or consumed in any other way. The intention is to include any type of tobacco product that might be produced for consumer use, regardless of how that product is consumed. Products that are currently available on the UK market are all considered to be captured by this definition. The additional wording 'consumed in any other way' is intended to cover emerging products with novel forms of usage.
- 59 Cigarette papers include anything intended to be used to encase tobacco products or herbal smoking products to enable them to be smoked. These therefore include products such as cigarette tubes.
- 60 In the 1933 Act, herbal smoking products are understood to be a type of tobacco product as it is set out that the expression "tobacco" includes smoking mixtures intended as a substitute for tobacco (section 7(5)). This Bill provides an altered definition of tobacco products which does not include herbal smoking. Herbal smoking products are understood as a product consisting wholly or partly of vegetable matter and intended to be smoked but not containing tobacco. Herbal smoking products are captured by this Bill, but they are defined and listed separately in this legislation.
- 61 The intention is to capture any products that contain tobacco and are used as consumer products as well as other herbal products that are smoked, due to the harmful nature of smoking. Whilst herbal smoking products do not contain nicotine or tobacco, they do contain cancer causing chemicals, tar and carbon monoxide, similar to a tobacco cigarette. Cigarette

⁷⁴ <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

⁷⁵ <https://www.legislation.gov.uk/uksi/2007/767/contents/made>

papers have also been included in the new age of sale restrictions as they are burnt with the tobacco.

- 62 The age of sale restriction does not apply to sales in the course of a business so would not prevent someone born on or after 1 January 2009 from being employed in a tobacco retail business or wholesaler. See the definition in clause 47 (Interpretation of Part 1) of 'sell' as sell by retail.
- 63 The age of sale restriction does not make it an offence for someone born on or after 1 January 2009 to possess or use tobacco products, herbal smoking products or cigarette papers.
- 64 An individual who is convicted of an offence under this provision may receive a fine of up to £2,500 (level 4 on the standard scale).
- 65 The clause provides that it is a defence for someone who is charged with the age of sale offence to prove that they took such steps as may be specified in regulations made by the Secretary of State to verify that the customer was born before 1 January 2009, or that they otherwise took all reasonable steps to avoid committing the offence. Regulations may specify steps, for example checking physical identity documents and the use of digital methods of age verification. If no such steps have been specified in regulations it will still be a defence for someone who is charged with the age of sale offence to prove that they took all reasonable steps to avoid committing the offence, which is a re-enactment of the existing defence under the 1933 Act of having taken all reasonable precautions and exercised all due diligence. Before making regulations under this section the Secretary of State must obtain consent from the Welsh Ministers if the regulations contain provisions that fall within the legislative competence of Senedd Cymru. Any regulations under this section will be subject to the negative resolution procedure.

Clause 2: Purchase of tobacco etc on behalf of others

- 66 Clause 2 makes it an offence for any adult aged 18 or over to buy, or attempt to buy, tobacco products, cigarette papers or herbal smoking products on behalf of anyone who is born on or after 1 January 2009, commonly referred to as 'proxy purchasing'. This is to ensure alignment with the new age of sale restriction in clause 1 (Sale of tobacco etc.). This clause replaces the current offence under section 91 of the Children and Families Act 2014⁷⁶ for someone aged 18 or over to buy, or attempt to buy, tobacco products or cigarette papers on behalf of someone who is under 18 in England and Wales.
- 67 The clause avoids the criminalisation of children by specifying that the offence is committed by an individual aged 18 or over.
- 68 An individual who is convicted of an offence under this provision may receive a fine of up to £2,500 (level 4 on the standard scale).
- 69 It is a defence if a person charged with this offence can prove they had no reason to suspect that the other person was born on or after 1 January 2009 or they can prove that they had no reason to believe that the other person intended to use the cigarette papers for smoking.

Clause 3: Tobacco vending machines

- 70 Clause 3 sets out that it is an offence if a person manages or controls a premises where a tobacco vending machine (a machine from which tobacco products, herbal smoking products, or cigarette papers may be bought or from which they are dispensed to a customer in

⁷⁶ <https://www.legislation.gov.uk/ukpga/2014/6/contents>

connection with a sale”) is available for use on the premises. This clause re-enacts and consolidates the existing provisions in the Children and Young Persons (Protection from Tobacco) Act 1991⁷⁷, which introduced a regulation making power to prohibit the sale of tobacco from an automatic machine in England and Wales. This has been updated to also include cigarette papers to align with the products in scope of the age of sale provision.

- 71 The clause also makes it clear that vending machines that dispense products are captured, where the sale may have taken place separately from the machine, for example, machines that operate via tokens, coupons, or receipts are captured by the prohibition. The machine is prohibited if the product is dispensed to a customer in connection with a sale, so businesses can use machines which dispense products so long as the product in question is dispensed to staff.
- 72 An individual who is convicted of an offence under this provision may receive a fine of up to £2,500 (level 4 on the standard scale).

Clause 4: Sale of unpackaged cigarettes

- 73 Clause 4 sets out the prohibition against selling cigarettes when they are not in their original packaging. Tobacco retailers must sell cigarettes in the packaging that they are supplied to the retailer in (defined as original packaging) and not doing so is an offence. This re-enacts the offence under section 3 of the Children and Young Persons (Protection from Tobacco) Act 1991⁷⁸.
- 74 Anyone who is convicted of an offence under this provision may receive a fine up to £1,000 (level 3 on the standard scale).

Clause 5: Age of sale notice at point of sale: England

- 75 The clause requires a tobacco retailer (a person who carries on a business involving the sale of tobacco by retail) to display an age of sale notice in a prominent position that says, “It is illegal to sell tobacco products to anyone born on or after 1 January 2009”. A premises means any place including a vehicle or moveable structure, for instance, this would include stalls at car boot sales.
- 76 The penalty for failure to display a notice is a fine of up to £1,000 (level 3 on the standard scale).
- 77 Clause 5(4) provides a regulation making power for the Secretary of State to stipulate requirements for the size or appearance of the statement to be displayed on the notice or any other aspect of the notice, such as the colour of the notice. Requirements for the notice will be set in regulations before 1 January 2027. This is a re-enactment with modifications of the regulation making power under section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991⁷⁹ (the 1991 Act). Under section 4 of the 1991 Act it is a requirement for any retailer selling tobacco products to display a notice that says, “It is illegal to sell tobacco products to anyone under the age of 18”. This clause only applies to England. The Protection from Tobacco (Display of Warning Statements) Regulations 1992⁸⁰ were made using the powers in section 4.

⁷⁷ <https://www.legislation.gov.uk/ukpga/1991/23/contents>

⁷⁸ <https://www.legislation.gov.uk/ukpga/1991/23/contents>

⁷⁹ <https://www.legislation.gov.uk/ukpga/1991/23/contents>

⁸⁰ <https://www.legislation.gov.uk/uksi/1992/3228/made#:~:text=The%20dimensions%20of%20the%20notice,displayed%20on%20the%20notice%20shall>

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Clause 6: Age of sale notice at point of sale: Wales

- 78 Clause 6 makes the same provision for retailers in Wales selling tobacco products as clause 5 (Age of sale notice at point of sale: England) does for England. The clause requires a tobacco retailer in Wales to display notices stating the new age of sale requirements. This clause applies to Wales only.
- 79 The clause requires a tobacco retailer in Wales to display an age of sale notice in a prominent position with the text in both English and Welsh. “It is illegal to sell tobacco products to anyone born on or after 1 January 2009” and “Mae’n anghyfreithlon gwerthu cynhyrchion tybaco i unrhyw un a anwyd ar neu ar ôl 1 Ionawr 2009”. The new sign must be displayed from 1 January 2027.
- 80 The penalty for failure to display a notice is a fine of up to £1,000 (level 3 on the standard scale).
- 81 Clause 6(4) provides a regulation making power for the Welsh Ministers to stipulate requirements for the size or appearance of the statement to be displayed on the notice or any other aspect of the notice, one example could be the colour of the notice. Requirements for the notice will be set in regulations before 1 January 2027. This is a re-enactment with modifications of the regulation making power under Section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991⁸¹ (the 1991 Act). Under section 4 of the 1991 Act it is a requirement for any retailer in Wales selling tobacco products to display a notice that says, “It is illegal to sell tobacco products to anyone under the age of 18”. The Protection from Tobacco (Display of Warning Statements) Regulations 1992⁸² were made using the powers in section 4.

Snus etc

Clause 7: Ban on manufacture of snus etc

- 82 Clause 7 makes it an offence to manufacture a tobacco product that is intended for oral use, is not intended to be inhaled or chewed and consists wholly or partly of tobacco in powder or particulate form.
- 83 This is a re-enactment of the prohibition on the production and supply of oral tobacco intended for consumption within the UK or through the travel retail sector in Regulation 17 of The Tobacco and Related Products Regulations 2016⁸³. The Bill extends these restrictions to include a ban on snus intended for export which simplifies enforcement and reduces the possibility of such harmful products being available within the UK.
- 84 An individual who is convicted of an offence under this provision may receive a fine or may be imprisoned for a term not exceeding 2 years, or both.

Clause 8: Ban of sales of snus etc

- 85 Clause 8 makes it an offence to sell a tobacco product that is intended for oral use, is not intended to be inhaled or chewed and consists wholly or partly of tobacco in powder or particulate form.

⁸¹ <https://www.legislation.gov.uk/ukpga/1991/23/contents>

⁸² <https://www.legislation.gov.uk/uksi/1992/3228/made#:~:text=The%20dimensions%20of%20the%20notice,displayed%20on%20the%20notice%20shall>

⁸³ <https://www.legislation.gov.uk/uksi/2016/507/contents>

- 86 This is a re-enactment of the prohibition on the production and supply of oral tobacco intended for consumption within the UK or through the travel retail sector in Regulation 17 of The Tobacco and Related Products Regulations 2016⁸⁴. The Bill extends these restrictions to include a ban on snus intended for export which simplifies enforcement and reduces the possibility of such harmful products being available within the UK.
- 87 It is a defence for a person charged with an offence under this provision to prove that they took all reasonable steps to avoid committing the offence.
- 88 An individual who is convicted of an offence under this provision may receive a fine or may be imprisoned for a term not exceeding 2 years, or both.

Clause 9: Possession of snus etc with intent to supply

- 89 Clause 9 makes it an offence for a person to have a tobacco product that is intended for oral use, is not intended to be inhaled or chewed and consists wholly or partly of tobacco in powder or particulate form in their possession with intent to supply it in a course of business.
- 90 It will not be an offence to possess relevant oral tobacco products for personal use or to give as a personal gift.
- 91 An individual who is convicted of an offence under this provision may receive a fine or may be imprisoned for a term not exceeding 2 years, or both.

Sale of vaping and nicotine products etc

- 92 Annex B illustrates examples of the vaping and nicotine products that in the government's view are in scope of each clause in Part 1. This is not intended to be an exhaustive list of products.
- 93 Clause 47 (Interpretation of Part 1) outlines definitions for Part 1. Definitions include a "vape" which means a device which vaporises substances, other than tobacco, for the purpose of inhalation through a mouthpiece (whether or not it also vaporises tobacco) and is not a medical device or a medicinal product and "vaporises" includes aerosolises. It also means an item which is intended to form part of a device including anything intended to be attached to it with a view to imparting flavour. A "vaping product" means a vape, or a vaping substance and a "vaping substance" means a substance, other than tobacco, that is intended to be vaporised by a vape. The definitions include both nicotine and non-nicotine vaping products.
- 94 Clause 47 (Interpretation of Part 1) provides the definition of a "nicotine product" for this Part. The clause defines a "nicotine product" as a device that is intended to deliver nicotine into the human body, or part of a device that does that or anything that contains nicotine. The definition excludes a range of products, including tobacco products, herbal smoking products, cigarette papers, devices that are intended to be used for tobacco consumption, vaping products, medical devices and medicinal products – these products are captured elsewhere in the bill, and in the case of medical devices and medicinal products fall under a separate regulatory framework as they are not consumer products.

Clause 10: Sale of vaping or nicotine products to under 18s

- 95 Clause 10 makes it an offence to sell a vaping or nicotine product to someone under the age of 18. This replaces the existing age of sale restriction for nicotine inhaling products (nicotine vapes) as set out in The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing)

⁸⁴ <https://www.legislation.gov.uk/uksi/2016/507/contents>

Regulations 2015⁸⁵ which made it an offence to sell a nicotine vape to children under the age of 18. Currently there are no age of sale restrictions for other consumer nicotine products.

- 96 A vaping product is defined in clause 47 (Interpretation of Part 1) as a vape or vaping substance. This is a change from the existing age of sale provision which currently only includes nicotine vapes. This has been changed to ensure a consistent approach across all types of vape, and to ensure that the bill gives us the powers to regulate e-liquids and refills along with the vape device itself. This change will come into force six months after the Bill is passed.
- 97 A nicotine product is defined in clause 48 (Meaning of “nicotine product”) and is self-explanatory.
- 98 An individual who is convicted of an offence under this provision may receive a fine of up to £2,500 (level 4 on the standard scale).
- 99 Clause 10 provides that it is a defence for someone who is charged with the offence to prove that they took such steps as may be specified in regulations made by the Secretary of State to verify that the customer was 18 or over, or that they otherwise took all reasonable steps to avoid the commission of the offence. Regulations may specify steps, for example checking physical identity documents and the use of digital methods of age verification. If no such steps have been specified in regulations it will still be a defence for someone who is charged with the age of sale offence to prove that they took all reasonable steps to avoid committing the offence, which is a re-enactment of the existing defence under the Children and Families Act 2014⁸⁶, of having taken all reasonable precautions and exercised all due diligence. Before making regulations under this section the Secretary of State must obtain consent from the Welsh Ministers if the regulations contain provisions that fall within the legislative competence of Senedd Cymru. Any regulations under this section will be subject to the negative resolution procedure.

Clause 11: Purchase of vaping or nicotine products on behalf of under 18s

- 100 Clause 11 makes it an offence for a person aged 18 or over to buy, or attempt to buy, a vaping product or a nicotine product on behalf of someone who is under the age of 18, also known as proxy purchasing. This clause replaces section 91 of the Children and Families Act 2014⁸⁷ (the 2014 act), which made it an offence for someone over 18 to buy, or attempt to buy, a nicotine inhaling product (nicotine vape) on behalf of someone who is under the age of 18.
- 101 The 2014 Act currently only applies to nicotine vapes, and the new restriction will apply to all vapes. This clause also extends the restriction to include nicotine products as currently there are no restrictions on the proxy purchasing of nicotine products. This change will come into force six months after the Bill is passed.
- 102 Anyone convicted of an offence under this provision may receive a fine of up to £2,500 (level 4 on the standard scale). It is a defence for a person charged with an offence to prove that they had no reason to suspect that the other person was under the age of 18.

Clause 12: Vaping and nicotine product vending machines

- 103 Clause 12 makes it an offence for a person who manages or controls a premises to have a vape or nicotine product vending machine (“an automatic machine from which vaping/nicotine

⁸⁵ <https://www.legislation.gov.uk/uksi/2015/895/contents>

⁸⁶ <https://www.legislation.gov.uk/ukpga/2014/6/contents>

⁸⁷ <https://www.legislation.gov.uk/ukpga/2014/6/contents>

products may be bought”) available for use on the premises. The offence will come into force six months after the Bill achieves Royal Assent, this is so that premises that currently contain a vape or nicotine product vending machine will have time to remove or stock the machine with alternative products.

104 The clause also makes it clear that vending machines that dispense products are captured, where the sale may have taken place separately from the machine, for example, machines that operate via tokens, coupons, or receipts are captured by the prohibition. The machine is prohibited if the product is dispensed to a customer in connection with a sale, so businesses can use machines which dispense products so long as the product in question is dispensed to staff. This clause introduces a new offence as there are currently no restrictions on the use of vape vending machines or nicotine product vending machines, unlike tobacco vending machines, which were banned by regulations made under the Children and Young Persons (Protection from Tobacco) Act 1991⁸⁸.

105 A person convicted of the offence may receive a fine of up to £2,500 (level 4 on the standard scale).

Displays of products or prices

Clause 13: Displays of products or prices in England

106 Clause 13 provides the Secretary of State with powers to regulate the display of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products and their prices, as well as the display of empty retail packaging or anything that represents the products, in retailers in England.

107 Under the Tobacco Advertising and Promotion Act 2002⁸⁹ there are already restrictions on the display in the course of business of tobacco products and prices. However, there are no restrictions under current legislation on where herbal smoking products, cigarette papers tobacco related devices, vaping products^{90,91} as well as their prices, can be displayed in retail premises. This allows for regulations to limit the display of all these different types of products. The inclusion of tobacco related devices ensures that products such as pipes and bongs can be

108 Subsection (6) confirms that before making regulations under this clause the Secretary of State must consult.

109 Clause 13 also facilitates the creation of offences for the failure to comply with the regulations and anyone convicted of an offence under this clause could be subject to imprisonment for a term not exceeding 2 years, a fine, or both.

Clause 14: Displays of products or prices in Wales

110 Clause 14 provides the Welsh Ministers with powers to regulate the display of tobacco products, tobacco related devices (such as heated tobacco devices, pipes and bongs), herbal smoking products, cigarette papers, vaping products and nicotine products and their prices, as well as the display of empty retail packaging, in retailers in Wales.

⁸⁸ <https://www.legislation.gov.uk/ukpga/1991/23/contents>

⁸⁹ <https://www.legislation.gov.uk/ukpga/2002/36/contents>

⁹⁰ <https://www.legislation.gov.uk/ukpga/2002/36/contents>

⁹¹ <https://www.legislation.gov.uk/ukpga/2002/36/contents>

111 Similarly, to England, there are already restrictions on displays in the course of business of tobacco products in Wales under the Tobacco Advertising and Promotion Act 2002 and regulations made under it. As set out under clause 13, there are no restrictions under current legislation on where tobacco related devices, vaping products and nicotine products, as well as their prices, can be displayed in retail premises. The inclusion of cigarette papers, herbal smoking products and tobacco related devices ensures that products such as heated tobacco devices, pipes and bongs can be subjected to display restrictions. This Bill provides for new regulations for the display of tobacco products to be developed. These will replace the existing regulations and the scope of these regulations may extend to other products. Tobacco Advertising and Promotion Act 2002⁹² is repealed.

112 Subsection (6) of this clause confirms that before making regulations under this clause Welsh Ministers must consult.

113 The power under clause 14 sets out that the regulations may provide for the creation of offences for the failure to comply with the regulations and anyone convicted of an offence could be subject to imprisonment for a term not exceeding 2 years, a fine, or both.

Free distribution and discounts

Clause 15: Free distribution and discount of products

114 Clause 15 makes it an offence to give away, any product or a coupon (defined as anything (whether in physical or electronic form), which can be redeemed for a product or service or for cash or any other benefit) to a member of the public where the purpose or effect is to promote a relevant product.

115 It is currently prohibited under section 9 of the Tobacco Advertising and Promotion Act 2002⁹³ (TAPA) to give away (in the course of a business) any product or coupon where the purpose or effect of which is to promote a tobacco product. This clause replaces section 9 of TAPA and extends the scope as there are currently no restrictions on businesses freely distributing nicotine and non-nicotine vaping products, cigarette papers, and herbal smoking products.

116 This clause also makes it an offence to sell a relevant product or coupon at a substantial discount. There is a regulation making power in TAPA to extend the ban on free distribution of tobacco products to cover selling a product at a substantial discount. This has been re-enacted as a ban on the face of the Bill rather than a regulation making powers, as there is no intention to permit selling a product or coupon at a substantial discount to circumvent the restriction on free distribution.

117 This clause provides that there is a defence available where a person is charged with giving away a vaping product or nicotine product or coupon for such if they can prove it was done in accordance with arrangements made by a public authority. If this defence is satisfied, then they are not guilty of the offence. An example of this could be where a government body funds a smoking cessation programme that utilises vapes as a cessation tool and provides them for free.

118 Anyone convicted of an offence under this clause may be subject to imprisonment, a fine, or both.

⁹² <https://www.legislation.gov.uk/ukpga/2002/36/contents>

⁹³ <https://www.legislation.gov.uk/ukpga/2002/36/section/9>

Licensing of retail sales of tobacco products etc in England

Clause 16: Prohibition of retail sales of tobacco products etc in England without a licence

- 119 Clause 16 provides the Secretary of State with the power to make regulations regarding the granting of personal and premises licences.
- 120 This clause prohibits the sale, exposure for sale, or possession for the purpose of sale (by the individual or another person) of tobacco products, herbal smoking products, cigarette papers, vaping or nicotine products by an individual in England, except under the authority of and in accordance with a personal licence. The Secretary of State may, by regulations, create exceptions to this prohibition. This provision will come into force when regulations for the licensing scheme are laid.
- 121 This clause also prohibits a person from using or permitting the use of premises in England, to store for the purpose of their sale (by the person or another person), expose for sale, or supply tobacco products, herbal smoking products, cigarette papers, vaping, or nicotine products to retail customers except under the authority of and in accordance with a premises licence. The Secretary of State may, by regulations, create exceptions to this prohibition. This provision will come into force when regulations for the licensing scheme are laid.
- 122 Before exercising the power to make regulations under this clause, the Secretary of State must consult. Further detail on what the licensing scheme regulations in England may include are set out in Schedule 1. Any regulations made under clause 16 are subject to the affirmative resolution procedure.

Schedule 1: Retail licensing scheme: England

- 123 This schedule details the regulations for a retail licensing scheme that may be made under the powers provided to the Secretary of State in clause 16 (Prohibition of retail sales of tobacco products etc in England without a licence). These provisions give further detail about what provisions made through regulations may include to provide clarity about the intended purpose of the regulation making powers. This schedule is for England only.
- 124 The regulations must describe the local authority that will be the licensing authority and thus hold the responsibility for granting licences.
- 125 The regulations may make provisions regarding the granting of a licence in England, including provisions which mean a licensing authority could not grant a licence to a premises in a particular area (for example, proximity to a school), or limiting the number of licences within a particular area. Provisions may also require a licensing authority to inspect a premises to ensure it meets regulations before a licence is granted.
- 126 The regulations may allow a licensing authority to charge a fee on application for a licence. This would include fees required at the point of any renewal of a licence. The amount of any fee is to be set in regulations and will be able to account for the cost of exercising functions in connection with the licensing scheme including administration and enforcement costs of the scheme. The regulations may require the licensing authority to pay a proportion of the fees collected to any other person with functions under or in connection with the licensing scheme (clauses 16-18 or the regulations), to ensure fees collected can be used for enforcement of the scheme in a situation where the licensing authority is different from the enforcement authority.

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

- 127 The regulations may also make provisions regarding the conditions of the licence, namely the requirements that licence holders will need to meet to maintain a licence for the sale or supply of relevant products.
- 128 The regulations may also make provisions regarding the duration of the licence, which is self-explanatory.
- 129 The regulations may make provisions for the publication of licence information by the licensing authority. Publication of a list of licensed retailers may support enforcement of the licensing scheme.
- 130 The regulations will establish the reviews and appeals process for decisions made regarding the granting of a licence. They must specify when a person may request a review of a decision taken under the regulations and give a person the right of appeal to a magistrates' court against a decision taken on a review. This will enable an independent decision. There may be a time limit for requesting reviews or initiating appeals.
- 131 The regulations may require a licensing authority to adhere to guidance published by the Secretary of State when carrying out its functions under the licensing regulations. Guidance will support the implementation of the regulations by licensing authorities.

Clause 17: Offences in connection with licences: England

- 132 Clause 17 sets out that anyone who breaches the prohibitions set out in clause 16(1) and 16(2) commits an offence.
- 133 This clause also makes it an offence for a person to provide false or misleading information to a licensing authority in, or in connection with, an application for the grant of a personal or premises licence; or in carrying out of any other obligation imposed by or under licensing regulations. It is only an offence if the information is false or misleading in a material respect, and the person knows or ought to reasonably know this about the information.
- 134 A person convicted of an offence under clauses 17(1) or 17(2) may receive a fine where there is no maximum amount. As an alternative to criminal prosecution, local weights and measures authorities may issue a fixed penalty notice for these offences under the provisions in clause 37 (Fixed penalty notices).
- 135 Upon conviction of the offence under clause 17(1) (prohibition of retail sales of tobacco products etc in England without a licence), as set out in clause 16(1) and (2) a court may make an order as to what happens to the relevant products to which the offence(s) relate. This may include forfeiture and destruction of the relevant products.

Clause 18: Financial penalties for breach of licence conditions: England

- 136 Clause 18 introduces financial penalties which may be imposed for the breach of conditions attached to a personal or premises licence in England, provided the breach is not a criminal offence under clause 17 (Offences in connection with licences: England). These financial penalties are civil penalties and can be issued by a local weights and measures authority.
- 137 This clause sets the maximum amount of the financial penalty at £2,500 and provides the Secretary of State with the power to change this maximum amount to account for inflation and so that the financial penalty amount remains proportionate. Any regulations made under clause 18 are subject to the negative resolution procedure as the scope of the power is narrow.
- 138 Further details on financial penalties for breach of licence conditions are set out in Schedule 2.

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

Schedule 2: Financial penalties for breach of retail licence conditions: England

- 139 This schedule sets out the procedure for local weights and measures authorities when imposing financial penalties for breach of licence conditions, introduced in clause 18 (Financial penalties for breach of licence conditions). This schedule is for England only.
- 140 Before imposing a financial penalty, a local weights and measures authority must issue a written notice of intent and allow for a period of representation, to give the person the opportunity to challenge the proposed financial penalty. If, after the period for representation, the local authority decides to impose the financial penalty, they must give a final written notice.
- 141 Both the notice of intent, the final notice can be withdrawn or amended to reduce the penalty amount at any time by written notice.
- 142 A person has the right to appeal to the magistrates' court against the decision to impose a financial penalty or the amount of the penalty. This will enable an independent decision. This schedule establishes the appeals procedure to be followed.
- 143 If a person fails to pay the whole or part of the financial penalty within the given period, the unpaid amount may be recovered as if it were payable under a county court order.
- 144 Any proceeds received from financial penalties must be returned to the Consolidated Fund once enforcement costs to investigate and issue the penalty have been deducted by the local weights and measures authority.

Retail licensing: Wales

Clause 19: Prohibition of retail sales of tobacco products etc in Wales without a licence

- 145 Clause 19 provides Welsh Ministers with the power to make regulations regarding the granting of personal and premises licences.
- 146 This clause prohibits the sale, exposure for sale, or possession for the purpose of sale (by the individual or another person) of tobacco products, herbal smoking products, cigarette papers, vaping or nicotine products by an individual in Wales, except under the authority of and in accordance with a personal licence. Welsh Ministers may, by regulations, create exceptions to this prohibition. This provision will come into force when regulations for the licensing scheme are laid.
- 147 This clause also prohibits a person from using or permitting the use of premises in Wales, to store for the purpose of their sale (by the person or another person), expose for sale, or supply tobacco products, herbal smoking products, cigarette papers, vaping or nicotine products to retail customers except under the authority of and in accordance with a premises licence. Welsh Ministers may, by regulations, create exceptions to this prohibition. This provision will come into force when regulations for the licensing scheme are laid.
- 148 The licensing authority responsible for granting of personal and premises licences in Wales will be the relevant county or county borough council.
- 149 Before exercising the power to make regulations under this clause, Welsh Ministers must consult. Further detail on what the licensing scheme regulations in Wales may include are set out in Schedule 3. Any regulations made under clause 19 are subject to the affirmative resolution procedure.

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

Schedule 3: Retail Licensing Scheme: Wales

- 150 This schedule details the regulations for a retail licensing scheme that may be made under the powers provided to Welsh Ministers in clause 19 (Prohibition of retail sales of tobacco products etc in Wales without a licence). These provisions give further detail about what provisions made through regulations may include to provide clarity about the intended purpose of the regulation making powers. This schedule is for Wales only.
- 151 The regulations may make provisions regarding the granting of a licence in Wales, including provisions which mean a licensing authority could not grant a licence to a premises in a particular area (for example, proximity to a school), or limiting the number of licences within a particular area. Provisions may also require a licensing authority to inspect a premises to ensure it meets regulations before a licence is granted.
- 152 The regulations may allow a licensing authority to charge a fee on application for a licence. This would include fees required at the point of any renewal of a licence. The amount of any fee is to be set in regulations and will be able to account for the cost of exercising functions in connection with the licensing scheme including administration and enforcement costs of the scheme. The regulations may require the licensing authority to pay a proportion of the fees collected to any other person with functions under the licensing scheme (clauses 19-21 or the regulations), to ensure fees collected can be used for enforcement of the scheme in a situation where the licensing authority is different from the enforcement authority.
- 153 The regulations may also make provisions regarding the conditions of the licence, namely the requirements that licence holders will need to meet to maintain a licence for the sale or supply of the relevant products.
- 154 The regulations may also make provisions regarding the duration of the licence, which is self-explanatory.
- 155 The regulations may make provisions for the publication of licence information by the licensing authority. Publication of a list of licensed retailers may support enforcement of the licensing scheme.
- 156 The regulations will establish the reviews and appeals process for decisions made regarding the granting of a licence. They must specify when a person may request a review of a decision taken under the regulations and give a person the right of appeal to a magistrates' court against a decision taken on a review. This will enable an independent decision. There may be a time limit for requesting reviews or initiating appeals.
- 157 The regulations may require a licensing authority to adhere to guidance published by Welsh Ministers when carrying out its functions under the licensing regulations. Guidance will support the implementation of the regulations by licensing authorities.

Clause 20: Offences in connection with licences: Wales

- 158 Clause 20 sets out that anyone who breaches the prohibitions set out in clause 19(1) and 19(2) commits an offence.
- 159 This clause also makes it an offence for a person to provide false or misleading information to a licensing authority in, or in connection with, an application for the grant of a personal or premises licence; or in carrying out of any other obligation imposed by or under licensing regulations. It is only an offence if the information is false or misleading in a material respect, and the person knows, or ought to reasonably know this about the information.

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

- 160 A person convicted of an offence under clauses 20(1) or 20(2) may receive a fine where there is no maximum amount. As an alternative to criminal prosecution, Local Authority Trading Standards in Wales may issue a fixed penalty notice for these offences under the provisions in clause 37 (Fixed penalty notices).
- 161 Upon conviction of the offence under clause 20(1) (prohibition of retail sales of tobacco products etc in Wales without a licence), as set out in clause 19(1) and (2)) a court may make an order as to what happens to the relevant products to which the offence(s) relate. This may include forfeiture and destruction of the relevant products.

Clause 21: Financial penalties for breach of licence conditions: Wales

- 162 Clause 21 introduces financial penalties which may be imposed for the breach of conditions attached to a personal or premises licence in Wales, provided the breach is not a criminal offence under clause 19 (Offences in connection with licences: Wales). These financial penalties are civil penalties and can be issued by a local weights and measures authority.
- 163 This clause sets the maximum amount of the financial penalty at £2,500 and provides Welsh Ministers with the power to change this maximum amount to account for inflation and so that the financial penalty amount remains proportionate. Any regulations made under clause 21 are subject to the negative resolution procedure as the scope of the power is narrow.
- 164 Further details on financial penalties for breach of licence conditions in Wales are set out in Schedule 4.

Schedule 4: Financial Penalties for Breach of Retail Licence Conditions: Wales

- 165 This schedule sets out the procedure for local weights and measures authorities (e.g. Local Authority Trading Standards in Wales) when imposing financial penalties for breach of licence conditions, introduced in clause 21 (Financial penalties for breach of licence conditions: Wales). This schedule is for Wales only.
- 166 Before imposing a financial penalty, a local weights and measures authority (e.g. Local Authority Trading Standards in Wales) must issue a written notice of intent and allow for a period of representation, to give the person the opportunity to challenge the proposed financial penalty. If, after the period for representation, the local authority decides to impose the financial penalty, they must give a final written notice.
- 167 Both the notice of intent, the final notice can be withdrawn or amended to reduce the penalty amount at any time by written notice.
- 168 A person has the right to appeal to the magistrates' court against the decision to impose a financial penalty or the amount of the penalty. This will enable an independent decision. This schedule establishes the appeals procedure to be followed.
- 169 If a person fails to pay the whole or part of the financial penalty within the given period, the unpaid amount may be recovered as if it were payable under a county court order.
- 170 Any proceeds received from financial penalties must be returned to the Welsh Consolidated Fund once enforcement costs to investigate and issue the penalty have been deducted by the local weights and measures authority (e.g. Local Authority Trading Standards in Wales).

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

Clause 22: Repeal of register of retailers of tobacco and nicotine products in Wales etc

171 Clause 22 amends the Public Health (Wales) Act 2017⁹⁴ and is self-explanatory. The effect is to repeal existing provisions for a retailer register in Wales once licensing scheme provisions in this Bill come into force by order of the Welsh Ministers.

Restricted premises orders

Clause 23: Restricted premises orders

172 Clause 23 provides that a “persistent offender” who commits a relevant offence in relation to the premises on at least two other occasions within a two-year period can be punished by being prevented from selling one or more of the relevant products altogether.

173 Relevant offences include those under clauses 1 (Sale of tobacco etc), 3 (Tobacco vending machines), 10 (Sale of vaping or nicotine products to under 18s) and 12 (Vaping and nicotine product vending machines) of this Bill, as well as the existing offences shown at subsection 8(b) of this clause up until the point they are repealed. This clause replaces, and is based on, section 12A of the Children and Young Persons Act 1933⁹⁵ where restricted premises orders were introduced for persistent breaches of the age of sale restrictions for tobacco and nicotine products.

174 A restricted premises order means that the retail business at the location where the offences took place is prohibited from selling one or more of the relevant products (tobacco products, herbal smoking products, cigarette papers, vaping products and nicotine products). The length of the order is determined by the court and may last up to a period of 12 months. This means that no sales of any of these products may take place from that business premises, but it does not affect other businesses within the same group or chain.

175 A restricted premises order is a local land charge, which means it would bind a buyer of the premises.

Clause 24: Restricted premises orders: interested persons

176 Clause 24 sets out the criteria for which individuals (‘interested persons’ who occupy or have an interest in the premises, for instance the manager, owner or landlord) may make representations to the court to try to prevent a restricted premises order being issued against a retailer.

177 This clause is based on the approach outlined in section 12A of the Children and Young Persons Act 1933⁹⁶ for restricted premises orders for breaches of the tobacco legislation.

178 This clause provides when an enforcement authority has applied for a restricted premises order, they must make reasonable enquires and give notice to anyone appearing to them to be an interested person.

179 An interested person can make their case as to why they should not be issued with a restricted premises order, and they may apply to the court to alter or discharge the order.

⁹⁴ <https://www.legislation.gov.uk/anaw/2017/2/contents/enacted>

⁹⁵ <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

⁹⁶ <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

Clause 25: Restricted premises orders: appeals

180 Clause 25 provides the right to appeal to the Crown Court against an order made by a magistrates' court under clauses 23 (Restricted premises orders) or 24 (Restricted premises orders: interested persons).

Clause 26: Breach of restricted premises orders

181 Clause 26 makes it an offence to breach a restricted premises order as defined in clause 23 (Restricted premises orders). This clause is based on section 12C of the Children and Young Persons Act 1933⁹⁷ which introduced fines for a breach of a restricted premises order. A breach of a restricted premises order includes the sale of any product that is prohibited, and applies if someone knowingly, or should reasonably know, that the sale is prohibited. Someone who is charged with the offence may have a defence if they can prove they took all reasonable steps to avoid committing the offence. Anyone convicted of an offence under this provision may receive a fine where there is no maximum amount.

Clause 27: Power to extend restricted premises orders in Wales

182 Clause 27 provides the Welsh Ministers with the power to add to the list of "relevant offences" (relating to the restrictions around relevant products) for which a restricted premises order can be issued, replacing an existing power for the Welsh Ministers power in section 51 of the Public Health (Wales) Act 2017⁹⁸ to specify a "tobacco or nicotine offence".

183 Before making regulations under this clause the Welsh Ministers must consider who is likely to have an interest in the regulations and Ministers should consult those who they deem are necessary.

Restricted sale orders

Clause 28: Restricted sale orders

184 Clause 28 provides that a persistent offender (who has committed a relevant offence on at least two other occasions within two years) can be prohibited from selling certain products (e.g. tobacco, herbal smoking, vaping or nicotine products as well as cigarette papers). Restricted sales orders can be imposed for persistent breaches of clauses 1 (Sale of tobacco, etc), 3 (Tobacco vending machines), 10 (Sale of vaping or nicotine products to under 18s) and 12 (Vaping and nicotine product vending machines) of this Bill, as well as the existing offences shown at subsection 5(b) of this clause up until the point they are repealed. This clause replaces and is based on section 12B of the Children and Young Persons Act 1933⁹⁹ where restricted sale orders were introduced for repeated breaches of the age of sale legislation for tobacco and nicotine products.

185 If a person convicted with a relevant offence is a persistent offender, the person who brought the proceedings for the offence can apply to the magistrates' court for a restricted sale order.

186 A restricted sale order prohibits a named person within a business from selling any tobacco products, herbal smoking products, cigarette papers, vaping products, or any relevant nicotine product or from having any management role in a premises relating to sales of those products. The order will apply to the named individual regardless of where they are

⁹⁷ <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

⁹⁸ <https://www.legislation.gov.uk/anaw/2017/2/contents>

⁹⁹ <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

employed. The length of the order is determined by the court and may last for a period of up to 12 months.

Clause 29: Restricted sale orders: appeals

187 Clause 29 provides the right to appeal to the Crown Court against an order made by a magistrates' court under clause 28 (Restricted sale orders).

Clause 30: Breach of restricted sale orders

188 Clause 30 makes it an offence to fail to comply with a restricted sale order. It is a defence for someone who is charged with the offence to prove they took all reasonable steps to avoid committing the offence, and anyone convicted of an offence under this provision may receive a fine where there is no maximum amount.

Offences by bodies

Clause 31: Liability of others for certain offences committed by bodies

189 Clause 31 makes a "relevant person" (a director or manager of a company or someone with partner status in a partnership or a person exercising function of management in an unincorporated association) liable for an offence committed by a body where the offence has been committed with their consent, connivance, or neglect. In such cases the relevant person would be liable in addition to the body (such as the company or partnership) they are working for to have proceedings brought against them. This applies to offences under clause 26 (Breach of restricted premises order) or any other offence under Part 1 of the Bill or any regulations made under clauses 13 (Displays of products or prices in England) and 14 (Displays of products of prices in Wales).

Enforcement functions

Clause 32: Enforcement by local weights and measures authorities

190 Clause 32 places a duty on local authorities to enforce the provisions in Part 1 of the Bill and any regulations made under clauses 13 (Displays of products or prices in England) and 14 (Displays of products of prices in Wales). It provides that the investigatory powers available to an enforcement authority are those in Schedule 5 (Investigatory powers) of the Consumer Rights Act 2015¹⁰⁰ (the 2015 Act). Investigatory powers provided by Schedule 5 of the 2015 Act include the powers to purchase products, observe the activities of a business, enter premises with or without warrant, inspect products, test any weighing or measuring equipment, require the production of documents, seize and detain goods, seize documents required as evidence, break open a container and to require assistance from persons on the premises.

Clause 33: Programme of enforcement action: England

191 Clause 33 sets out a requirement for enforcement authorities in England to consider a so-called 'programme of enforcement' and the potential design of the programme on a yearly basis. This is a means of ensuring that a local authority in England considers whether they are enforcing offences effectively. The programme of enforcement itself is as described in the clause and is self-explanatory.

¹⁰⁰ <https://www.legislation.gov.uk/ukpga/2015/15/contents>

Clause 34: Programme of enforcement action: Wales

192 Clause 34 sets out a requirement for enforcement authorities in Wales to consider a so-called ‘programme of enforcement’ and the potential design of the programme on a yearly basis. This is a means of ensuring that local authorities in Wales consider whether they are enforcing offences effectively. The programme of enforcement itself is as described in the clause and is self-explanatory.

Powers of ministers to take over enforcement

Clause 35: Power of ministers to take over enforcement functions

193 Clause 35 provides a power for the Secretary of State or the Welsh Ministers to carry out the enforcement as prescribed in clause 32 (Enforcement by local weights and measures authorities) instead of the local enforcement authority. The effect of this is that a national enforcement authority will undertake the investigation and enforcement, rather than the local enforcement authority. This could arise if a local enforcement authority is unable or unwilling to undertake enforcement of a certain case.

Clause 36: Power of ministers to take over proceedings

194 Clause 36 provides a power for the Secretary of State to take over the legal proceedings relating to offences committed under Part 1 of the Bill or regulations made under clause 13 (Displays of products or prices in England). It also provides a power for the Welsh Ministers to take over the legal proceedings relating to any offence that has been committed under Part 1 of the Bill or regulations made under clause 14 (Displays of products or prices in Wales). This will allow a national authority to undertake the legal proceedings instead of a local enforcement authority. This could arise if a local enforcement authority is unable or unwilling to undertake the legal proceedings of a certain case.

Fixed penalties

Clause 37: Fixed penalty notices

195 Clause 37 introduces fixed penalty notices (FPNs) for the enforcement of the age of sale restrictions for tobacco products, herbal smoking products and cigarette papers (clause 1) and vaping and nicotine products (clause 10), proxy purchasing of tobacco etc. (clause 2) and vaping or nicotine products (clause 11), tobacco age of sale notice at point of sale regulations in England (clause 5) and Wales (clause 6), regulations relating to the display of products or prices in England (clause 13) and Wales (clause 14), the free distribution and discount of tobacco, vaping and nicotine products (clause 15), and any offences in connection with licensing in England (clause 17) and Wales (clause 20). Section 91 of the Children and Families Act 2014¹⁰¹ introduced FPNs for the proxy purchasing of tobacco and vaping products; and this will be replaced by the FPN regime in the Bill.

196 An FPN offers the person the opportunity to avoid prosecution for the offence if they make a payment of the fine within a specified period. The amount of the fine will be level 4 on the standard scale (currently set at £2,500) for offences in connection with licensing in England (clause 17) and Wales (clause 20). For all other offences the fine will be £200. The amount specified is that if paid within 28 days and will be reduced by 50% if paid within 14 days.

197 No legal proceedings can be initiated before the end of the 28-day period. If the person who has received the FPN fails to make the payment and the local enforcement authority decide to

¹⁰¹ <https://www.legislation.gov.uk/ukpga/2014/6/data.pdf>

initiate proceedings against them for the offence, the time that is calculated for the magistrates' court will begin after the payment window of 28 days. However, an FPN can be withdrawn by the local enforcement authority at any point. This is mentioned in section 127(1) of the Magistrates' Court Act 1980¹⁰².

Clause 38: Fixed penalties: use of proceeds

198 Clause 38 provides that proceeds received from FPNs for offences in connection with licensing in England (clause 17) and Wales (clause 20) must be paid to the relevant Consolidated Fund once enforcement costs of investigating the offence and issuing the FPN have been deducted by the local weights and measures authority.

199 Clause 38 provides that any proceeds from FPNs for all other offences must be used by the local weights and measures authority (e.g. Local Authority Trading Standards in England and Wales) in connection with enforcing any measures in this Bill, or any regulations made under this Bill, as well as measures in Part 1 of the Health Act 2006¹⁰³ (smoke-free premises) in England, Part 3 of the Public Health (Wales) Act 2017¹⁰⁴ in Wales, and The Tobacco and Related Products Regulations 2016¹⁰⁵.

Clause 39: Power to change amount of fixed penalties

200 Clause 39 provides the Secretary of State and the Welsh Ministers with a power to change the amount of the FPN and the percentage discount for early payment. This power excludes the ability to change the amount of the FPN for offences in connection with licensing in England (clause 17) and Wales (clause 20). For all other offences, the maximum amount the FPN amount can be changed to is equivalent to level 3 on the standard scale of fines for summary offences (currently £1,000). This is included in the Bill to ensure there is flexibility for new regimes to adapt the penalty amount, and the discounted amount, to align with changing economic and social circumstances, such as changes in inflation, and to ensure fine amounts are proportionate.

Handing over tobacco etc to underage people in Wales

Clause 40: Handing over tobacco etc to underage people in Wales

201 Clause 40 is self-explanatory and introduces Schedule 5 (Handing over tobacco etc to underage people in Wales).

Schedule 5: Handing over tobacco etc to underage people in Wales

202 This schedule amends the Public Health (Wales) Act 2017¹⁰⁶ to update the provision about handing over of tobacco etc to persons under 18 to align with the new age of sale restrictions, to include vaping products, herbal smoking products, cigarette papers, and nicotine products in this restriction and to provide a power to extend the products to which that Chapter applies to include devices which enable a tobacco product to be consumed. The amendments outlined in the Bill are provided in both English and Welsh.

¹⁰² <https://www.legislation.gov.uk/ukpga/1980/43/contents>

¹⁰³ <https://www.legislation.gov.uk/ukpga/2006/28/part/1>

¹⁰⁴ <https://www.legislation.gov.uk/anaw/2017/2/part/3>

¹⁰⁵ <https://www.legislation.gov.uk/uksi/2016/507/contents>

¹⁰⁶ <https://www.legislation.gov.uk/anaw/2017/2/contents>

Consequential, transitional and transitory provision

Clause 41: Consequential amendments to do with Part 1

203 Clause 41 states the consequential amendments to do with Part 1 and where these may be found in the Schedules 6 and 7 according to when they come into force and is self-explanatory.

Schedule 6: Part 1 consequential amendments commencing after 6 months

204 This schedule details consequential amendments that will be made to existing pieces of legislation that will come into force six months after the Bill is passed. Consequential amendments in the schedule will ensure other legislation relating to restrictions and regulations of tobacco are in line with the provisions of the Bill. This amends the Children and Young Persons Act 1933¹⁰⁷, the Children and Young Persons (Protection from Tobacco) Act 1991¹⁰⁸, the Tobacco Advertising and Promotion Act 2002¹⁰⁹, the Health Act 2006¹¹⁰, the Criminal Justice and Immigration Act 2008¹¹¹, the Regulatory Enforcement and Sanctions Act 2008¹¹², the Health Act 2009¹¹³, the Children and Families Act 2014¹¹⁴, the Tobacco and Related Products Regulations 2016¹¹⁵ (S.I. 2016/507), the Public Health (Wales) Act 2017¹¹⁶, and the Digital Markets, Competition and Consumers Act 2024¹¹⁷.

Schedule 7: Part 1 consequential amendments commencing on 1 January 2027

205 This schedule details any consequential amendments that will be made to existing pieces of legislation that will come into force on 1 January 2027. Consequential amendments in the schedule will ensure that measures in the Bill coming into force on 1 January 2027 can operate as intended. This amends the Children and Young Persons Act 1933¹¹⁸, the Local Government etc (Scotland) Act 1994¹¹⁹, the Police Reform Act 2002¹²⁰, the Courts Act 2003¹²¹, the Regulatory Enforcement and Sanctions Act 2008¹²², the Health Act 2009¹²³, the Tobacco and Primary Medical Services (Scotland) Act 2010¹²⁴, the Police Reform and Social Responsibility Act

¹⁰⁷ <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

¹⁰⁸ <https://www.legislation.gov.uk/ukpga/1991/23/contents>

¹⁰⁹ <https://www.legislation.gov.uk/ukpga/2002/36/contents>

¹¹⁰ <https://www.legislation.gov.uk/ukpga/2006/28/contents>

¹¹¹ <https://www.legislation.gov.uk/ukpga/2008/4/contents>

¹¹² <https://www.legislation.gov.uk/ukpga/2008/13/contents>

¹¹³ <https://www.legislation.gov.uk/ukpga/2009/21/contents>

¹¹⁴ <https://www.legislation.gov.uk/ukpga/2014/6/contents>

¹¹⁵ <https://www.legislation.gov.uk/uksi/2016/507/contents>

¹¹⁶ <https://www.legislation.gov.uk/anaw/2017/2/contents>

¹¹⁷ <https://www.legislation.gov.uk/ukpga/2024/13/contents>

¹¹⁸ <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

¹¹⁹ <https://www.legislation.gov.uk/ukpga/1994/39/contents>

¹²⁰ <https://www.legislation.gov.uk/ukpga/2002/30/contents>

¹²¹ <https://www.legislation.gov.uk/ukpga/2003/39/contents>

¹²² <https://www.legislation.gov.uk/ukpga/2008/13/contents>

¹²³ <https://www.legislation.gov.uk/ukpga/2009/21/contents>

¹²⁴ <https://www.legislation.gov.uk/asp/2010/3/contents>

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2011¹²⁵, the Digital Markets, Competition and Consumers Act 2024¹²⁶ and the Children and Families Act 2014¹²⁷. The Protection of Children (Tobacco) Act 1986¹²⁸ and the Children and Young Persons (Protection from Tobacco) Act 1991¹²⁹ are repealed.

Clause 42: Application of programmes of enforcement to old age of sale offences

206 Clause 42 ensures that the programme of enforcement for England and Wales (clauses 33 and 34) in the Bill will apply to existing tobacco control measures (age of sale restrictions of tobacco in section 7 of the Children and Young Persons Act 1933¹³⁰ and age of sale notice requirements in section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991)¹³¹ up until the new measures in the Bill come into force on 1 January 2027.

Clause 43: Application of fixed penalty regime to old age of sale offences

207 Clause 43 provides for the FPN regime (clause 37, fixed penalty notices) in this Bill to apply to existing offences to sell tobacco products to, or purchase these products on behalf of, someone underage (under 18) from six months after Royal Assent. From 1 January 2027, when the new age of sale restrictions for tobacco products, herbal smoking products and cigarette papers come into force, FPNs will apply to enforce these new restrictions.

208 Up until the 1 January 2027, clause 38 (Fixed penalties: use of proceeds) applies as if it includes reference to section 91 of the Children and Families Act 2014¹³² (Purchase of tobacco etc. on behalf of under 18s).

Clause 44: Transitional provision: general

209 Clause 44 provides transitional provisions, and the effect of this provision is self-explanatory.

Powers to adjust scope

Clause 45: Power to extend Part 1 to other products

210 Clause 45 provides the Secretary of State with powers by regulations to amend any provision of Part 1 which applies to tobacco products by extending the scope to include any device that enables a tobacco product to be consumed (such as a heated tobacco device or pipe), or an item which is intended to form part of such a device. Before making regulations under this section the Secretary of State must consult and obtain consent from the Welsh Ministers if the regulations contain provisions that fall within the legislative competence of the Senedd Cymru.

Crown application

Clause 46: Crown application

211 Clause 46 provides that Part 1 of the Bill and any regulations made under Part 1 bind the Crown. This means that the new age of sale restrictions applies in relation to all bodies and

¹²⁵ <https://www.legislation.gov.uk/ukpga/2011/13/contents>

¹²⁶ <https://www.legislation.gov.uk/ukpga/2024/13/contents/enacted>

¹²⁷ <https://www.legislation.gov.uk/ukpga/2014/6/contents>

¹²⁸ <https://www.legislation.gov.uk/ukpga/1986/34#:~:text=1986%20CHAPTER%2034,sixteen%3B%20and%20for%20connect ed%20purposes.>

¹²⁹ <https://www.legislation.gov.uk/ukpga/1991/23/contents>

¹³⁰ <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

¹³¹ <https://www.legislation.gov.uk/ukpga/1991/23/contents>

¹³² <https://www.legislation.gov.uk/ukpga/2014/6/part/5/crossheading/tobacco-nicotine-products-and-smoking>

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persons acting as servants of the Crown such as government departments, prisons run by His Majesty's prison service, and to members of the armed forces. The Crown itself may not be criminally liable under this Part but persons in the service of the Crown such as civil servants or prison employees may be prosecuted for an offence and are criminally liable.

Interpretation etc

Clause 47: Interpretation of Part 1

212 Clause 47 provides the definitions for Part 1 of the Bill and the effect of this provision is self-explanatory.

Clause 48: Meaning of "nicotine product"

213 Clause 48 sets out the meaning of a "nicotine product" and is self-explanatory.

Part 2: Sale and distribution: Scotland

214 The clauses in Part 2 extend to Scotland.

215 The Bill replaces the definition of "nicotine vapour product" in the Scottish legislation with the definition of "vaping product" in this Bill.

Tobacco etc

216 Annex B illustrates examples of tobacco products that are in the government's view in scope of each clause in Part 2. This is not intended to be an exhaustive list of products.

Clause 49: Age of sale for tobacco products etc

217 Clause 49 amends existing Scottish tobacco legislation to align with the new age of sale for tobacco products, herbal smoking products and cigarette papers as brought forward by the Bill, ensuring alignment across the UK.

218 The Tobacco and Primary Medical Services (Scotland) Act 2010¹³³ (the 2010 Act) currently makes it an offence to sell tobacco products and cigarette papers to anyone who is under the age of 18 and makes related provisions for this. Clause 49 amends this legislation, for example by replacing references to anyone "under the age of 18" to anyone "born on or after 1 January 2009". The effect is that it will be an offence for a person to sell a tobacco product, herbal smoking product (given amendments in clause 53 (Extension of tobacco legislation to herbal smoking products)), or cigarette papers to a person who is born on or after 1 January 2009. Amendments are also made to update references in the defence to the offence.

219 The clause also updates the proxy purchasing offence. The effect of this is that it will be an offence for a person aged 18 or over to knowingly buy or attempt to buy a tobacco product, herbal smoking product or cigarette papers on behalf of a person born on or after 1 January 2009.

220 The clause amends the provision about display of warning statements to align with the new age of sale restrictions. The effect is that the notice which must be displayed under section 8 of the 2010 Act must contain the following statement: "It is illegal to sell tobacco products to anyone born on or after 1 January 2009".

221 This clause also updates the 'age verification policy' provisions in the 2010 Act to ensure that age verification is consistently and appropriately applied in line with the new age of sale

¹³³ <https://www.legislation.gov.uk/asp/2010/3/contents>

restrictions for tobacco products, herbal smoking products, cigarette papers, and nicotine products. The 2010 Act requires tobacco and vaping businesses to operate an “age verification policy” in relation to customers who appear under 25. This is a policy that requires steps to be taken by someone in a relevant retail setting to verify the age of a customer purchasing tobacco products, cigarette papers or vaping products (vapes).

222 The Bill makes amendments to reflect the new age of sale restrictions. If the retailer thinks a customer buying tobacco products, herbal smoking products or cigarette papers was born on or after the 1 January 2009 they are required to establish their age. Until the end of 2033 this requirement applies whenever the retailer thinks the customer is under 25.

223 If the retailer thinks a customer buying a vaping product or nicotine product is under the age of 25, they are required to operate a policy of taking steps to establish their age. This is an update to the existing provision in the 2010 Act for vaping product businesses to ensure businesses that sell nicotine products are also captured. The clause retains an existing power for the Scottish Ministers to make regulations to amend the age in respect of vaping and nicotine products that is specified in the age verification policy. The power to amend the specified age for the age verification policy for tobacco products is no longer required as the Bill updates the provision in the 2010 Act such that it refers to retailers needing to consider if the customer purchasing tobacco products appears to have been born on or after 1 January 2009 rather than referring to a specific age.

Clause 50: Sale of unpackaged cigarettes

224 Clause 50 amends the Tobacco and Primary Medical Services (Scotland) Act 2010¹³⁴ and makes it an offence to sell cigarettes that are not in their original packaging. This re-enacts the offence under section 3 of the Children and Young Persons (Protection from Tobacco) Act 1991¹³⁵. Tobacco retailers must sell cigarettes in the packaging that they are supplied to the retailer in and not doing so is an offence.

225 Anyone who is convicted of an offence under these provisions may receive a fine up to £1,000 (level 3 on the standard scale).

Clause 51: Repeal of offence of purchasing tobacco products by under 18s

226 Clause 51 omits section 5 (Purchase of tobacco products by people under 18) of the Tobacco and Primary Medical Services (Scotland) Act 2010¹³⁶ (the 2010 Act). Section 5 of the 2010 Act made it an offence for someone under the age of 18 to buy or attempt to buy a tobacco product or cigarette papers. Omitting this section of the 2010 Act means it is no longer an offence for someone under the age of 18 to buy or attempt to buy tobacco products or cigarette papers. This is intended to achieve consistency with the current position in England and Wales where the age of sale restrictions applies to the sale and not the purchase of tobacco products.

Clause 52: Repeal of power to confiscate tobacco products from person under 18

227 Clause 52 omits section 7 (Confiscation of tobacco products from people under 18) of the Tobacco and Primary Medical Services (Scotland) Act 2010¹³⁷ (the 2010 Act). Section 7 of the 2010 Act allowed a constable with reasonable grounds for suspecting that a person in a public place is under the age of 18 and is in possession of a tobacco product or cigarette papers, to

¹³⁴ <https://www.legislation.gov.uk/asp/2010/3/contents>

¹³⁵ <https://www.legislation.gov.uk/ukpga/1991/23/contents>

¹³⁶ <https://www.legislation.gov.uk/asp/2010/3/contents>

¹³⁷ <https://www.legislation.gov.uk/asp/2010/3/contents>

require the person to surrender the tobacco product or cigarette papers. Omitting this section of the 2010 Act means constables can no longer confiscate tobacco products or cigarette papers from someone who they suspect to be under 18 and in possession of a tobacco product or cigarette papers. This is intended to achieve consistency with the position in England and Wales.

Clause 53: Extension of tobacco legislation to herbal smoking products

228 Clause 53 amends existing Scottish legislation to extend the scope of various provisions in the Tobacco and Primary Medical Services (Scotland) Act 2010¹³⁸ (the 2010 Act) that apply to tobacco products to include herbal smoking products. Herbal smoking products are not currently in scope of the age of sale restrictions in the 2010 Act. This Bill includes herbal smoking products for the age of sale restrictions in England and Wales and this clause aims to enable alignment between Scotland and the rest of the UK.

229 Herbal smoking products are introduced into provisions regulating the sale of tobacco products to persons under 18 (section 4), age verification policy (section 4B), sale of tobacco or vaping product by persons under 18 (section 4C) and purchase of tobacco products on behalf of persons under 18 (section 6) of the 2010 Act.

230 The clause inserts a definition of “herbal smoking product” into the 2010 Act.

Clause 54: Power to make provision about warning statements

231 Clause 54 amends section 8 of the Tobacco and Primary Medical Services (Scotland) Act 2010¹³⁹ (the 2010 Act) to re-enact, with some modification, the existing power for the Scottish Ministers to make provision about warning statements. It gives the Scottish Ministers powers to make regulations to make provision about the size or appearance of the statement on the notice and any other aspect of the notice. This aligns with the approach for England, Wales and Northern Ireland in clauses 5 (Age of sale notice at point of sale: England), 6 (Age of sale notice at point of sale: Wales) and 72 (Age of sale notice at point of sale). The Sale of Tobacco (Display of Warning Statements) (Scotland) Regulations 2011¹⁴⁰ were made using the old powers in section 8 of the 2010 Act, but because this Bill is re-enacting those powers, sections 17(2)(b) (repeal and re-enactment) and 23A (Acts of the Scottish Parliament etc) of the Interpretation Act 1978¹⁴¹ mean that the regulations will remain in force.

Clause 55: Ban on manufacture of snus etc

232 Clause 55 adds a new section 9A to the Tobacco and Primary Medical Services (Scotland) Act 2010¹⁴² (the 2010 Act) to include provision banning the manufacture of relevant oral tobacco products, such as snus. This aligns with the approach for England and Wales (clause 7 (Ban on manufacture of snus etc)) and Northern Ireland (clause 73 (Ban on manufacture of snus etc)).

233 This is a re-enactment of the prohibition on the production and supply of oral tobacco intended for consumption within the UK or through the travel retail sector in regulation 17 of The Tobacco and Related Products Regulation 2016¹⁴³. The Bill extends these restrictions to

¹³⁸ <https://www.legislation.gov.uk/asp/2010/3/contents>

¹³⁹ <https://www.legislation.gov.uk/asp/2010/3/contents>

¹⁴⁰ <https://www.legislation.gov.uk/ssi/2011/132/contents/made>

¹⁴¹ <https://www.legislation.gov.uk/ukpga/1978/30/contents>

¹⁴² <https://www.legislation.gov.uk/asp/2010/3/contents>

¹⁴³ <https://www.legislation.gov.uk/uksi/2016/507/contents>

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include snus intended for export which simplifies enforcement and reduces the possibility of such harmful products being available within the UK.

234 An individual who is convicted of an offence under this provision may receive a fine or may be imprisoned for a term not exceeding 2 years, or both.

Clause 56: Ban on sales of snus etc

235 Clause 56 adds a new section 9B to the Tobacco and Primary Medical Services (Scotland) Act 2010¹⁴⁴ (the 2010 Act) to include provision banning the sale of relevant oral tobacco products, such as snus. This aligns with the approach for England and Wales (clause 8 (Ban of sale of snus etc)) and Northern Ireland (clause 74 (Ban of sale of snus etc)).

236 This is a re-enactment of the prohibition on the production and supply of oral tobacco intended for consumption within the UK or through the travel retail sector in regulation 17 of The Tobacco and Related Products Regulation 2016¹⁴⁵. The Bill extends these restrictions to include snus intended for export which simplifies enforcement and reduces the possibility of such harmful products being available within the UK.

237 An individual who is convicted of an offence under this provision may receive a fine or may be imprisoned for a term not exceeding 2 years, or both.

Clause 57: Possession of snus etc with intent to supply

238 Clause 57 adds a new section 9C to the Tobacco and Primary Medical Services (Scotland) Act 2010¹⁴⁶ (the 2010 Act) to include provision banning the possession of relevant oral tobacco products, such as snus, with intent to supply in the course of business. This aligns with the approach for England and Wales (clause 9 (Possession of snus etc with intent to supply)) and Northern Ireland (clause 75 (Possession of snus etc with intent to supply)).

239 It will not be an offence to possess relevant oral tobacco products for personal use or to give as a personal gift.

240 An individual who is convicted of an offence under this provision may receive a fine or may be imprisoned for a term not exceeding 2 years, or both.

Vaping and nicotine products

241 Annex B illustrates examples of vaping and nicotine products that in the government's view are in scope of each clause in Part 2. This is not intended to be an exhaustive list of products.

Clause 58: Extension of offences to vaping and nicotine products

242 Clause 58 makes it an offence to sell a vaping or nicotine product to someone under the age of 18 in Scotland. This amends the Tobacco and Primary Medical Services (Scotland) Act 2010¹⁴⁷ (the 2010 Act) which introduced various restrictions and requirements for vaping products, including both nicotine and non-nicotine vapes). This clause extends the existing offences (in sections 4A, 4B, 4C, and 6A of the 2010 Act) to include nicotine products and makes provision to align definitions across the UK. This aligns with the approach for England and Wales.

¹⁴⁴ <https://www.legislation.gov.uk/asp/2010/3/contents>

¹⁴⁵ <https://www.legislation.gov.uk/uksi/2016/507/contents>

¹⁴⁶ <https://www.legislation.gov.uk/asp/2010/3/contents>

¹⁴⁷ <https://www.legislation.gov.uk/asp/2010/3/contents>

243 The clause also omits section 7 (power to extend vending machine prohibition) from the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016¹⁴⁸ and replaces section 9 (Prohibited vending machines) of the 2010 Act. The new clause makes it an offence for the person with management or control of premises to have a vending machine from which tobacco products, herbal smoking products, vaping products, nicotine products and cigarette papers may be bought on the premises. The clause also makes it clear that vending machines that dispense products are captured, where the sale may have taken place separately from the machine, for example, machines that operate via tokens, coupons, or receipts are captured by the prohibition. The machine is prohibited if the product is dispensed to a customer in connection with a sale, so businesses can use machines which dispense products so long as the product in question is dispensed to staff.

Clause 59: Meaning of “nicotine product”

244 Clause 59 sets out the meaning of a “nicotine product” for this Part and is self-explanatory.

Clause 60: Age verification in relation to tobacco and vaping products etc

245 Clause 60 amends section 4 and 4A of the Tobacco and Primary Medical Services (Scotland) Act 2010¹⁴⁹ (the 2010 Act). The amendments are to allow for digital methods of age verification. Currently, it is a defence for someone who is charged with an age of sale offence in Scotland that they took reasonable steps to establish a customer’s age and that those reasonable steps involved being shown a prescribed document (a passport, a UK driving licence, a European Union photocard driving licence, or another prescribed document) that would convince a reasonable person as to the customer’s age.

246 The clause replaces this part of the existing defence and provides a power for the Scottish Ministers to prescribe in regulations the steps which should be taken to establish the customer’s age, as a defence to the offence. This will allow other steps to be specified to establish a customer’s age and enable the use of both physical documents and digital methods of age verification. This future-proofs the defence against changes in age verification methods. These changes will commence by regulations made by the Scottish Ministers.

247 The clause also omits section 4B(5)(b) of the 2010 Act, which allowed the Scottish Ministers to publish guidance about documents that may be shown as evidence of a customer’s age. This deletion does not prevent the guidance published by Scottish Ministers from including information about documents that may be shown as evidence of a customer’s age, but removes the focus from the showing of documents to account for advances in age verification processes (for example, digital verification services or the scanning of a document).

Displays of products or prices

Clause 61: Displays of vaping and nicotine products

248 Clause 61 amends the Tobacco and Primary Medical Services (Scotland) Act 2010¹⁵⁰ (the 2010 Act) by inserting a new section 3A (Display of products or prices). The new clause provides the Scottish Ministers with powers to regulate the display of herbal smoking products, vaping products and nicotine products and their prices, as well as the display of empty retail packaging or anything that represents the products, in retailers in Scotland. Unlike the equivalent clauses for England, Wales, and Northern Ireland this power does not cover

¹⁴⁸ <https://www.legislation.gov.uk/asp/2016/14/contents>

¹⁴⁹ <https://www.legislation.gov.uk/asp/2010/3/contents>

¹⁵⁰ <https://www.legislation.gov.uk/asp/2010/3/contents>

tobacco products, this is because provisions about displays of tobacco products in Scotland is made under the 2010 Act, rather than under the Tobacco Advertising and Promotion Act 2002, and the bill is not repealing the 2010 Act.

- 249 This clause confirms that a website does not fall within the meaning of place and so the Scottish Ministers cannot use this provision to regulate the display of these products on websites. This is included to maintain consistency with section 3 of the 2010 Act. However, this is not intended to produce a different result to clauses 13 and 14 for England and Wales and clause 79 (Displays of products and prices in Northern Ireland) for Northern Ireland which do not explicitly state that a website is not a place.
- 250 Clause 61 also facilitates the creation of offences for the failure to comply with the regulations and anyone convicted of an offence under this clause could be subject to a fine of up to £2,500 (level 4 on the standard scale).
- 251 This clause also outlines that the Scottish Ministers must consult before making regulations under this power.

Free distribution

Clause 62: Free distribution and discount of products

- 252 Clause 62 amends the Tobacco and Primary Medical Services (Scotland) Act 2010¹⁵¹ (the 2010 Act) by inserting a new section 8A (free distribution of products). The new section 8A makes it an offence to give away any product, or a coupon (anything (whether in physical or electronic form) which can be redeemed for a product or service or for cash or any other benefit) to a member of the public where the purpose or effect is to promote a relevant product. There are currently no restrictions on businesses distributing nicotine and non-nicotine vaping products, nor for herbal smoking products and cigarette papers in Scotland. This clause will repeal section 18 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016¹⁵².
- 253 This clause also makes it an offence to sell by retail a product or coupon at a substantial discount. This is to avoid a loophole in the legislation where, for example, a person could offer a relevant product for sale at a substantial discount to circumvent the restriction on free distribution.
- 254 This clause provides that there is a defence available where a person is charged with giving away a vaping product or nicotine product or coupon for such if they can prove it was done in accordance with arrangements made by a public authority. If this defence is satisfied, then they are not guilty of the offence. An example of this could be where a government body funds a smoking cessation programme that utilises vapes as a cessation tool and provides them for free. This clause grants the Scottish Ministers a power to create further defences if needed.
- 255 Anyone convicted of an offence under this provision may receive a fine or may be imprisoned for a term not exceeding 2 years, or both. This is the same approach as outlined in clause 15 (Free distribution and discount of products) for England and Wales.

Clause 63: Alignment of definition of “tobacco product”

¹⁵¹ <https://www.legislation.gov.uk/asp/2010/3/contents>

¹⁵² <https://www.legislation.gov.uk/asp/2016/14/section/18>

256 Clause 63 amends the definition of “tobacco product” in the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3)¹⁵³, section 35 (Interpretation of Part 1), to align with the definition within this Bill.

Clause 64: Alignment of definition of “vaping product”

257 Clause 64 introduces Schedule 8, which amends the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3)¹⁵⁴ to align the definition of “vaping product” within this Bill.

Schedule 8: Alignment of definition of “vaping product” in Scottish legislation

258 Schedule 8 amends, the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3)¹⁵⁵, to change references from “nicotine vapour product” to “vaping product” and align the definition of “vaping product” with the one in this Bill.

Extension of retailer register etc

Clause 65: Extension of retailer register etc

259 Clause 65 introduces Schedule 9 which amends the Tobacco and Primary Medical Services (Scotland) Act 2010¹⁵⁶ and is self-explanatory.

Schedule 9: Expansion of retailer register etc: Scotland

260 Schedule 9 amends the Tobacco and Primary Medical Services (Scotland) Act 2010¹⁵⁷ (the 2010 Act) by extending Chapter 2 of Part 1 of the 2010 Act so that retailers selling herbal smoking products and nicotine products are subject to the same registration requirements as retailers who sell tobacco and vaping products.

Miscellaneous and consequential provision

Clause 66: Crown application of 2010 Act

261 Clause 66 amends section 36 of the Tobacco and Primary Medical Services (Scotland) Act 2010¹⁵⁸ (the 2010 Act) by adding a reference to the Scottish Ministers.

Clause 67: Power to extend 2010 Act to other products

262 Clause 67 provides the Scottish Ministers with powers to amend Part 1 of the Tobacco and Primary Medical Services (Scotland) Act 2010¹⁵⁹ (the 2010 Act) to extend the scope of any provision which applies in relation to a tobacco product to any device that enables a tobacco product to be consumed other than by being smoked (such as a heated tobacco device).

263 It also provides the Scottish Ministers with a power to amend Part 1 of the 2010 Act and extend the scope of any provision which applies in relation to a tobacco product to some or all smoking related products, as listed in section 35(2) of the 2010 Act.

¹⁵³ <https://www.legislation.gov.uk/asp/2010/3/contents>

¹⁵⁴ <https://www.legislation.gov.uk/asp/2010/3/contents>

¹⁵⁵ <https://www.legislation.gov.uk/asp/2010/3/contents>

¹⁵⁶ <https://www.legislation.gov.uk/asp/2010/3/contents>

¹⁵⁷ <https://www.legislation.gov.uk/asp/2010/3/contents>

¹⁵⁸ <https://www.legislation.gov.uk/asp/2010/3/contents>

¹⁵⁹ <https://www.legislation.gov.uk/asp/2010/3/contents>

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

264 The Scottish Ministers must consult before exercising these powers.

Part 3: Sale and distribution: Northern Ireland

265 The clauses in Part 3 extend to Northern Ireland.

Tobacco etc

266 Annex B illustrates examples of tobacco products that are in the government's view in scope of each clause in this Part. This is not intended to be an exhaustive list of products.

Clause 68: Age of sale for tobacco products etc

267 Clause 68 amends existing tobacco legislation in Northern Ireland to align with the new age of sale restrictions for tobacco products and cigarette papers. The existing Article 3 in the Health and Personal Social Services (Northern Ireland) Order 1978¹⁶⁰ (the 1978 Order) makes it an offence to sell tobacco or cigarette papers to anyone who is under the age of 18 and makes the purchase of tobacco, cigarette papers or relevant nicotine products (nicotine vapes) on behalf of a person under the age of 18 an offence. Clause 68 substitutes a new Article 3 which makes it an offence to sell tobacco products, herbal smoking products, and cigarettes papers to anyone born on or after 1 January 2009. (Herbal smoking products are captured in the definition of tobacco in the 1978 Order (as a substitute for tobacco) and so are also included in the new age of sale restrictions for tobacco and cigarette papers).

268 The clause provides that it is a defence for someone who is charged with the offence to prove that they took such steps as may be specified in regulations made by the Department of Health in Northern Ireland to verify that the customer was born before 1 January 2009, or that they otherwise took all reasonable steps to avoid committing the offence. This will allow such steps to include checking physical identity documents and the use of digital methods of age verification. If no such steps have been specified in regulations it will still be a defence for someone who is charged with the age of sale offence to prove that they took all reasonable steps to avoid committing the offence, which is a re-enactment of the existing defence under the 1978 Order of having taken all reasonable precautions and exercised all due diligence. Any regulations under this section will be subject to the negative resolution procedure.

269 An individual who is convicted of an offence may receive a fine of up to £5,000 (level 5 on the standard scale).

Clause 69: Purchase of tobacco on behalf of others

270 Clause 69 amends the Health and Personal Social Services (Northern Ireland) Order 1978¹⁶¹ (1978 Order) to align the proxy purchasing offence with the new age of sale restrictions. The clause substitutes a new Article 4A (Purchase of tobacco etc on behalf of persons born on or after 1 January 2009) which sets out the offence for any adult aged 18 or over to buy, or attempt to buy, tobacco products, cigarette papers or herbal smoking products on behalf of anyone who is born on or after 1 January 2009, commonly referred to as 'proxy purchasing'. This is to ensure alignment with the new age of sale restriction in clause 68 (Age of sale for tobacco products etc) and the approach for England and Wales in clause 2 (Purchase of tobacco etc on behalf of others).

271 The offence only applies to any adult aged 18 or over, to avoid the criminalisation of children.

¹⁶⁰ <https://www.legislation.gov.uk/nisi/1978/1907/contents>

¹⁶¹ <https://www.legislation.gov.uk/nisi/1978/1907/contents>

272 The clause provides that it is a defence if a person charged with this offence can prove they had no reason to suspect that the other person was born on or after 1 January 2009 or they can prove that they had no reason to believe that the other person intended to use the cigarette papers for smoking.

273 An individual who is convicted of an offence may receive a fine of up to £5,000 (level 5 on the standard scale).

Clause 70: Tobacco vending machines

274 Clause 70 amends the Health and Personal Social Services (Northern Ireland) Order 1978¹⁶² by inserting a new Article 4B (Tobacco vending machines) that makes it an offence where a person has the management or control of premises where a tobacco vending machine (an automatic machine for the sale of tobacco products, herbal smoking products or cigarette papers) is available for use. The clause also makes it clear that vending machines that dispense products are captured, where the sale may have taken place separately from the machine, for example, machines that operate via tokens, coupons, or receipts are captured by the prohibition. The machine is prohibited if the product is dispensed to a customer in connection with a sale, so businesses can use machines which dispense products so long as the product in question is dispensed to staff.

275 A person who is convicted of an offence under this provision may receive a fine of up to £5,000 (level 5 on the standard scale).

276 This clause is similar to clause 3 (tobacco vending machines) for England and Wales. However, there is a level 5 fine in this clause whereas clause 3 provides for a level 4 fine for the same offence. This reflects the existing provision for tobacco vending machine offences in Northern Ireland.

Clause 71: Sale of unpackaged cigarettes

277 Clause 71 amends the Health and Personal Social Services (Northern Ireland) Order 1978¹⁶³ by inserting a new Article 4C (Sale of unpackaged cigarettes) that makes it an offence to sell cigarettes that are not in their original packaging (the retail packaging in which the cigarettes were supplied to the tobacco retailer for the purpose of sale).

278 Anyone who is convicted of an offence under this provision may receive a fine of up to £1,000 (level 3 on the standard scale).

Clause 72: Age of sale notice at point of sale

279 Clause 72 amends the Health and Personal Social Services (Northern Ireland) Order 1978¹⁶⁴ by inserting a new clause (Article 4D, Age of sale notice at point of sale).

280 The clause requires a tobacco retailer (a person who carries on a business involving the sale of tobacco by retail) to display an age of sale notice in a prominent position that says, "It is illegal to sell tobacco products to anyone born on or after 1 January 2009". A premises means any place including a vehicle or moveable structure, for instance this would include stalls at car boot sales. It is a defence for a person charged with this offence if they can demonstrate they took all reasonable steps to avoid committing the offence.

¹⁶² <https://www.legislation.gov.uk/nisi/1978/1907/contents>

¹⁶³ <https://www.legislation.gov.uk/nisi/1978/1907/contents>

¹⁶⁴ <https://eur03.safelinks.protection.outlook.com/GetUrlReputation>

281 The clause provides the Department of Health in Northern Ireland with powers to make regulations about the size or appearance of the statement of the notice and any other aspect of the notice, for example the colour of the notice.

282 Anyone convicted of an offence under Article 4D may receive a fine of up to £1,000 (level 3 on the standard scale).

Snus etc

Clause 73: Ban on manufacture of snus etc

283 Clause 73 adds Article 4E to the Health and Personal Social Services (Northern Ireland) Order 1978¹⁶⁵ to include a provision banning the manufacture of relevant oral tobacco products, such as snus. This aligns with the approach for England and Wales (clause 7 (Ban on manufacture of snus etc)) and Scotland (clause 55 (Ban on manufacture of snus etc)).

284 This is a re-enactment of the prohibition on the production and supply of oral tobacco intended for consumption within the UK or through the travel retail sector in Regulation 17 of The Tobacco and Related Products Regulations 2016¹⁶⁶. The Bill extends these restrictions to include a ban on snus intended for export which simplifies enforcement and reduces the possibility of such harmful products being available within the UK.

285 An individual who is convicted of an offence under this provision may receive a fine or may be imprisoned for a term not exceeding 2 years, or both.

Clause 74: Ban of sales of snus etc

286 Clause 74 adds Article 4F to the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26))¹⁶⁷ to include a provision banning the sale of relevant oral tobacco products, such as snus. This aligns with the approach for England and Wales (clause 8 (Ban of sale of snus etc)) and Scotland (clause 56 (Ban of sale of snus etc)).

287 This is a re-enactment of the prohibition on the production and supply of oral tobacco intended for consumption within the UK or through the travel retail sector in Regulation 17 of The Tobacco and Related Products Regulations 2016¹⁶⁸. The Bill extends these restrictions to include a ban on snus intended for export which simplifies enforcement and reduces the possibility of such harmful products being available within the UK.

288 An individual who is convicted of an offence under this provision may receive a fine or may be imprisoned for a term not exceeding 2 years, or both.

Clause 75: Possession of snus etc with intent to supply

289 Clause 75 adds Article 4G to the Health and Personal Social Services (Northern Ireland) Order 1978¹⁶⁹ to include a provision banning the possession of relevant oral tobacco products, such as snus, with intent to supply. This aligns with the approach for England and Wales (clause 9 (Possession of snus etc with intent to supply)) and Scotland (clause 57 (Possession of snus etc with intent to supply)).

¹⁶⁵ <https://www.legislation.gov.uk/nisi/1978/1907/contents>

¹⁶⁶ <https://www.legislation.gov.uk/uksi/2016/507/contents>

¹⁶⁷ <https://www.legislation.gov.uk/nisi/1978/1907/contents>

¹⁶⁸ <https://www.legislation.gov.uk/uksi/2016/507/contents>

¹⁶⁹ <https://www.legislation.gov.uk/nisi/1978/1907/contents>

290 It will not be an offence to possess relevant oral tobacco products for personal use or to give as a personal gift.

291 An individual who is convicted of an offence under this provision may receive a fine or may be imprisoned for a term not exceeding 2 years, or both.

Vaping and nicotine products

292 Annex B illustrates examples of vaping and nicotine products that are in the government's view in scope of each clause in this Part. This is not intended to be an exhaustive list of products.

Clause 76: Sale of vaping or nicotine products to under 18s

293 Clause 76 inserts a new Article 4E (Sale of vaping or nicotine products to under 18s) into the Health and Personal Social Services (Northern Ireland) Order 1978¹⁷⁰ (the 1978 Order). The clause makes it an offence to sell a vaping or nicotine product to a person who is under the age of 18. Currently there are no age of sale restrictions for nicotine products other than vapes in Northern Ireland.

294 It is a defence for someone who is charged with the offence to prove that they took such steps as may be specified in regulations made by the Department of Health in Northern Ireland to verify that the customer was 18 or over, or that they otherwise took all reasonable steps to avoid committing the offence. This will allow such steps to include checking physical identity documents and the use of digital methods of age verification. Any regulations under this section will be subject to the negative resolution procedure. If no such steps have been specified in regulations it will still be a defence for someone who is charged with the age of sale offence to prove that they took all reasonable steps to avoid committing the offence, which is a re-enactment of the existing defence under the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016¹⁷¹ of having taken all reasonable precautions and exercised all due diligence. .

295 An individual who is convicted of an offence under this provision may receive a fine of up to £5,000 (level 5 on the standard scale).

Clause 77: Purchase of vaping or nicotine products on behalf of under 18s

296 Clause 77 inserts a new Article 4I (Purchase of vaping or nicotine products on behalf of under 18s) into the Health and Personal Social Services (Northern Ireland) Order 1978¹⁷² (1978 Order) and introduces an offence for individuals aged 18 or over to buy, or attempt to buy, vaping or nicotine products on behalf of a person who is under the age of 18.

297 The clause extends the existing restriction which applies only to nicotine vaping products to all vaping products as well as nicotine products, as currently there are no restrictions on the proxy purchasing of nicotine products.

298 It is a defence for a person charged with an offence to prove that they had no reason to suspect that the person was under the age of 18. Anyone convicted with this offence may receive a fine of up to £5,000 (level 5 on the standard scale).

¹⁷⁰ <https://www.legislation.gov.uk/nisi/1978/1907/contents>

¹⁷¹ <https://www.legislation.gov.uk/nia/2016/26/contents>

¹⁷² <https://www.legislation.gov.uk/nisi/1978/1907/contents>

Clause 78: Vaping and nicotine product vending machines

- 299 Clause 78 inserts a new Article 4J (Vaping and nicotine product vending machines) into the Health and Personal Social Services (Northern Ireland) Order 1978¹⁷³ (the 1978 order) that makes it an offence for a person who manages or controls a premise to have a vape or nicotine product vending machine available for use. The clause defines a vape or nicotine product vending machine as “an automatic machine from which vaping products/ nicotine products may be bought”.
- 300 The clause also makes it clear that vending machines that dispense products are captured, where the sale may have taken place separately from the machine, for example, machines that operate via tokens, coupons, or receipts are captured by the prohibition. The machine is prohibited if the product is dispensed to a customer in connection with a sale, so businesses can use machines which dispense products so long as the product in question is dispensed to staff.
- 301 Anyone convicted of an offence under these provisions may receive a fine of up to £5,000 (level 5 on the standard scale).

Displays of products or prices

Clause 79: Displays of products and prices in Northern Ireland

- 302 Clause 79 inserts a new Article 4K (Displays of products or prices) into the Health and Personal Social Services (Northern Ireland) Order 1978¹⁷⁴ (1978 Order). The clause provides the Department of Health in Northern Ireland with powers to regulate the display of relevant products (tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping and nicotine products) and their prices, the display of empty retail packaging and anything that represents the product, in retailers in Northern Ireland. Under current legislation, there are no restrictions on where, vaping products, herbal smoking products, nicotine products, and cigarette papers, as well as their prices, can be displayed in retail premises.
- 303 The clause also facilitates the creation of offences for the failure to comply with the regulations and anyone convicted of this offence could be subject to imprisonment for a term not exceeding 2 years, or a fine, or both.

Free distribution and discounts

Clause 80: Free distribution and discount of products

- 304 Clause 80 inserts a new Article 4L (Free distribution and discounts of products) into the Health and Personal Social Services (Northern Ireland) Order 1978¹⁷⁵ (1978 Order). The clause makes it an offence to give away any product, or a coupon (anything (whether in physical or electronic form) which, by itself, can be redeemed for a product, service, for cash or any other benefit) to a member of the public where the purpose or effect is to promote a relevant product (tobacco product, herbal smoking product, cigarette paper, vaping or nicotine product). It is currently prohibited, under section 9 of the Tobacco Advertising and Promotion Act 2002¹⁷⁶, to give away in the course of business any product or coupon where the purpose

¹⁷³ <https://www.legislation.gov.uk/nisi/1978/1907/contents>

¹⁷⁴ <https://www.legislation.gov.uk/nisi/1978/1907/contents>

¹⁷⁵ <https://www.legislation.gov.uk/nisi/1978/1907/contents>

¹⁷⁶ <https://www.legislation.gov.uk/ukpga/2002/36/contents>

or effect is to promote a tobacco product (and this clause will replace section 9), however there are no current restrictions on businesses freely distributing nicotine and non-nicotine vaping products, nor for herbal smoking products and cigarette papers. This clause also makes it an offence to sell a product or coupon at a substantial discount.

305 This clause provides that there is a defence available where a person is charged with giving away a vaping product or nicotine product or coupon for such if they can prove it was done in accordance with arrangements made by a public authority. If this defence is satisfied, then they are not guilty of the offence. An example of this could be where a government body funds a smoking cessation programme that utilises vapes as a cessation tool and provides them for free.

306 Anyone convicted of an offence may be subject to imprisonment (for a term not exceeding 2 years), or a fine where there is no maximum amount, or both.

Enforcement

Clause 81: Programme of enforcement action by district councils

307 Clause 81 inserts a new Article 6A (Programme of enforcement action by district councils) into the Health and Personal Social Services (Northern Ireland) Order 1978¹⁷⁷ to provide requirements for district councils in Northern Ireland to consider a so-called ‘programme of enforcement’ and the potential design of the programme on a yearly basis. This is a means of ensuring that a district council in Northern Ireland considers whether they are enforcing offences effectively. The programme of enforcement itself is as described in the clause and is self-explanatory. This clause has a similar effect as clauses 33 (Programme of enforcement action: England) and 34 (Programme of enforcement action: Wales) for England and Wales respectively.

Interpretation of 1978 Order

Clause 82: Interpretation of 1978 Order

308 Clause 82 substitutes Article 7 of the Health and Personal Social Services (Northern Ireland) Order 1978¹⁷⁸ for a new Article 7 (Interpretation of Part 2) and new Article 7A (Meaning of nicotine product) to insert definitions of cigarette papers, herbal smoking product, medical device, medicinal product, nicotine product, premises, retail packaging, sell, tobacco product, tobacco retailer, UK driving licence, vape, vaping product, vaping substance, vaporises, and vehicle.

Retailer register and licensing

Clause 83: Extension of retailer register

309 Clause 83 introduces Schedule 10 and is self-explanatory.

Schedule 10: Extension of retailer register: Northern Ireland

310 This schedule amends the Tobacco Retailers Act (Northern Ireland) 2014¹⁷⁹ such that the existing registration scheme in Northern Ireland for tobacco product businesses is extended to

¹⁷⁷ <https://www.legislation.gov.uk/nisi/1978/1907/contents>

¹⁷⁸ <https://www.legislation.gov.uk/nisi/1978/1907/contents>

¹⁷⁹ <https://www.legislation.gov.uk/nia/2014/4/contents/enacted>

include retailers of vaping and nicotine products. Retailers selling tobacco products, herbal smoking products and cigarette papers are already covered by this scheme.

311 These amendments will commence by order made by the Department of Health in Northern Ireland, provided for under clause 167 (Commencement: Parts 1 to 4) subsection 7.

Clause 84: Prohibition of retail sales of tobacco products etc without a licence

312 Clause 84 inserts new Articles 4A (Prohibition of retail sales of tobacco products etc without a licence), 4B (Offences in connection with licences) and 4C (Financial penalties for breach of licence conditions) into the Tobacco Retailers Act (Northern Ireland) 2014¹⁸⁰ to enable the introduction of a retail licensing scheme for the sale of tobacco products, herbal smoking products, cigarette papers, vaping and nicotine products in Northern Ireland.

313 Article 4A provides the Department of Health in Northern Ireland with the power to make regulations regarding the granting of personal and premises licences.

314 Article 4A prohibits the sale, exposure for sale, or possession for the purpose of sale (by the individual or another person) of tobacco products, herbal smoking products, cigarette papers, vaping or nicotine products by an individual in Northern Ireland, except under the authority of and in accordance with a personal licence. This provision will come into force when regulations for the licensing scheme are laid.

315 Article 4A also prohibits a person from using or permitting the use of premises in Northern Ireland, to store for the purpose of their sale (by the person or another person), expose for sale, or supply tobacco products, herbal smoking products, cigarette papers, vaping or nicotine products to retail customers except under the authority of and in accordance with a premises licence. This provision will come into force when regulations for the licensing scheme are laid.

316 Article 4A also provides the Department of Health in Northern Ireland with the power to create, by regulations, exceptions to the prohibitions in Article 4A(1) or (2).

317 Before excising the power to make regulations under the new Article 4A, the Department of Health in Northern Ireland must consult. Further detail on what the licensing scheme regulations in Northern Ireland may include are set out in Schedule 11.

318 Article 4B sets out that anyone who breaches the prohibitions set out in Article 4A(1) or (2) commits an offence. It also makes it an offence for a person to provide false or misleading information to a licensing authority in, or in connection with, an application for the grant of a personal or premises licence; or in carrying out of any other obligation imposed by or under licensing regulations. It is only an offence if the information is false or misleading in a material respect, and the person knows, or ought to reasonably know this about the information.

319 A person convicted of a licensing offence in Northern Ireland may receive a fine of up to level 5 on the standard scale in Northern Ireland (currently set at £5,000). As an alternative to criminal prosecution, district councils may instead issue a fixed penalty notice for these offences provided for under the Tobacco Retailers Act (Northern Ireland) 2014¹⁸¹. The value of the fixed penalty notice will be established in regulations under section 12(8) of the Tobacco

¹⁸⁰ <https://www.legislation.gov.uk/nia/2014/4/contents/enacted>

¹⁸¹ <https://www.legislation.gov.uk/nia/2014/4/contents/enacted>

Retailers Act (Northern Ireland) 2014¹⁸², as is consistent with the current approach to setting fixed penalty notice values in Northern Ireland.

320 Upon conviction of the offence under Article 4B(1) a court may make an order as to what happens to the relevant products to which the offence(s) relate. This may include forfeiture and destruction of the relevant products.

321 Article 4C introduces financial penalties which may be imposed for the breach of conditions attached to a personal or premises licence in Northern Ireland, provided the breach is not a criminal offence under Article 4B. These financial penalties are civil penalties and can be issued by district councils. The maximum amount of the financial penalty is set at £2,500 and provides the Department of Health in Northern Ireland with the power to change this maximum amount to account for inflation and so that the financial penalty amount remains proportionate.

322 Further details on financial penalties for breach of licence conditions are set out in Schedule 12.

323 This clause also introduces Schedule 13 and is self-explanatory.

Schedule 11: Retail licensing scheme in Northern Ireland

324 This schedule inserts new Schedule 1 to the Tobacco Retailers Act (Northern Ireland) 2014¹⁸³.

325 This new Schedule 1 details the regulations for a retail licensing scheme that may be made under the powers provided to the Department of Health in Northern Ireland new Article 4A (Prohibition of retail sales of tobacco products etc without a licence) of the Tobacco Retailers Act (Northern Ireland) 2014¹⁸⁴ inserted by clause 84 (Prohibition of retail sales of tobacco products etc without a licence) of this Bill. These provisions give further detail about what provisions made through regulations may include to provide clarity about the intended purpose of the regulation making powers. This schedule is for Northern Ireland only.

326 The regulations must specify a council that will be the licensing authority and thus hold the responsibility for granting licences.

327 The regulations may make provisions regarding the granting of a licence, including provisions which mean a licensing authority could not grant a licence to a premises in a particular area (for example, proximity to a school), or limiting the number of licences within a particular area. Provisions may also require a licensing authority to inspect a premises to ensure it meets regulations before a licence is granted.

328 The regulations may allow a licensing authority to charge a fee on application for a licence. This would include fees required at the point of any renewal of a licence. The amount of any fee is to be set in regulations and will be able to account for the costs of exercising functions in connection with the licensing scheme including administration and enforcement costs of the scheme. The regulations may require the licensing authority to pay a proportion of fees collected to any other persons with function under the licensing scheme, to ensure fees collected can be used for the administration and enforcement of the scheme.

¹⁸² <https://www.legislation.gov.uk/nia/2014/4/contents/enacted>

¹⁸³ <https://www.legislation.gov.uk/nia/2014/4/contents/enacted>

¹⁸⁴ <https://www.legislation.gov.uk/nia/2014/4/contents/enacted>

- 329 The regulations may also make provisions regarding the conditions of the licence, namely the requirements that licence holders will need to meet to maintain a licence for the sale of the relevant products.
- 330 The regulations may also make provisions regarding the duration of the licence, which is self-explanatory.
- 331 The regulations may make provisions for the publication of licence information by the licensing authority. Publication of a list of licensed retailers may support enforcement of the licensing scheme.
- 332 The regulations will establish the reviews and appeals process for decisions made regarding the granting of a licence. They must specify when a person may request a review of a decision taken under the regulations and give a person the right of appeal to a magistrates' court against a decision taken on a review. This will enable an independent decision. There may be a time limit for requesting reviews or initiating appeals.
- 333 The regulations may require a licensing authority to adhere to guidance published by the Department of Health in Northern Ireland when carrying out its functions under the licensing regulations. Guidance will support the implementation of the regulations by licensing authorities.

Schedule 12: Financial Penalties for breach of retail licence conditions in Northern Ireland

- 334 This Schedule inserts new Schedule 12 into the Tobacco Retailers Act (Northern Ireland) 2014¹⁸⁵.
- 335 Schedule 12 sets out the procedure for district councils in Northern Ireland when imposing financial penalties for breach of licence conditions, introduced in new Article 4C (Financial penalties for breach of licence conditions) of the Tobacco Retailers Act (Northern Ireland) 2014¹⁸⁶ inserted by clause 84 (Prohibition of retail sales of tobacco products etc without a licence) of this Bill.
- 336 Before imposing a financial penalty, a council must issue a written notice of intent and allow for a period of representation, to give the person the opportunity to challenge the proposed financial penalty. If, after the period for representation, the local authority decides to impose the financial penalty, they must give a final written notice.
- 337 Both the notice of intent, the final notice can be withdrawn or amended to reduce the penalty amount at any time by written notice.
- 338 A person has the right to appeal to the magistrates' court against the decision to impose a financial penalty or the amount of the penalty. This will enable an independent decision. This schedule establishes the appeals procedure to be followed.
- 339 If a person fails to pay the whole or part of the financial penalty within the given period, the unpaid amount may be recovered as if it were payable under a county court order.
- 340 Any proceeds received from financial penalties must be used by the council for the purpose of its functions under the Tobacco Retailers Act (Northern Ireland) 2014¹⁸⁷ or for such other

¹⁸⁵ <https://www.legislation.gov.uk/niu/2014/4/contents/enacted>

¹⁸⁶ <https://www.legislation.gov.uk/niu/2014/4/contents/enacted>

¹⁸⁷ <https://www.legislation.gov.uk/niu/2014/4/contents/enacted>

functions the Department of Health in Northern Ireland may specify by regulations. It also places a duty on councils to provide the Department of Health in Northern Ireland with information on the use of financial penalty receipts, if required. This approach aligns with the existing approach for use of proceeds from fixed penalty notices under the same Act.

Schedule 13: Licensing of retail sales of tobacco products etc: consequential amendments

341 Schedule 13 details any consequential amendments that will be made to existing pieces of legislation relating to the licensing of retail sales of tobacco products, herbal smoking products, cigarette papers, vaping and nicotine products in Northern Ireland. This schedule amends the Tobacco Retailers Act (Northern Ireland) 2014¹⁸⁸ and this Bill so that the existing tobacco retailer register in Northern Ireland is removed, once the licensing regulations commence. This Schedule adds licensing offences to the list of offences for which a fixed penalty notice can be issued in Northern Ireland; the value of the fixed penalty notice for licensing offences is not established in the Bill for Northern Ireland in the way that it is for England and Wales, as it will instead be set by regulations as per the existing statutory framework for setting fixed penalty notice values in Northern Ireland.

Power to extend legislation

Clause 85: Power to extend legislation to other products

342 Clause 85 provides the Department of Health in Northern Ireland with a power to by regulations amend any of the provisions that apply to tobacco products in Part 2 of the Health and Personal Social Services (Northern Ireland) Order 1978¹⁸⁹ by extending them to cover any device that enables a tobacco product to be consumed (such as a heated tobacco device) or an item intended to form part of such a device. Before exercising this power, the Department must consult.

Consequential etc. transitional and transitory provision

Clause 86: Consequential and other amendments

343 Clause 86 introduces Schedule 14 and Schedule 15 and is self-explanatory.

Schedule 14: Part 3: consequential and other amendments commencing after 6 months

344 This schedule sets out any consequential amendments that will be made to existing pieces of legislation that are to do with Part 3 and will commence six months after the Bill has passed. This schedule amends the Health and Personal Social Services (Northern Ireland) Order 1978¹⁹⁰, The Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991¹⁹¹, the Health Act 2009¹⁹², the Digital Markets, Competition and Consumers Act 2024¹⁹³, and the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016¹⁹⁴.

¹⁸⁸ <https://www.legislation.gov.uk/niu/2014/4/contents/enacted>

¹⁸⁹ <https://www.legislation.gov.uk/niu/1978/1907/contents>

¹⁹⁰ <https://www.legislation.gov.uk/niu/1978/1907/contents>

¹⁹¹ <https://www.legislation.gov.uk/niu/1991/2872>

¹⁹² <https://www.legislation.gov.uk/ukpga/2009/21/contents>

¹⁹³ <https://www.legislation.gov.uk/ukpga/2024/13/contents/enacted>

¹⁹⁴ <https://www.legislation.gov.uk/niu/2016/26/contents>

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

345 This schedule also amends the Tobacco Retailers Act (Northern Ireland) 2014¹⁹⁵. The amendments update the list of offences that are classified as a tobacco, vape or nicotine offence. The amendments also update the list of offences for which a person can be issued with a Fixed Penalty Notice (FPN). This ensures the existing FPN regime in Northern Ireland continues and is expanded to all nicotine products and new offences in this Bill, including free distribution of products and breaches of regulations related to the display of products or prices. The definition of “tobacco business” is updated to mean tobacco product and herbal smoking product businesses to ensure that the registration scheme in Northern Ireland continues to capture herbal smoking product businesses.

Schedule 15: Part 3: consequential amendments commencing on 1 January 2027

346 This schedule details any consequential amendments that will be made to existing pieces of legislation that are to do with Part 3 and will commence on 1 January 2027. The schedule amends the Health and Personal Social Services (Northern Ireland) Order 1978¹⁹⁶, The Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991¹⁹⁷, the Police (Northern Ireland) Act 2003¹⁹⁸, The Smoking (Northern Ireland) Order 2006¹⁹⁹, the Digital Markets, Competition and Consumers Act 2024²⁰⁰, and the Tobacco Retailers Act (Northern Ireland) 2014²⁰¹.

Clause 87: Transitional provision

347 Clause 87 provides transitional provisions, and the effect of this provision is self-explanatory.

Part 4: Snus etc: Seizure and detention powers

Clause 88: Power of officer of Revenue and Customs to seize and detain snus etc

348 Clause 88 enables customs officials to seize and detain imported relevant oral tobacco products in order to enable an enforcement authority (e.g. Local Authority Trading Standards in England and district councils in Northern Ireland) to take over. However, the imported relevant oral tobacco products may not be detained for a period of more than 48 hours (the calculation of 48 hours excludes all UK bank holidays and weekends).

349 The Commissioners for His Majesty’s Revenue and Customs are responsible for dealing with the relevant oral tobacco products during the period of detention.

350 This will not prevent the importation of snus for personal use or to give as a personal gift.

Part 5: Product and information requirements etc

351 This Part of the Bill contains a suite of regulation making powers to enable requirements to be set in relation to product standards, including packaging and features of products, to enable establishment of a registration scheme and for information to be provided to support

¹⁹⁵ <https://www.legislation.gov.uk/nia/2014/4/contents/enacted>

¹⁹⁶ <https://www.legislation.gov.uk/nisi/1978/1907/contents>

¹⁹⁷ <https://www.legislation.gov.uk/nisi/1991/2872>

¹⁹⁸ <https://www.legislation.gov.uk/ukpga/2003/6/contents>

¹⁹⁹ <https://www.legislation.gov.uk/nisi/2006/2957/contents>

²⁰⁰ <https://www.legislation.gov.uk/ukpga/2024/13/contents/enacted>

²⁰¹ <https://www.legislation.gov.uk/nia/2014/4/contents/enacted>

registration and check for compliance with product standards, and for testing of products for quality and safety.

352 Directive 2014/40/EU²⁰² (the ‘Directive’) set EU wide requirements for tobacco products and e-cigarettes to harmonise the EU market for these products. The UK implemented the Directive primarily by making The Tobacco and Related Products Regulations 2016²⁰³ (TRPR 2016). The current product standards, labelling requirements etc, for tobacco products and vapes are therefore in the main set out in the TRPR 2016.

353 In relation to packaging of tobacco products, part of the Directive was implemented by The Standardised Packaging of Tobacco Products (SPoT) Regulations 2015²⁰⁴. These were also made under powers in section 94 of the Children and Families Act 2014 (the 2014 Act)²⁰⁵.

354 Under the Windsor Framework Agreement, the requirements of the EU Tobacco Products Directive continue to apply in relation to Northern Ireland. If regulations are made under the powers in Part 5 of the Bill which cover matters which the Directive applies to, then appropriate provision will be made in respect of Northern Ireland to ensure that the UK government meets its obligations under the Windsor Framework.

355 Clauses 89 (Retail packaging), 90 (Features of products) and 91 (Contents and flavour) are re-enacting, with modifications, the regulation making powers to make provision about the retail packaging etc. of tobacco products in section 94 of the Children and Families Act 2014²⁰⁶ (the 2014 Act). Therefore, this Bill repeals section 94 of the Children and Families Act 2014²⁰⁷ as the provisions are restated in this Bill. The Standardised Packaging of Tobacco Products (SPoT) Regulations 2015²⁰⁸ were made using the powers in section 94 of the 2014 Act but because this Bill is re-enacting those powers, section 17(2)(b) of the Interpretation Act 1978²⁰⁹ means that the SPoT Regulations will remain in force.

356 Under TRPR 2016 producers of tobacco products, herbal smoking products and nicotine vapes are required to notify the Secretary of State before these products are introduced to the UK market. Clause 94 (Registration) allows for the establishment of a registration scheme that would replace the current notification system in TRPR 2016. There are also powers to require information to be provided about products for studies to be carried out on products and for testing. Details of the powers can be found in the clause descriptions below. These new regulation-making powers will help to improve the safety of products that are on the market and improve customer confidence, whilst enabling improvement of the enforcement of restrictions surrounding non-compliant products. The requirements to notify tobacco products, herbal smoking products and nicotine vaping products will remain in place until the new registration scheme is established.

357 The measures outlined in Part 5 extend to the whole of the UK. Before making regulations under Part 5 the Secretary of State must obtain the consent of the Welsh Ministers, the Scottish Ministers and the Executive Office in Northern Ireland if the regulations contain provision

²⁰² <http://2014/40/EU>

²⁰³ <https://www.legislation.gov.uk/uksi/2016/507/contents>

²⁰⁴ <https://www.legislation.gov.uk/uksi/2015/829/contents>

²⁰⁵ <https://www.legislation.gov.uk/ukpga/2014/6/contents>

²⁰⁶ <https://www.legislation.gov.uk/ukpga/2014/6/contents>

²⁰⁷ <https://www.legislation.gov.uk/ukpga/2014/6/contents>

²⁰⁸ <https://www.legislation.gov.uk/uksi/2015/829/contents>

²⁰⁹ <https://www.legislation.gov.uk/ukpga/1978/30/contents>

which would be within the legislative competence of the Senedd Cymru, the Scottish Parliament or the Assembly, as outlined in clause 110 (Consent to regulations under Part 5).

358 Any regulations made under Part 5 of the Bill are subject to the affirmative resolution procedure.

359 In relation to this part, “Production” which in relation to a product, means the manufacture of the product, or the putting of a name, trademark or other distinguishing mark on the product by a person, the effect of which is to hold the person out as being the manufacturer of the product. “Supply” which in relation to a product, includes offering or agreeing to supply it, or exposing or possessing it for supply, of products.

360 Before exercising any of the powers in this part there is a duty to consult.

Product requirements etc

361 Annex B illustrates examples of products that in the government’s view are in scope of each clause in Part 5. This is not intended to be an exhaustive list of products.

362 Clause 110 (Interpretation of Part 5) and 112 (Meaning of “nicotine product”) provide definitions for Part 5, including the meaning of “packaging” which in relation to a product means the external packaging of the product (including any wrapper), the internal packaging of that product, or any other material attached to or included with the product or anything within in the internal or external packaging. “Retail packaging” in relation to a product, means the packaging in which it is, or intended to be, presented for sale by retail.

Clause 89: Retail packaging

363 Clause 89 provides powers for the Secretary of State to make regulations about the packaging of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products. The power could be used to regulate retail packaging, including the appearance of such packaging as well as the information provided on it and its shape and texture. A refill container containing a vaping liquid could be treated as packaging for these purposes.

364 Under the Children and Families Act 2014²¹⁰ there was a power to make regulations about the retail packaging of tobacco products. However, the Bill widens this power to cover tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products.

Clause 90: Features of products

365 Clause 90 provides the Secretary of State with a power to make regulations about the features of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products. These requirements will relate to the product itself, rather than the packaging, for instance the regulations which may be made under this power may specify the colour of the products or what can be printed on the body of the product (such as images, for example), the appearance of the products and its shape.

366 Under the Children and Families Act 2014²¹¹ there was a power to make regulations about the features of tobacco products. However, the Bill widens this power to cover tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products.

²¹⁰ <https://www.legislation.gov.uk/ukpga/2014/6/contents>

²¹¹ <https://www.legislation.gov.uk/ukpga/2014/6/contents>

367 Clause 111 (Interpretation of Part 5) provides the definition of “production” makes it clear that regulations can cover production outside the UK.

Clause 91: Contents and flavour

368 Clause 91 provides the Secretary of State with a power to make regulations about the substances that may be included in (as well as the amount of any given substance) and the flavour of tobacco products, tobacco related devices, herbal products, cigarette papers, vaping products or nicotine products. Regulations made under this power could be used to restrict the flavour of any accessories intended to be used to give flavour to any of these products.

369 For example, regulations may prohibit certain ingredients (such as vitamins, colourings or prohibited additives) being used in these products, including additives which impart a particular flavour (taste and smell).

370 There is a ban on flavoured cigarettes and hand rolling tobacco across the UK, on heated tobacco products in Northern Ireland and restrictions on vitamins and what additives are allowed in tobacco products and nicotine containing vaping products. These measures are set out in The Tobacco and Related Products Regulations 2016²¹² (TRPR 2016).

371 Regulations made under this power may include provision about how the flavour of a product is to be determined. For example, this power could be used to establish an expert advisory panel to assist and provide advice to the Secretary of State in determining whether a product has a certain flavour.

372 Regulations made under this power may impose prohibitions, requirements or limitations in relation on the production, importation or supply of these products if in the course of a business or for retail by the travel sector.

373 As the regulations relate to the production, importation, and supply of products, any individual or organisation involved in the supply chain would be required to ensure products they deal with adhere to the regulations.

Clause 92: Substances released into human body and emissions

374 Clause 92 provides the Secretary of State with a power to make regulations about the nature and amount of substances and emissions that may be released by tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping or nicotine products. The power includes making provisions about how the nature and amount of substances or emissions are determined.

375 The Tobacco and Related Product Regulations 2016²¹³ (TRPR 2016) currently set maximum emission levels for cigarettes (which detail the measurement and verification of these emission levels).

Non-compliant images

Clause 93: Non-compliant images

376 Clause 93 provides the Secretary of State with regulation making powers to prohibit a person from publishing a “non-compliant” image of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products, nicotine products or of their packaging. This means that if, for example, regulations were made to restrict the packaging of a vape,

²¹² <https://www.legislation.gov.uk/uksi/2016/507/contents>

²¹³ <https://www.legislation.gov.uk/uksi/2016/507/contents>

then it would be an offence to publish an image of a vape in packaging that did not adhere to those packaging restrictions. Clause 93 extends to all products and to images from which it is possible to tell that a product (or its packaging) is in breach of regulations.

377 This means that an online retailer would not be able to have images on their website with non-compliant packaging or products on show, for example, displaying an image of a vape packaging without the mandated warning signage.

378 Under The Tobacco and Related Product Regulations 2016²¹⁴ (TRPR 2016) the publication of non-compliant images of tobacco products is banned reflecting the current requirements on packaging of tobacco products.

Registration and information requirements

Clause 94: Registration

379 Clause 94 provides the Secretary of State with a power to establish a register of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products or nicotine products. Currently tobacco, herbal smoking products and nicotine vapes are required to be notified before being placed on the UK market. Regulations could specify, for example: who can keep the register, who is eligible to register a product, the content of the register, publication of the register, and fees to maintain the register. Additionally, regulations may state when a product's registration expires, renews, may be cancelled or suspended. Powers may also specify requirements, for example, for images of a product or its packaging.

380 Under the Regulations, it could be made an offence to supply a product that has not been registered in the same way as it is currently an offence to supply a product that has not been notified. The power also provides the Secretary of State with the ability to set the level of fees payable for registration. The fees may be set at a level to cover the cost of carrying out any functions under Part 5 or regulations made under Part 5 such as, for example, the cost of monitoring, producing annual reports and running events to aid compliance.

Clause 95: Information

381 Clause 95 provides the Secretary of State with a power to require a producer or importer of a tobacco product, tobacco related device, herbal smoking products, cigarette papers, vaping product or nicotine product to provide information that is related to the product or its producer. The information required to be provided might be further to the information required under the registration system or could be sales data or market research data.

382 Regulations made under this power may make provision about when and how the information must be provided and about the publication of information provided under the regulations.

Clause 96: Studies

383 Clause 96 provides the Secretary of State with a power to require a producer of a tobacco product, tobacco related device, herbal smoking product, cigarette papers, vaping product or nicotine product to carry out a study and submit the results in relation to the product or an ingredient in the product. The regulations may make provisions about how a study is to be carried out, questions to address and content and structure of a report.

²¹⁴ <https://www.legislation.gov.uk/uksi/2016/507/contents>

384 Regulations made under this power may make provision about the detailed requirements of the study.

Clause 97: Responsible person

385 Clause 97 provides the Secretary of State with a power to require a producer of a tobacco product, tobacco related device, herbal smoking product, cigarette papers, vaping product or nicotine product to nominate an individual to be responsible for information that has to be provided in accordance with regulations made under clauses 94 (Registration), 95 (Information) and 96 (Studies). The aim of having a dedicated person responsible is to ensure information is provided to strengthen compliance and enforcement of product standards and ultimately help improve consumer safety and trust.

386 Regulations made under this clause may make provisions about who is eligible to be nominated as the responsible person and require the person to have a connection to the UK.

Quality control and safety

Clause 98: Testing

387 Clause 98 provides the Secretary of State with a power to introduce regulations that require a person to test products to determine whether a product complies with requirements imposed in regulations made under this Part of the Bill.

388 Regulation 14 of The Tobacco and Related Products Regulations 2016²¹⁵ (TRPR 2016) imposes requirements for measurements of tar, nicotine and carbon monoxide emissions from cigarettes and for verification of those measurement by an approved laboratory that is independent from the tobacco industry. A fee is payable by producers as set in The Tobacco Products and Herbal Products for Smoking (Fees) Regulations 2017²¹⁶.

389 Regulations made under this power may include provision about the requirements for testing, such as how and when the tests should be carried out and who may carry out the tests. This may include detail on how many tests are required and any associated fees that should be paid in respect of the tests.

Clause 99: Product safety

390 Clause 99 provides the Secretary of State with a power to make regulations that requires producers or importers to have a process in place for collecting information on the effect of their product on human health and safety.

391 The clause also allows for regulations to be made conferring a power on the Secretary of State to require a product to be recalled from the market or to prohibit or limit the supply of a product in circumstances set out in the regulations, for instance, if there is serious risk to public health. This allows the Secretary of State to set out circumstances under which products could be banned or recalled.

392 Regulation 39 of The Tobacco and Related Products Regulations 2016²¹⁷ (TRPR 2016) sets out the current requirements for producers of electronic cigarettes (nicotine vapes) to establish and maintain a system about all the suspected adverse effects on human health of a product. The power in this clause would enable similar requirements to be applied on producers or

²¹⁵ <https://www.legislation.gov.uk/uksi/2016/507/contents>

²¹⁶ <https://www.legislation.gov.uk/uksi/2017/409>

²¹⁷ <https://www.legislation.gov.uk/uksi/2016/507/contents>

importers of non-nicotine vapes, nicotine products, heated tobacco devices, as well as tobacco products, herbal smoking products and cigarette papers.

393 It is vital that producers have processes in place to collect information on the effect of their products on human health, so that any issues are spotted. If concerns with a product come to light, the expectation is that information would be sought from the producer or importer in line with requirements imposed under clause 95 (Information), linking with data held under the registration system. A similar requirement is currently imposed in respect of electronic cigarettes and refill containers under regulation 39 of TRPR 2016.

394 In an extreme case, should a product cause harm to health or be unsafe, the Secretary of State may need to be able to require a product to be recalled or stop the supply of the product. The power to make regulations under clause 99 (Product safety) will enable the circumstances under which such a power could be used to be set out. A similar requirement is currently imposed in respect of electronic cigarettes and refill containers under regulation 40 of TRPR 2016.

Matters dealt with by 2016 Regulations

Clause 100: Matters dealt with by 2016 regulations

395 Clause 100 provides the Secretary of State with powers to make provision in regulations that is similar to any provision in The Tobacco and Related Products Regulations 2016²¹⁸ (TRPR 2016). This will ensure that any gaps are covered which may exist in the powers taken under this Part relative to provision made in the TRPR 2016, which was made under the power in section 2(2) of the European Communities Act 1972 to implement Directive 2014/40/EU. The power also enables TRPR 2016 to be amended so as to apply any provision in those regulations to tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products or nicotine products to which TRPR 2016 do not currently apply. For example, it would be possible using this power to extend the current notification scheme so that it captures non-nicotine vapes and nicotine products.

Clause 101: Treatment of 2016 regulations

396 Clause 101 allows for regulations to revoke parts of The Tobacco and Related Products Regulations 2016²¹⁹ (TRPR 2016) without replacing them. This clause makes clear that any power to make regulations under Part 5 of this Bill that corresponds with the provisions under TRPR 2016 should be interpreted as being made under this Part in line with section 14 of the Interpretation Act 1978²²⁰ (Implied power to amend).

Supplementary

Clause 102: Offences

397 Clause 102 provides for the creation of offences for the failure to comply with any regulations made under Part 5 and sets out the maximum penalties that could be imposed for failure to comply.

²¹⁸ <https://www.legislation.gov.uk/uksi/2016/507/contents>

²¹⁹ <https://www.legislation.gov.uk/uksi/2016/507/contents/made>

²²⁰ <https://www.legislation.gov.uk/ukpga/1978/30/contents>

Clause 103: Enforcement

398 Clause 103 provides for provisions about enforcement to be included in regulations made under Part 5. The regulations may give the function of enforcement of the regulations to relevant enforcement authorities. The relevant enforcement authorities are a local weights and measures authority in England, Scotland and Wales and a district council in Northern Ireland.

399 The regulations may make the same provisions as are made in this Bill under clauses 35 (Power of ministers to take over enforcement functions) and 36 (Power of ministers to take over proceedings), thereby allowing the relevant national authority (the Secretary of State, the Welsh Ministers, the Scottish Ministers or the Department of Health in Northern Ireland) to take over enforcement, or legal proceedings relating to any offence committed under the regulations, from a relevant enforcement authority.

400 Regulations may provide the enforcement authorities with appropriate powers to carry out enforcement activities such as powers to obtain information, seize or forfeit goods suspected of being non-compliant. This may be done by applying provisions in the Consumer Protection Act 1987²²¹ or making separate provision corresponding or similar to the provisions of that Act.

Clause 104: Sub-delegation

401 This clause provides for legislative sub-delegation to allow the Secretary of State, when making regulations under this part, to delegate functions to other people. This is considered appropriate given the nature of some of the matters dealt with by the regulations. For example, under clause 98 (Testing), regulations may provide for tests to be required to be carried out on certain products. It may be appropriate for detailed technical specifications for tests to be set out in guidance rather than in the legislation. Further, the regulations may require that a specific body carries out tests on products to determine whether they comply with any requirements imposed under this part of the Bill. Such tests may require specific technical expertise therefore this clause allows the Secretary of State to confer that function on such a body with the relevant expertise.

Clause 105: Power to make provision binding the Crown

402 Clause 105 provides that any regulations made under Part 5 bind the Crown. This means that the new product and information requirements apply in relation to all bodies and persons acting as servants of the Crown such as government departments, prisons run by His Majesty's prison service, and to members of the armed forces. The Crown itself may not be liable for an offence under this Part but persons in the service of the Crown such as civil servants or prison employees may be.

Clause 106: Power to amend legislation

403 Clause 106 provides that consequential provision made by regulations under Part 5 may amend, repeal or revoke any legislation (whenever passed or made) and is self-explanatory.

Clause 107: Consequential repeal

404 Clause 107 omits section 94 of the Children and Families Act 2014²²² (the 2014 Act) relating to the retail packaging of tobacco. Section 94 of the 2014 Act gave powers to regulate the retail packaging of tobacco products. These have been replaced and updated by this Bill and are

²²¹ <https://www.legislation.gov.uk/ukpga/1987/43>

²²² <https://www.legislation.gov.uk/ukpga/2014/6/contents>

therefore no longer needed. The Standardised Packaging of Tobacco Products Regulations 2015²²³ were made under the powers in Section 94, these will remain in force.

405 Other sections in the 2014 Act relating to nicotine products will also be amended and/or repealed, depending on the commencement date under that Schedule. For instance, as set out in Schedule 4, this Bill will omit section 92 of the 2014 Act, *'Prohibition of sale of nicotine products to persons under 18'*, which will commence after 6 months.

Clause 108: Enforcement of 2016 Regulations

406 Clause 108 brings non-compliance with the requirements of The Tobacco and Related Products Regulations 2016²²⁴ (TRPR 2016) within scope of the enforcement regime set up under Part 3 of the Digital Markets, Competition and Consumers Act 2024²²⁵ by adding TRPR 2016 to the list of secondary legislation in Schedule 15 of that Act.

Consultation and consent

Clause 109: Consultation

407 Clause 109 sets out the duty to consult and is self-explanatory.

Clause 110: Consent to regulations under Part 5

408 Regulations made under Part 5 of the Bill may relate to matters which are within the legislative competence of the devolved governments. Provision is therefore made in clause 110 requiring the Secretary of State to obtain consent from the Welsh Ministers, the Scottish Ministers and the Executive Office of Northern Ireland if provisions of the regulations fall within the legislative competence of the devolved legislatures.

Interpretation

Clause 111: Interpretation of Part 5

409 Clause 111 sets out definitions for Part 5 of the Bill and the effect is self-explanatory.

Clause 112: Meaning of “nicotine product”

410 Clause 112 provides the meaning of a “nicotine product” for Part 5 of the Bill and is self-explanatory.

Part 6: Advertising and sponsorship

411 The Tobacco Advertising and Promotion Act (2002)²²⁶ (the 2002 Act) introduced measures to limit the marketing and promotion of tobacco products and to reduce exposure to tobacco advertising and promotional activities. The 2002 Act prohibited the advertising of tobacco products to the public, with an exemption for specialist tobacconists, and prohibited sponsorship agreements which promote tobacco products. This Bill repeals and replaces the 2002 Act. Clauses in Part 6 of the Bill make similar provision relating to advertising, sponsorship and brandsharing as the 2002 Act to include herbal smoking products, cigarette papers, vaping, and nicotine products, for the whole of the UK.

²²³ <https://www.legislation.gov.uk/uksi/2015/829/contents>

²²⁴ <https://www.legislation.gov.uk/uksi/2016/507/contents>

²²⁵ <https://www.legislation.gov.uk/ukpga/2024/13/contents>

²²⁶ www.legislation.gov.uk/ukpga/2002/36/contents

- 412 Herbal smoking products and cigarette papers have been included within Part 6 due to the harmful nature of smoking itself. Whilst herbal smoking products do not contain nicotine or tobacco, they do contain cancer causing chemicals, tar and carbon monoxide, similar to a tobacco cigarette. Cigarette papers have also been included as they are burnt with the tobacco. This is consistent with other parts of the Bill.
- 413 The existing restrictions on advertising of nicotine vapes as set out in The Tobacco and Related Products Regulations 2016²²⁷ (TRPR 2016) will be replaced by the provisions in Part 6 of this Bill. The settings where advertising is banned for nicotine vapes under these regulations will be captured by this Part and extended to form a total prohibition on advertising for these products and nicotine products. This total prohibition means that settings such as public transport, billboards, and posters, that are currently not captured are now captured. Provision made in the Bill will maintain the existing ban on tobacco advertising.
- 414 The 2002 Act also bans the free distribution and display of tobacco products. Provision for these bans are made in clause 13 (Displays of products or prices in England), 15 (Free distribution and discount of products), 62 (Free distribution and discount of products) and 80 (Free distribution and discount of products) of this Bill.
- 415 For clauses 13 (Displays of products or prices in England) and 14 (Displays of products or prices in Wales), the inclusion of the phrase ‘in the course of business’ is to make it clear that this does not apply to any individual acting in a private capacity.
- 416 The prohibitions on advertising, promotion, brandsharing and sponsorship in Part 6 are not intended to prevent the public at large, such as journalists etc from making incidental commentary on tobacco products, herbal smoking products, cigarette papers, vaping products, or nicotine products, nor is it intended that the representation of such products by those engaged in creative or artistic pursuits (actors, painters, producers etc) should be prohibited.

Advertising

Clause 113: Publishing advertisements

- 417 Clause 113 makes it an offence to publish a tobacco product, herbal smoking product, cigarette paper, vaping product, or nicotine product advertisement in the UK. For instance, this includes advertisements in media, such as publishing an advert for a vaping product in a newspaper.

Clause 114: Designing advertisements

- 418 Clause 114 makes it an offence to design and make a tobacco product, herbal smoking product, cigarette paper, vaping product, or nicotine product advertisement which will be published in the UK. For instance, this could include a design agency that is designing a nicotine pouch advertisement.

Clause 115: Printing advertisements

- 419 Clause 115 makes it an offence to print a tobacco product, herbal smoking product, cigarette paper, vaping product, or nicotine product advertisement knowing that this will be published in the UK.

²²⁷ www.legislation.gov.uk/uksi/2016/507/contents

Clause 116: Distributing advertisements

420 Clause 116 makes it an offence to distribute a tobacco product, herbal smoking product, cigarette paper, vaping product, or nicotine product advertisement in the UK. This could include a company that hands out leaflets which contain vape advertisements.

Clause 117: Causing publication, designing, printing or distribution

421 Clause 117 makes it an offence to cause the publication, designing, printing or distribution of a tobacco product, herbal smoking product, cigarette paper, vaping product, or nicotine product advertisement knowing this will be published or distributed in the UK. For example, this would make it an offence for someone to commission an advertising agency to create a nicotine product advert on their behalf.

Clause 118: Internet services

422 Clause 118 makes it an offence to provide an internet service in the course of a business by which means an advertisement to promote a tobacco product, herbal smoking product, cigarette paper, vaping product, or nicotine product, is published or distributed in the UK. For example, a company that provides an internet service enables an advertisement for any of the relevant products, or fails to take action to take down an advertisement once they become aware of its existence.

Clause 119: Advertising: defences

423 Clause 119 sets out defences for a person charged with an offence under clause 113 to 118 (113 (Publishing advertisements), 114 (Designing advertisements), 115 (Printing advertisements), 116 (Distributing advertisements), 117 (Causing publication, designing, printing or distribution) and 118 (Internet services)). This includes if the advertisement is part of a communication within the tobacco product, herbal smoking product, cigarette paper, vaping product or nicotine trade between those involved in the trade at a senior level or with decision making responsibility, or if an individual specifically requests information about a product, or in a publication which is printed outside of the UK and whose market is not the UK (except for an in-flight magazine).

Clause 120: Specialist tobacconists

424 Clause 120 provides that specialist tobacconists may continue to advertise tobacco specialist products such as cigars, snuff and pipe tobacco. This clause is restating the existing law. A person does not commit an offence under clauses relating to advertisement, publication, printing, or distribution (clauses 113 to 117 (113 (Publishing advertisements), 115 (Designing advertisements), 116 (Printing advertisements), 116 (Distributing advertisements) and, 117 (Causing publication, designing, printing or distribution))), if an advertisement is in a specialist tobacconist, is not visible from outside the specialist tobacconist and is not to advertise cigarettes or hand-rolling tobacco. Regulations may set requirements for advertisements such as that any advertisement must display a health warning.

425 A specialist tobacconist shop is defined as a shop which sells tobacco products by retail, and over half of whose sales are from cigars, snuff, pipe tobacco and smoking accessories. The clause defines a shop as a self-contained part of a shop, with premises meaning the self-contained part. To determine if a shop is a specialist tobacconist, sales are measured by sale price, which is calculated using the last 12 months of a shop's accounts or the period the shop has been open for if the shop has been open for less than 12 months.

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

Clause 121: Exclusion for advertisements that are displays

426 Clause 121 provides that no offence is committed under this Part if a product or other material which is displayed is subject to the law relating to displays. The purpose of this provision is to avoid a display which is permitted being prohibited as an advertisement. For example, displaying a vape would not be considered an advertisement if vapes were subject to restrictions set out in legislation on their display.

427 For the purposes of this clause, ‘the law relating to displays’ means for England and Wales regulations made under this Bill, for Scotland provision under the Tobacco and Primary Medical Services (Scotland) Act 2010²²⁸, and for Northern Ireland regulations made under the Health and Personal Social Services (Northern Ireland) Order 1978²²⁹ in Northern Ireland.

Brandsharing

Clause 122: Brandsharing

428 Clause 122 provides the Secretary of State with the power to introduce regulations that prohibit brandsharing of tobacco products, herbal smoking products, cigarette papers, vaping products, or nicotine products. Brandsharing, or brandstretching as it is sometimes known, is a form of indirect advertising which promotes the use of a tobacco product, herbal smoking product, cigarette paper, vaping product or nicotine product by putting its branding on other products or services, or vice versa. Using a tobacco product logo on a T-shirt or a confectionary company using their branding on a vape are examples of brandsharing if the intent is to promote vapes.

429 The power also provides for the creation of offences for the failure to comply with the regulations and anyone convicted of an offence may be subject to imprisonment, a fine (where there is no maximum amount) or both.

The Secretary of State must obtain consent from the Scottish Ministers and the Department of Health in Northern Ireland before making regulations which contain provision which would be within the legislative competence of Scotland or Northern Ireland reflecting that regulation of brandsharing is devolved to Scotland and Northern Ireland.

Sponsorship

Clause 123: Sponsorship: tobacco products

430 Clause 123 makes it an offence for an individual to be involved with a sponsorship agreement where the purpose is to promote a tobacco product in the course of business. This maintains the current prohibition of tobacco sponsorship in the Tobacco Advertising and Promotion Act 2002²³⁰ (TAPA)

431 Anyone convicted of an offence under this provision may be subject to imprisonment (for a term not exceeding 2 years) or a fine, or both.

Clause 124: Sponsorship: vaping and nicotine and other products

432 Clause 124 makes it an offence for an individual to be a party to a sponsorship agreement where the purpose is to promote a herbal smoking product, cigarette paper, vaping product,

²²⁸ <https://www.legislation.gov.uk/asp/2010/3/contents>

²²⁹ <https://www.legislation.gov.uk/nisi/1978/1907/contents>

²³⁰ <https://www.legislation.gov.uk/ukpga/2002/36/contents>

or nicotine product in the course of business. For example, this clause will prohibit sports teams from being sponsored by a vaping company.

433 The legislation will apply to any agreement entered into after this section comes into force two months after Royal Assent. The ban will take effect from a date to be specified in regulations. From that date, it will be an offence if either party makes a contribution under the agreement and does anything whose purpose or effect is to promote one of these products.

434 Anyone convicted of an offence under this provision may be subject to imprisonment (for a term not exceeding 2 years), a fine where there is no maximum amount, or both.

Audiovisual services and radio broadcasting

Clause 125: Audiovisual services and radio broadcasting

435 Clause 125 outlines that Part 6 of this Bill does not apply to independent television or radio services, or to the British Broadcasting Corporation (BBC) or Sianel Pedwar Cymru, on-demand programme services, or non-UK on-demand programme services which are a Tier 1 service as defined in the Communications Act 2003²³¹ (the 2003 act). This is because advertising and sponsorship is prohibited on these services under regulations by the Office of Communications as set out in the 2003 act.

Clause 126: Extension of provisions about audiovisual and radio broadcasting

436 Clause 126 is self-explanatory and introduces Schedule 16.

Schedule 16: Advertising etc: audiovisual and radio broadcasting

437 Schedule 16 amends the Communications Act 2003²³² (the 2003 act) so that it additionally applies to herbal smoking products, cigarette papers, vaping products and nicotine products. The effect of this schedule is to ensure that the ban of advertising vapes on television, radio, and on-demand programme services implemented by the 2003 act is extended so that all those products mentioned are captured and fall under the advertising ban instated by the 2003 act. These bans therefore will continue to be governed by the existing provisions within the 2003 act rather than through the Bill itself, unlike other advertising measures.

Offences by bodies

Clause 127: Liability of others for offences committed by bodies

438 Clause 127 makes a “relevant person” (a director or manager of a company or someone with partner status in a partnership) liable for an offence under Part 6 of the Bill committed by a body, where the offence has been committed with their consent, connivance, or neglect. In such cases the relevant person may be liable in addition to the body (such as the company or partnership) they are working for. This applies to offences in clauses in Part 6 as well as regulations made under that Part.

439 The clause sets out definitions for a body and a relevant person.

²³¹ <https://www.legislation.gov.uk/ukpga/2003/21/contents>

²³² <https://www.legislation.gov.uk/ukpga/2003/21/contents>

Enforcement

Clause 128: Enforcement authorities

440 Clause 128 places a duty on relevant enforcement authorities to enforce the provisions in Part 6 of the Bill and regulations made under powers in Part 6. A relevant enforcement authority is a local weights and measures authority in England, Wales and Scotland (e.g. Local Authority Trading Standards), and a district council in Northern Ireland.

Clause 129: Power of ministers etc to take over enforcement functions

441 Clause 129 provides a power for the relevant national authority (the Secretary of State, the Welsh Ministers, the Scottish Ministers or the Department of Health in Northern Ireland) to carry out the enforcement of a particular case or a particular type of case instead of the relevant local enforcement authority. The effect of this is that a national enforcement authority will undertake the investigation and enforcement, rather than the local enforcement authority as prescribed in clause 128 (Enforcement authorities). This could arise if a local enforcement authority is unable or unwilling to undertake enforcement of a certain case.

Clause 130: Power of ministers etc to take over proceedings

442 Clause 130 provides a power for the Secretary of State, the Welsh Ministers, or the Department of Health in Northern Ireland to take over the legal proceedings relating to any offence that has been committed under Part 6 of the Bill or regulations made under it. This will allow a national authority to undertake the legal proceedings in court instead of a local enforcement authority. This could arise if a local enforcement authority is unable or unwilling to undertake the legal proceedings of a certain case. This provision doesn't extend to Scottish Ministers as ultimately the decision to proceed with a prosecution in Scotland rests solely with the Lord Advocate in their capacity as head of the Crown Office and Procurator Fiscal Service; it would therefore be inappropriate to grant this power to Scottish Ministers.

Alignment of definition in old advertising legislation pending replacement

Clause 131: Alignment of definition of “tobacco product” in old legislation

443 Clause 131 amends the definition of ‘tobacco products’ in the Tobacco Advertising and Promotion Act 2002²³³, section 1 (Interpretation), to align with the definition within this Bill.

Power to extend advertising legislation

Clause 132: Power to extend Part 6 and Communications Act 2003 to other products

444 Clause 132 provides the Secretary of State with powers to amend Part 6 and the Communications Act 2003²³⁴ by extending the scope to any device that enables a tobacco product to be consumed (such as a heated tobacco device), or an item which is intended to form part of such a device. Before making regulations under this clause the Secretary of State must obtain consent from the Welsh Ministers, the Scottish Ministers and the Department of Health in Northern Ireland if provisions of the regulations fall within the legislative competence of the devolved legislatures. This Power ensures that devices that are used to

²³³ <https://www.legislation.gov.uk/ukpga/2002/36/contents>

²³⁴ <https://www.legislation.gov.uk/ukpga/2003/21/contents>

consume tobacco can be subjected to the same advertisement and promotion prohibitions as tobacco products and ensures that the legislation is future-proof and flexible.

Crown application

Clause 133: Crown application

445 Clause 133 provides that Part 6 of the Bill and any regulations made under Part 6 bind the Crown. This means that the advertising and sponsorship restrictions apply in relation to all bodies and persons acting as servants of the Crown such as government departments, prisons run by His Majesty's prison service, and to members of the armed forces. The Crown itself will not be liable for an offence under this Part (this is not the case for persons in the service of the Crown such as civil servants or prison employees) but a court may make a declaration of unlawfulness in respect of an act (or omission) for which the Crown would otherwise have been criminally liable.

Interpretation

Clause 134: Interpretation of Part 6

446 Clause 134 provides the definitions for Part 6 and is self-explanatory.

Part 7: Smoke-free places, vape-free places and other free-from places

Clause 135: Addition of smoke-free places in England

447 Clause 135 amends the Health Act 2006²³⁵ (the 2006 Act) to allow the Secretary of State to make regulations designating additional places or vehicles in England to be smoke-free.

448 Clause 135 removes the requirement of Section 4 of the 2006 Act for places to be designated smoke-free only where there is a 'significant risk' that people present would be exposed to 'significant quantities of smoke'. This would allow for more spaces to be designated smoke-free.

449 The clause specifies that for a place to be designated smoke-free it must be a workplace or open to the public and that the designation must take effect only when it is being used as a workplace or open to the public. It also sets out that exceptions can be specified, and that Secretary of State has a duty to consult.

450 Clause 135 also amends section 5 of the 2006 Act, which relates to vehicles, to enable persons to designate areas as not being smoke-free. This will allow the Secretary of State to identify in regulations certain groups of people who will be able to designate certain areas to be not smoke-free.

Clause 136: Smoke-free premises: recasting of power to exempt performers

451 Clause 136 recasts an existing regulation making power in section 3(5) of the Health Act 2006²³⁶ (the 2006 Act), that the Secretary of State may make regulations that would allow performers to smoke during a performance if the artistic integrity of the performance made it appropriate.

²³⁵ <https://www.legislation.gov.uk/ukpga/2006/28/contents>

²³⁶ <https://www.legislation.gov.uk/ukpga/2006/28/contents>

452 The clause 136 exemption operates as power for the Secretary of State to create a defence to the offence of smoking in a smoke-free place by regulations (section 7 of the 2006 Act) and failing to prevent smoking in a smoke-free place by regulations (section 8 of the 2006 Act). This would have the effect of enabling performers to smoke in a place that is otherwise smoke-free when performing, where it is justified to preserve the artistic integrity of the performance. The exemption would apply only to the performer and not other persons, such as crew or stagehands, and would not mean that the wider stage or set is no longer smoke-free.

Clause 137: No-smoking signs in England

453 Clause 137 amends section 6 of the Health Act 2006²³⁷ requirements around no-smoking signs. The clause sets out that whoever occupies or manages a no-smoking premises must ensure the relevant no-smoking signs are displayed in or near the premises.

454 The clause provides powers for the Secretary of State to make regulations which specify the display and design requirements of no-smoking signs as well as how and where the signs are to be displayed.

Clause 138: Vape-free places in England

455 Clause 138 amends the Health Act 2006²³⁸ (the 2006 Act) to allow the Secretary of State to make regulations designating places or vehicles in England to be vape-free but only if these places are already smoke-free.

456 Clause 138 makes it an offence for a person to vape in a vape-free place or vehicle. It also places a duty on the manager of a vape-free place or driver of a vape-free vehicle to stop a person using a vape on their premises or in their vehicle.

457 The clause also requires a person who occupies or manages a vape-free place to put up no-vaping signs and ensure they are adequately displayed. Regulations may set out specific requirements that these signs must comply with, as well as to create exceptions for signage in vehicles.

458 The smoke-free places restrictions in the 2006 Act did not apply to the Crown and the same approach has been adopted for this clause to provide a consistent legislative approach. This means these restrictions do not apply to bodies and persons acting as servants of the Crown such as government departments, prisons run by His Majesty's prison service, and the armed forces. However, government bodies have the ability to bring forward similar restrictions other than under the 2006 Act and have previously done so in relation to smoking.

Clause 139: Heated tobacco-free places in England

459 Clause 139 provides powers for the Secretary of State to prohibit the use of heated tobacco products in England, but only in places that are already smoke-free.

460 Clause 139 makes it an offence for a person to use a heated tobacco device in a heated tobacco-free place or vehicle. It also places a duty on the manager of a heated tobacco-free place or driver of a vape-free vehicle to stop a person using a heated tobacco device on their premises or in their vehicle.

461 The clause also requires management of a heated tobacco-free place or vehicle to put up no heated tobacco signs, and ensure they are adequately displayed. Regulations may set out

²³⁷ <https://www.legislation.gov.uk/ukpga/2006/28/contents>

²³⁸ <https://www.legislation.gov.uk/ukpga/2006/28/contents>

specific requirements that these signs must comply with. Only smoke-free places may be designated as heated-tobacco free places.

462 The smoke-free places restrictions in the Health Act 2006²³⁹ (the 2006 Act) did not apply to the Crown and the same approach has been adopted for this clause to provide a consistent legislative approach. This means these restrictions do not apply to all bodies and persons acting as servants of the Crown such as government departments, prisons run by His Majesty's prison service, and to the armed forces. However, government bodies have the ability bring forward similar restrictions other than under the 2006 Act and have previously done so in relation to smoking.

Clause 140: Amendments consequential on sections 136 to 140

463 Clause 140 is self-explanatory and introduces Schedule 17.

Schedule 17: Amendments consequential on sections 136 to 140

464 Schedule 17 lists any consequential amendments made to the Health Act 2006²⁴⁰ to refine the definition of "workplace", alter the relevant references to enforcement including fixed penalties and provide updated or new definitions for a number of areas such as "heated tobacco devices" and "vape-free place".

Scotland

Clause 141: No-smoking premises in Scotland

465 Clause 141 amends the Smoking, Health and Social Care (Scotland) Act 2005²⁴¹ (the 2005 Act) to allow the Scottish Ministers to make regulations designating certain premises which are not "wholly or substantially enclosed" as no-smoking premises. The clause specifies that the Scottish Ministers have a duty to consult prior to making such regulations.

466 The clause specifies that for places other than vehicles to be prescribed as "no-smoking premises" they must be wholly or substantially enclosed, or a workplace or open to the public. When prescribed, no-smoking premises that are not wholly or substantially enclosed are smoke-free only during the times when they are open to the public or used as a place of work. The clause provides definitions of open to the public, premises, vehicle, work and workplaces.

467 The clause permits exceptions to be included in regulations and enables the Scottish Ministers to identify in regulations certain groups of people who will be able to designate certain areas to be not smoke-free.

468 Clause 141(1) substitutes parts of section 4 of the 2005 Act but these amendments do not have the effect of revoking the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 (the 2006 Regulations), and the 2006 Regulations remain in place.

Clause 142: No-smoking signs in Scotland

469 Clause 142 amends the Smoking, Health and Social Care (Scotland) Act 2005²⁴² requirements around no-smoking signs. The clause sets out that a person who has management or control

²³⁹ <https://www.legislation.gov.uk/ukpga/2006/28/contents>

²⁴⁰ <https://www.legislation.gov.uk/ukpga/2006/28/contents>

²⁴¹ <https://www.legislation.gov.uk/asp/2005/13/contents>

²⁴² <https://www.legislation.gov.uk/asp/2005/13/contents>

of no-smoking premises must ensure the relevant no-smoking signs are displayed in or near a premises.

470 The clause provides powers for the Scottish Ministers to make regulations which specify the display and design requirements of no-smoking signs, how and where the signs are to be displayed and to create exceptions.

Clause 143: Vape-free premises in Scotland

471 Clause 143 amends the Part 1 of the Smoking, Health and Social Care (Scotland) Act 2005²⁴³ (the 2005 Act) to change the heading to “Smoking, vaping and similar activities”, to then include a new section on vaping.

472 Clause 143 provides a power for the Scottish Ministers to prescribe a place as being vape-free, but only as far as they are already smoke-free. The clause also makes it an offence for a person to vape in a vape-free place or vehicle. It places a duty on the person having management or control of a vape-free place to permit a person to use a vape on their premises.

473 The clause also requires the person having management or control of a vape-free place to display no-vaping signs. Regulations may set out specific requirements that these signs must comply with, as well as create exception in relation to the signage requirements.

474 Whilst vaping is less harmful than smoking there is a risk to people’s health from vape aerosol, for example aerosols have been linked to asthma attacks. To protect public health, and particularly that of children, the Scottish Ministers may want to extend existing smoke-free places to also become vape-free.

475 The smoke-free places restrictions in the 2005 Act did apply to the Crown and the same approach has been adopted for this clause to provide a consistent legislative approach. This means these restrictions do apply to all bodies and persons acting as servants of the Crown such as government departments, prisons run by His Majesty’s prison service, and to members of the armed forces.

Clause 144: Heated tobacco-free premises in Scotland

476 Clause 144 amends the Smoking, Health and Social Care (Scotland) Act 2005²⁴⁴ (the 2005 Act) to insert a new chapter that relating to the use of heated tobacco devices.

477 In particular, clause 144 provides a power for the Scottish Ministers to prescribe a place as being heated tobacco-free, but only where that place is already smoke-free. The clause makes it an offence for a person to use a heated tobacco device in a heated tobacco-free place premises. It also places a duty on a person with management or control of a heated tobacco-free place to stop a person using a heated tobacco device on their premises.

478 The clause also requires persons who occupies or is concerned in the management of a heated tobacco-free place to put up signs and ensure they are adequately displayed. Scottish ministers may make regulations setting out specific requirements that these signs must comply with, as well as exceptions to the duty to display signage.

479 The smoke-free places restrictions in the 2005 Act did apply to the Crown and the same approach has been adopted for this clause to provide a consistent legislative approach. This means these restrictions do apply to all bodies and persons acting as servants of the Crown

²⁴³ <https://www.legislation.gov.uk/asp/2005/13/contents>

²⁴⁴ <https://www.legislation.gov.uk/asp/2005/13/contents>

such as government departments, prisons run by His Majesty’s prison service, and to members of the armed forces.

Clause 145: Amendments consequential on sections 142 to 145

480 Clause 145 is self-explanatory and introduces Schedule 18.

Schedule 18: Amendments consequential on sections 142 to 145

481 Schedule 18 amends the Smoking, Health and Social Care (Scotland) Act 2005²⁴⁵ to introduce Schedule 18. It updates the appropriate enforcement provisions and provides definitions for areas not previously covered such as “vapes”.

Wales

Clause 146: Smoke-free places and vehicles in Wales: duty to consult

482 Clause 146 in the Bill amends the Public Health (Wales) Act 2017²⁴⁶, so the Welsh Ministers have a duty to consult before making regulation under section 13 (additional smoke-free places) and section 15 (smoke-free vehicles).

Clause 147: Smoke-free vehicles in Wales

483 Clause 147 amends the Public Health (Wales) Act 2017 to enable the Welsh Ministers to identify classes of person who may designate areas of a vehicle as not smoke-free.

Clause 148: No-smoking signs in Wales

484 Clause 148 amends the Public Health (Wales) Act 2017²⁴⁷ requirements around no-smoking signs. The clause sets out that a person who occupies or manages a no-smoking premises must ensure no-smoking signs are displayed in or near the premises.

485 The clause provides powers for the Welsh Ministers to make regulations which specify the display and design requirements of no-smoking signs, how and where the signs are to be displayed.

Clause 149: Vape-free places in Wales

486 Clause 149 amends the Public Health (Wales) Act 2017²⁴⁸ (the 2017 Act) to insert a new chapter relating to vaping. This allows the Welsh Ministers to make regulations designating places or vehicles in Wales as vape-free, but only when they are already smoke-free.

487 Clause 149 makes it an offence for a person to vape in a vape-free place or vehicle. It also places a duty on a person who manages or controls of a vape-free place or a driver of a vape-free vehicle to stop a person using a vape on their premises or in their vehicle.

488 The clause also places a duty on a person who occupies or has management responsibilities of a vape-free place or a person who manages a vape-free vehicle to put up no-vaping signs and ensure they are adequately displayed. Regulations may set out specific requirements that these signs must comply with, as well as create exceptions in relation to the signage requirements for vehicles.

²⁴⁵ <https://www.legislation.gov.uk/asp/2005/13/contents>

²⁴⁶ <https://www.legislation.gov.uk/anaw/2017/2/contents>

²⁴⁷ <https://www.legislation.gov.uk/anaw/2017/2/contents>

²⁴⁸ <https://www.legislation.gov.uk/anaw/2017/2/contents>

489 The smoke-free places restrictions in the 2017 Act did not apply to the Crown and the same approach has been adopted for this clause to provide a consistent legislative approach. This means these restrictions do not apply to all bodies and persons acting as servants of the Crown such as government departments, prisons run by His Majesty's prison service, and to the armed forces. However, government bodies have the ability to bring forward similar restrictions other than under the 2017 Act and have previously done so in relation to smoking.

Clause 150: Heated tobacco-free places in Wales

490 Clause 150 amends the Public Health (Wales) Act 2017²⁴⁹ (the 2017 Act) to insert a new chapter relating to heated tobacco. This allows the Welsh Ministers to make regulations designating places or vehicles in Wales to be made heated tobacco-free, but only where such places that are already smoke-free.

491 Clause 150 makes it an offence for a person to use a heated tobacco in a tobacco free place or vehicle. It also places a duty on a person who controls or is concerned with the management of a heated tobacco-free place, or the driver of a heated tobacco-free vehicle to stop a person using a heated tobacco device on their premise or in their vehicle.

492 The clause also provides that a person who occupies or is involved in the management of a heated tobacco-free place or with management responsibilities of a heated tobacco-free vehicle must put up no heated tobacco signs, and ensure they are adequately displayed. The Welsh Ministers may set out specific requirements that these signs must comply with in regulations, as well as create exceptions in relation to the signage requirements for vehicles.

493 The smoke-free places restrictions in the 2017 Act did not apply to the Crown and the same approach has been adopted for this clause to provide a consistent legislative approach. This means these restrictions do not apply to all bodies and persons acting as servants of the Crown such as government departments, prisons run by His Majesty's prison service, and to the armed forces. However, relevant government bodies may bring forward similar restrictions.

Clause 151: Amendments consequential on sections 147 to 151

494 Clause 151 is self-explanatory and introduces Schedule 19.

Schedule 19: Amendments consequential on sections 147 to 151

495 Schedule 19 amends the Public Health (Wales) Act 2017²⁵⁰ to include a series of definitions in both Welsh and English.

Northern Ireland

Clause 152: Additional smoke-free places in Northern Ireland

496 Clause 152 amends Articles 5 and 6 of The Smoking (Northern Ireland) Order 2006²⁵¹.

497 The clause specifies that for additional places to be made smoke-free they must be a workplace or open to the public, this can include outdoor spaces. Such spaces may only be prescribed smoke-free places during the times they are open to the public or used as a place of

²⁴⁹ <https://www.legislation.gov.uk/anaw/2017/2/contents>

²⁵⁰ <https://www.legislation.gov.uk/anaw/2017/2/contents>

²⁵¹ <https://www.legislation.gov.uk/nisi/2006/2957/contents>

work. Clause 152 also introduces a duty to consult for the Department of Health before designating any additional smoke-free places.

498 The clause permits exceptions to be included in regulations for both smoke-free places and vehicles and allows the Department of Health in Northern Ireland to identify certain groups of individuals who may designate certain areas to not be smoke-free.

Clause 153: No-smoking signs in Northern Ireland

499 Clause 153 amends The Smoking (Northern Ireland) Order 2006²⁵² requirements around no-smoking signs. The clause sets out that whoever occupies or manages a no-smoking premises must ensure no-smoking signs are displayed in or near the premises.

500 The clause provides that regulations may specify the display and design requirements of no-smoking signs, as well as how and where the signs are to be displayed.

Clause 154: Vape-free places in Northern Ireland

501 Clause 154 amends The Smoking (Northern Ireland) Order 2006²⁵³ (the 2006 Order) to allow for the Department of Health in Northern Ireland to make regulations designating places or vehicles to be vape-free, but only when they are already smoke-free.

502 Clause 154 makes it an offence for a person to vape in a vape-free place or vehicle. It also places a duty on a person who controls or manages a vape-free place or drivers of a vape-free vehicle to stop a person using a vape on their premises or in their vehicle.

503 The clause also states that the occupier or management of a vape-free place, or person with management responsibility of a vape-free vehicle must put up no-vaping signs and ensure they are adequately displayed. Regulations may set out specific requirements that these signs must comply with as well as create exceptions in relation to the signage requirements for vehicles.

504 The no-smoking places restrictions in the 2006 Order did apply to the Crown and the same approach has been adopted for this clause to provide a consistent legislative approach. This means these restrictions do apply to all bodies and persons acting as servants of the Crown such as government departments and the armed forces.

Clause 155: Heated tobacco-free places in Northern Ireland

505 Clause 155 amends The Smoking (Northern Ireland) Order 2006²⁵⁴ (the 2006 Order) to allow Department of Health in Northern Ireland to make regulations designating places or vehicles in Northern Ireland to be heated tobacco-free, but only when they are already smoke-free.

506 Clause 155 makes it an offence for a person to use a heated tobacco product in a heated tobacco-free place or vehicle. It also places a duty on the manager or person who controls a heated tobacco-free place or driver of a heated tobacco-free vehicle to stop a person using a heated tobacco device on their premises or in their vehicle.

507 The clause also states that the occupier or management of a heated tobacco-free place, or person with management responsibility for a heated tobacco-free vehicle, must put up no heated tobacco signs, and ensure they are adequately displayed. Regulations may set out

²⁵² <https://www.legislation.gov.uk/nisi/2006/2957/contents>

²⁵³ <https://www.legislation.gov.uk/nisi/2006/2957/contents>

²⁵⁴ <https://www.legislation.gov.uk/nisi/2006/2957/contents>

specific requirements that these signs must comply with, as well as create exceptions in relation to the signage requirements for vehicles.

508 The no-smoking places restrictions in the 2006 Order did apply to the Crown and the same approach has been adopted for this clause to provide a consistent legislative approach. This means these restrictions do apply to all bodies and persons acting as servants of the Crown such as government departments and the armed forces.

Clause 156: Amendments consequential on sections 153 to 156

509 Clause 156 is self-explanatory and introduces Schedule 20.

Schedule 20: Amendments consequential on sections 153 to 156

510 Schedule 20 amends The Smoking (Northern Ireland) Order 2006²⁵⁵ to ensure that the definition of “workplaces” is updated accordingly and other relevant definitions are included in the necessary legislation.

Ships

Clause 157: Power to prohibit vaping etc on ships

511 Clause 157 amends section 85 of the Merchant Shipping Act 1995²⁵⁶ and makes provision regarding safety regulations that are made under that Act to provide for vape-free and heated tobacco-free provision for ships and hovercraft, which corresponds with provisions in the Health Act 2006.

Part 8: General

512 Clauses in Part 8 of the Bill extend to the whole of the UK.

Clause 158: Application to Parliament

513 Clause 158 provides that this Bill or regulations made under it apply to the Parliamentary Estate.

Clause 159: Further consequential amendments

514 Clause 159 is self-explanatory and introduces Schedule 21.

Schedule 21: Consequential amendments: General

515 This schedule outlines amendments that are consequential on this Bill. It amends the Health Act 2009²⁵⁷, Regulatory Enforcement and Sanctions Act 2008²⁵⁸, Consumer Rights Act 2015²⁵⁹, the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016²⁶⁰, the Digital Markets, Competition and Consumers Act 2024²⁶¹, the Communications Act 2003²⁶², the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3)²⁶³, The Tobacco and Related Products

²⁵⁵ <https://www.legislation.gov.uk/nisi/2006/2957/contents>

²⁵⁶ <https://www.legislation.gov.uk/ukpga/1995/21/contents>

²⁵⁷ <https://www.legislation.gov.uk/ukpga/2009/21/contents>

²⁵⁸ <https://www.legislation.gov.uk/ukpga/2008/13/contents>

²⁵⁹ <https://www.legislation.gov.uk/ukpga/2015/15/contents>

²⁶⁰ <https://www.legislation.gov.uk/asp/2016/14/contents>

²⁶¹ <https://www.legislation.gov.uk/ukpga/2024/13/contents/enacted>

²⁶² <https://www.legislation.gov.uk/ukpga/2003/21/contents>

²⁶³ <https://www.legislation.gov.uk/asp/2010/3/contents>

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

Regulations 2016²⁶⁴ and the Media Act 2024²⁶⁵. The Tobacco Advertising and Promotion Act 2002²⁶⁶ is repealed.

Clause 160: Power of Secretary of State to make consequential provision

516 Clause 160 gives the Secretary of State a regulation making power to make provision that is consequential on this Bill and may amend, repeal or revoke any legislation passed or made before, or in the same session as this Bill (including provision made by this Bill).

517 Any regulations made to amend, repeal, or revoke primary legislation will be subject to the affirmative resolution procedure. Any other regulations under this section will be subject to the negative resolution procedure.

518 The clause also defines “primary legislation” meaning it to be an Act of Parliament, an Act of the Scottish Parliament, an Act or Measure of Senedd Cymru or Northern Ireland legislation.

Clause 161: Power of Scottish Ministers to make consequential provision

519 Clause 161 gives the Scottish Ministers a regulation making power to make provisions that is consequential on Part 2 (sale and distribution: Scotland) and clauses 141 to 145 and Schedule 18 of this Bill.

520 Any regulations may amend, repeal, or revoke provision made by or under an Act passed before this Bill or in the same session of Parliament as this Bill or an Act of the Scottish Parliament passed before this Bill.

521 Any regulations that amend or repeal provisions made by an Act of the Scottish Parliament, or an Act are subject to the affirmative resolution procedure. Any other regulations under this section will be subject to the negative resolution procedure.

Clause 162: Power of Welsh Ministers to make consequential provision

522 Clause 162 gives the Welsh Ministers a regulation making power to make provision that is consequential on Part 1 (sale and distribution), as well as on clauses 146 to 151 and Schedule 19 of this Bill.

523 The clause provides that the use of the power by the Welsh Ministers can only be made if the provision would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd.

524 Any regulations may amend, or repeal or revoke provision made by or under an Act passed before this Bill or in the same session of Parliament as this Bill or an Act or Measure of Senedd Cymru passed before this Bill.

525 Any regulations that amend or repeal provisions made by an Act, or an Act or Measure of Senedd Cymru are subject to the affirmative resolution procedure. Any other regulations under this section will be subject to the negative resolution procedure.

Clause 163: Power of Northern Ireland department to make consequential provision

526 Clause 163 gives Northern Ireland departments a regulation making power to make provision that is consequential on Part 3 (sale and distribution: Northern Ireland) and clauses 152 to 156 and Schedule 20 of this Bill.

²⁶⁴ <https://www.legislation.gov.uk/uksi/2016/507/contents>

²⁶⁵ <https://www.legislation.gov.uk/ukpga/2024/15/contents/enacted>

²⁶⁶ <https://www.legislation.gov.uk/ukpga/2002/36/contents>

527 Any regulations may amend, repeal or revoke provision made by or under an Act passed before or in the same session of Parliament as this Bill or Northern Ireland legislation passed or made before this Bill.

528 Any regulations that amend, repeal or revoke an Act or Northern Ireland legislation are subject to the affirmative resolution procedure. Any other regulations under this section will be subject to the negative resolution procedure.

Clause 164: Regulations: general

529 Clause 164 provides that where regulations are made under this Bill, the regulations may make consequential, supplementary, incidental, transitional, or saving provision and allows regulations to make different provision for different purposes and different provision for different parts of the UK. This does not apply to regulations made under clauses 167 (Commencement: Parts 1 to 4), 168 (Commencement: Parts 5 to 8), and 169 (Transitional provision).

Clause 165: Regulations and orders: procedure

530 Clause 165 provides the procedure for making regulations under this Bill. Regulations made by the Secretary of State or the Welsh Ministers under this Bill are to be made by statutory instrument.

531 Regulations made under this Bill by the Scottish Ministers are to be made by Scottish statutory instrument.

532 Reference is made to section 27 (Scottish statutory instruments) of the Interpretation and Legislative Reform (Scotland) Act 2010²⁶⁷ as this makes provision about Scottish statutory instruments.

533 The power of the Department of Health in Northern Ireland to make regulations under clause 163 (Power of Northern Ireland department to make consequential provision) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979²⁶⁸.

534 The clause defines the “the affirmative resolution procedure” and “the negative resolution procedure” in the context of this Bill.

Clause 166: Extent

535 Clause 166 provides for the extent of this Bill. A table on territorial extent of each clause in the Bill can be found at Annex A. The extent of the different Parts of the Bill are as follows:

- a. Part 1 extends to England and Wales only.
- b. Part 2 extends to Scotland only.
- c. Part 3 extends to Northern Ireland only.
- d. Parts 4, 5 and 6 and this Part of the Bill extend to England and Wales, Scotland and Northern Ireland.

536 Any amendment or repeal made by the Bill has the same extent as the provision that is amended or repealed.

²⁶⁷ <https://www.legislation.gov.uk/asp/2010/10/contents>

²⁶⁸ <https://www.legislation.gov.uk/nisi/1979/1573/contents>

Clause 167: Commencement: Parts 1 to 4

537 Clause 167 provides commencement dates for the various clauses in Parts 1 to 4 in this Bill. The commencement section of the Explanatory Notes provides a detailed summary and explanation of these commencement dates.

Clause 168: Commencement: Parts 5 to 8

538 Clause 168 provides commencement dates for the various clauses in Parts 5 to 8 in this Bill. The commencement section of the Explanatory Notes provides a detailed summary and explanation of these commencement dates.

Clause 169: Transitional provision

539 Clause 169 provides a power to make the transitional or saving provisions.

540 The Welsh Ministers may by regulations make transitional or saving provision in relation to the coming into force of clauses 19 to 22 and schedules 3 and 4, clause 40 and Schedule 5, clauses 146 to 151 and Schedule 19.

541 The Scottish Ministers may by regulations make transitional or saving provision in relation to the coming into force of Part 2 (Sale and Distribution: Scotland), clauses 141 to 145 and Schedule 18 (smoke-free places, vape-free places and other free-from places: Scotland)

542 The Department of Health in Northern Ireland may by regulations make transitional or saving provision in relation to the coming into force of Part 3 (Sale and Distribution: Northern Ireland), clauses 152 to 156 and Schedule 20 (smoke-free places, vape-free places and other free-from places: Northern Ireland).

543 The Secretary of State may by regulations make transitional or saving provision in relation to the coming into force of any provision of this Bill.

Clause 170: Short title

544 Clause 170 provides that this Bill can be cited as the Tobacco and Vapes Act 2025 once passed.

Commencement

545 Clauses 167 and 168 provide for the commencement of the clauses in this Bill.

546 To give businesses sufficient time to prepare for implementation of measures in the Bill, Part 1 (Sale and Distribution: England and Wales), Part 2 (Sale and Distribution: Scotland), Part 3 (Sale and Distribution: Northern Ireland) and Part 4 (Snus etc: Seizure and Detention Powers) come into force 6 months from the day on which the Bill is passed, with the exception of:

547 Any provision of, or amendment made by, Parts 1 to 3 where it confers a power to make regulations or relates to the exercise of the power, comes into force on the day on which the Bill is passed. This is because the commencement of powers to make secondary legislation does not require an implementation period.

548 Several measures which relate to the age of sale of tobacco etc are required to come into force on the 1 January 2027. This includes:

- a. In relation to England and Wales: Clauses 1 (Sale of tobacco etc), 2 (Purchase of tobacco etc on behalf of others), 5 (Age of sale notice at point of sale: England), 6 (Age of Sale notice at point of sale: Wales), 41 (2) (Consequential amendments to do with Part 1) and Schedule 7 (Part 1 consequential amendments commencing on 1 January 2027)
- b. In relation to Scotland: Clause 49 (Age of sale for tobacco products etc)
- c. In relation to Northern Ireland: Clauses 68 (Age of sale for tobacco products etc), 69 (Purchase of tobacco on behalf of others) and 72 (Age of sale notice at point of sale), 86(2) (Consequential and other amendments) and Schedule 15 (Part 3 consequential amendments commencing on 1 January 2027).

549 Clause 16 (Prohibition of retail sales of tobacco products etc in England without a licence), 17 (Offences in connection with licences: England), 18 (Financial penalties for breach of licence conditions: England), Schedule 1 (Retail licensing scheme: England) and Schedule 2 (Financial penalties for breach of retail licence conditions: England) come into force on such a day as set out by the Secretary of State by regulations.

550 Clause 19 (Prohibition of retail sales of tobacco products etc in Wales without a licence), 20 (Offences in connection with licences: Wales), 21 (Financial penalties for breach of licence conditions: Wales), 22 (Repeal of register of retailers of tobacco and nicotine products in Wales etc), Schedule 3 (Retail licensing scheme: Wales) and Schedule 4 (Financial penalties for breach of retail licence conditions: Wales) come into force on such a day as set by the Welsh Ministers by order.

551 Clause 40 (Handing over tobacco etc to underage people in Wales) and Schedule 5 (Handing over tobacco etc to underage people in Wales) which come into force on such a day as set out by the Welsh Ministers by order.

552 Clause 63 (Alignment of definition of “tobacco product” in Scottish legislation) comes into force at the end of the period of 2 months beginning with the day on which is the Bill is passed.

553 Clause 60 (Age verification in relation to tobacco and vaping products etc), Clause 65 (Extension of retailer register etc) and Schedule 9 (Extension of retailer register etc: Scotland) come into force on such a day as set out by the Scottish Ministers by regulations.

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554 Clause 83 (Extension of retailer register), Clause 84 (Prohibition of retailer sales of tobacco products etc without a licence) and Schedule 10 (Extension of retailer register: Northern Ireland), Schedule 11 (Retail licensing schemes in Northern Ireland), Schedule 12 (Financial penalties for breach of retail licence conditions in Northern Ireland) and Schedule 13 (Licensing of retail sales of tobacco products etc: consequential amendments) come into force on such a day as set out by the Department of Health in Northern Ireland by order.

555 Part 5 (Product and Information Requirements Etc) contains powers to make secondary legislation and so comes into force on the day on which the Bill is passed.

556 In Part 6 (Advertising and Sponsorship), Clause 124 (Sponsorship: vaping and nicotine and other products), 131 (Alignment of definition of “tobacco product” in old legislation), 133 (Crown application) and 134 (Interpretation of Part 6) come into force at the end of the period of 2 months beginning with the day on which is the Bill is passed. The remainder of the provisions in Part 6 come into force on such day as the Secretary of State may by regulations appoint.

557 Part 7 (Smoke-free, vape-free places and other free-from places) come into force on such day as the appropriate national authority appoints. The Secretary of State may by regulations commence clauses 135 to 140, clause 157, and Schedule 17. The Scottish Ministers may by regulations commence clauses 141 to 145, and Schedule 18. The Welsh Ministers may by order commence clauses 146 to 151, and Schedule 19. The Department of Health in Northern Ireland may by order commence clauses 152 to 156, and Schedule 20.

558 Part 8 (General) comes into force on the day on which the Bill is passed, with the exception of clause 159 (Further consequential amendments) and Schedule 21 (Consequential amendments: general) which come into force on such a day as the Secretary of State may by regulations appoint.

Financial implications of the Bill

559 The measures in the Bill are enabling and as a result most of the proposals will not place direct costs on health and care organisations purely by their enactment.

560 Smoking places a significant cost on society. ASH estimates that the total costs of smoking per annum in England are £21.3 billion²⁶⁹. Uplifting this estimate based on the relative size of the population in England compared to the whole of the UK, the government estimates the costs of smoking to the UK to be around £25.2 billion. This includes a £21.3 billion loss to productivity per year through smoking related lost earnings, unemployment, and early death, as well as costs to the NHS and social care sector of around £3.5 billion per year.

561 The previous government published a Tobacco and Vapes Bill Impact assessment on 20 March 2024²⁷⁰. Whilst this impact assessment does draw on similar evidence and data there have been a number of publications containing updates to estimates and figures used throughout the Impact Assessment, as well as additional data covering more recent time periods that were not available at the time of the original publication, such as data from a range of stakeholders including other government departments and external bodies. As a result, a new

²⁶⁹ ASH. 2025. New figures show cost of smoking to society in England dwarfs tobacco tax revenue

²⁷⁰ DHSC. 2024. [Tobacco and Vapes Bill: impact assessment - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/123456/Tobacco_and_Vapes_Bill_impact_assessment.pdf)

Tobacco and Vapes Bill Impact Assessment has been produced that utilises the latest data available and includes analysis for new measures included in the Bill.

- 562 In the Impact Assessment for the Tobacco and Vapes Bill, in relation to costs, the analysis showed the overall reduction in tobacco consumption over 30 years in the UK is expected to reduce profits for tobacco retailers by £2,366m, and for tobacco wholesalers by £508m. It is expected that tobacco retailers will incur familiarisation costs of £8m, costs due to increased time to check people's IDs of £84m and costs to put up new signage in shops of £0.2m. These costs are in 2024 prices.
- 563 The reduction in tobacco consumption would also reduce the amount of tobacco duty collected by HMRC. It is estimated that the cumulative reduction in tobacco duty receipts over 30 years in the UK would be £23,750m. However, this reduction in the tobacco duty revenue represents a transfer from the government collecting this tax to the people in society previously paying the tax. The people that no longer take up smoking because of this policy benefit from an increase in the amount they can spend on other goods and services and the government loses an equal amount that they can spend. Therefore, this reduction in tax revenue does not make society as a whole better or worse off.
- 564 In order to discourage non-smokers and young people from taking up vaping, and to raise revenue, the government has confirmed the introduction of Vaping Products Duty (VPD) which will come into force from 1 October 2026. To ensure the new duty does not make smoking more attractive than vaping, there will be a simultaneous one-off rate increase for tobacco duties on 1 October 2026.
- 565 In relation to financial benefits, the analysis showed the expected benefits in the UK accrued from the health benefits of a reduction in the number of people taking up smoking would result in monetised QALYs gains from fewer deaths of £418m. There will also be wider societal benefits, including productivity gains of £27,298m, reduced healthcare usage costs of £2,814m, reduced social care usage costs of £1,839m, and reductions in fire costs associated with smoking of £982m. These benefits are in 2024 prices.
- 566 The benefits of the policy will continue beyond 30 years and increase in size due to the nature of the policy option. For example, even when the reduction in tobacco duty is included, the policy is estimated to provide a total net benefit of around £70 billion by 2100.
- 567 With the new legal age of sale, local authorities would need to check the same number of businesses, and the government expects it to take the same amount of time to investigate any potential offences. Local authorities may incur some additional costs to familiarise themselves with the new law, but do not expect this to be a significant cost.
- 568 The government is investing £10 million of new funding in 2025/26 for Trading Standards, to support the enforcement of underage and illicit tobacco and vape sales, and the implementation of the measures in the Bill. The government is also investing £100 million over 5 years to support HMRC and Border Force's illicit tobacco strategy, which sets out plans to be at the forefront of tackling illegal activity and opportunities that criminals may seek to exploit. The strategy establishes a new Illicit Tobacco Taskforce, which combines the operational, investigative and intelligence expertise of various agencies and enhances the ability to disrupt organised crime.
- 569 As it is local authorities that will be responsible for checking compliance with the new law on the legal age of sale for tobacco, the government does not anticipate any additional enforcement costs for the police. However, there may be additional costs for the justice system and a Justice Impact Test and New Burdens Assessment will be completed.

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- 570 In relation to vaping, the updated impact assessment includes full appraisals of the additional measures for banning vape vending machines and extending advertising restrictions.
- 571 For all the vaping measures and powers, it is estimated that there would be costs to vape manufacturers, retailers and wholesalers for all of the vaping regulations (restrictions on flavours, packaging requirements and regulations on point-of-sale displays). These would include costs to familiarise themselves with the new regulations as well as a reduction in profits. For each of the measures, there are additional industry specific costs.
- 572 The main health benefits expected as a result of the vaping policies is a reduction in the number of children and young people that take up vaping. As there is currently limited evidence on the health impacts of vaping, particularly the long-term harms of vaping, it has not been possible to quantify the health benefits from a reduction in the number of children and young people that take up vaping. However, evidence from Canada, suggests that for every young person not taking up vaping the health benefits to the individual could be over £14,000.
- 573 In relation to the impact of new smoke-free, vape-free, and heated tobacco-free policies, the financial impact will be dependent on the scope of the policy adopted in secondary legislation at which further impact assessment(s) will be completed to assess the costs and benefits of implementing the policy.

Parliamentary approval for financial costs or charges imposed

- 574 The House of Commons passed a money resolution and a ways and means resolution for this Bill at Second Reading on 26 November 2024.
- 575 The Bill requires a money resolution to authorise new charges on the public revenue (broadly speaking, new public expenditure). The resolution is required because, among other things, the Bill confers various functions on local authorities, which are funded, in part, by grants paid out of money provided by Parliament (see, for example, clause 32, 103(1)(a) and 128(1)). It also confers various functions on the Secretary of State that could result in additional administrative expenditure of a kind that requires a money resolution (see, for example, clause 101 and the substituted section 4(1) inserted by clause 135).
- 576 The Bill also requires a ways and means resolution (which, broadly speaking, is required in relation to a charge on the people or for other payments into the Consolidated Fund). The resolution is required because, among other things, clauses 94(3) and 98(2)(e) confer powers to provide for fees, or to extend existing legislation about fees, that could be characterised as a charge on the people, and clause 38(1) makes provision for the proceeds from fixed penalty notices in England to be paid into the Consolidated Fund.

Compatibility with the European Convention on Human Rights

- 577 The Rt Honourable Baroness Merron, Parliamentary Under-Secretary (Department of Health and Social Care), has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in her view, the provisions of the Bill are compatible with the Convention rights.

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578 The Bill contains a limited number of provisions which may engage Convention rights, in particular Article 1 of Protocol 1 to the Convention (right to property) (“A1P1”), Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination). The remaining provisions of the Bill are considered not to engage Convention rights.

579 A fuller consideration of the provisions of the Bill which may raise European Convention on Human Rights (ECHR) issues is provided in Annex C.

Environmental Law

580 The Rt Honourable Baroness Merron, Parliamentary Under-Secretary (Department of Health and Social Care), is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021²⁷¹. Accordingly, no statement under that section has been made.

Duty under section 13C of the European Union (Withdrawal) Act 2018

581 The Rt Honourable Baroness Merron, Parliamentary Under-Secretary (Department of Health and Social Care), is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would affect trade between Northern Ireland and the rest of the UK. Accordingly, no statement under section 13C of the European Union (Withdrawal) Act 2018²⁷² has been made.

Related documents

582 The following documents are relevant to the Bill and can be read at the stated locations:

- Children and Young Persons Act 1933²⁷³
- Creating a smokefree generation and tackling youth vaping consultation: government response²⁷⁴
- Delegated Powers Memorandum²⁷⁵
- Health (Miscellaneous Provisions) Act (Northern Ireland) 2016²⁷⁶
- Health and Personal Social Services (Northern Ireland) Order 1978²⁷⁷

²⁷¹ <https://www.legislation.gov.uk/ukpga/2021/30/contents>

²⁷² <https://www.legislation.gov.uk/ukpga/2018/16/contents>

²⁷³ <https://www.legislation.gov.uk/ukpga/Geo5/23-24/12>

²⁷⁴ <https://www.gov.uk/government/consultations/creating-a-smokefree-generation-and-tackling-youth-vaping/outcome/creating-a-smokefree-generation-and-tackling-youth-vaping-consultation-government-response>

²⁷⁵ bills.parliament.uk/bills/3879/publications

²⁷⁶ <https://www.legislation.gov.uk/nia/2016/26/contents>

²⁷⁷ <https://www.legislation.gov.uk/nisi/1978/1907/contents>

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- Health and Social Care Committee recommendations on youth vaping²⁷⁸
- Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016²⁷⁹
- Proxy Purchasing of Tobacco, Nicotine Products etc. (Fixed Penalty Notice) (England) Regulations 2015²⁸⁰
- Public Health (Wales) Act 2017²⁸¹
- Retained EU Law (Revocation and Reform) Act 2023²⁸²
- Science and Technology Committee report and recommendations on an inquiry on e-cigarettes ²⁸³
- Smoking, Health and Social Care (Scotland) Act 2005 ²⁸⁴
- Towards a smoke-free generation: tobacco control plan for England²⁸⁵
- The Children and Families Act 2014²⁸⁶
- The Khan review: making smoking obsolete²⁸⁷
- The Tobacco Advertising and Promotions Act 2002 (TAPA)²⁸⁸
- Tobacco and Related Products Regulations 2016²⁸⁹
- United Kingdom Internal Market Act 2020²⁹⁰
- Youth vaping call for evidence analysis ²⁹¹

²⁷⁸ <https://committees.parliament.uk/publications/40969/documents/199544/default/>

²⁷⁹<https://www.legislation.gov.uk/asp/2016/14/enacted#:~:text=An%20Act%20of%20the%20Scottish,following%20serious%20incidents%20in%20the>

²⁸⁰ <https://www.legislation.gov.uk/uksi/2015/936/contents/made>

²⁸¹ <https://www.legislation.gov.uk/anaw/2017/2/contents>

²⁸²www.legislation.gov.uk/ukpga/2023/28

²⁸³ <https://publications.parliament.uk/pa/cm201719/cmselect/cmsctech/505/50502.htm>

²⁸⁴www.legislation.gov.uk/asp/2005/13/contents

²⁸⁵ <https://www.gov.uk/government/publications/towards-a-smoke-free-generation-tobacco-control-plan-for-england>

²⁸⁶ www.legislation.gov.uk/ukpga/2014/6/contents

²⁸⁷ <https://www.gov.uk/government/publications/the-khan-review-making-smoking-obsolete>

²⁸⁸ <https://www.legislation.gov.uk/ukpga/2002/36/contents>

²⁸⁹<https://www.legislation.gov.uk/uksi/2016/507/contents/made>

²⁹⁰ www.legislation.gov.uk/ukpga/2020/27/introduction

²⁹¹ <https://www.gov.uk/government/calls-for-evidence/youth-vaping-call-for-evidence/outcome/youth-vaping-call-for-evidence-analysis>

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Annex A – Territorial extent and application in the UK

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
1 Sale and distribution: England and Wales							
Clause 1	Yes	Yes	Yes	No	No	No	No
Clause 2	Yes	Yes	Yes	No	No	No	No
Clause 3	Yes	Yes	Yes	No	No	No	No
Clause 4	Yes	Yes	Yes	No	No	No	No
Clause 5	Yes	No	No	No	No	No	No
Clause 6	No	Yes	Yes	No	No	No	No
Clause 7	Yes	Yes	Yes	No	No	No	No
Clause 8	Yes	Yes	Yes	No	No	No	No
Clause 9	Yes	Yes	Yes	No	No	No	No
Clause 10	Yes	Yes	Yes	No	No	No	No
Clause 11	Yes	Yes	Yes	No	No	No	No
Clause 12	Yes	Yes	Yes	No	No	No	No
Clause 13	Yes	No	No	No	No	No	No
Clause 14	No	Yes	Yes	No	No	No	No
Clause 15	Yes	Yes	Yes	No	No	No	No
Clause 16	Yes	No	No	No	No	No	No
Clause 17	Yes	No	No	No	No	No	No
Clause 18	Yes	No	No	No	No	No	No
Clause 19	No	Yes	Yes	No	No	No	No
Clause 20	No	Yes	Yes	No	No	No	No
Clause 21	No	Yes	Yes	No	No	No	No
Clause 22	No	Yes	Yes	No	No	No	No
Clause 23	Yes	Yes	Yes	No	No	No	No
Clause 24	Yes	Yes	Yes	No	No	No	No
Clause 25	Yes	Yes	No	No	No	No	No

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Clause 26	Yes	Yes	Yes	No	No	No	No
Clause 27	No	Yes	Yes	No	No	No	No
Clause 28	Yes	Yes	Yes	No	No	No	No
Clause 29	Yes	Yes	No	No	No	No	No
Clause 30	Yes	Yes	Yes	No	No	No	No
Clause 31	Yes	Yes	Yes	No	No	No	No
Clause 32	Yes	Yes	Yes	No	No	No	No
Clause 33	Yes	No	No	No	No	No	No
Clause 34	No	Yes	Yes	No	No	No	No
Clause 35	Yes	Yes	Yes	No	No	No	No
Clause 36	Yes	Yes	Yes	No	No	No	No
Clause 37	Yes	Yes	Yes	No	No	No	No
Clause 38	Yes	Yes	Yes	No	No	No	No
Clause 39	Yes	Yes	Yes	No	No	No	No
Clause 40	No	Yes	Yes	No	No	No	No
Clause 41	Yes	Yes	Yes	No	No	No	No
Clause 42	Yes	Yes	Yes	No	No	No	No
Clause 43	Yes	Yes	Yes	No	No	No	No
Clause 44	Yes	Yes	Yes	No	No	No	No
Clause 45	Yes	Yes	Yes	No	No	No	No
Clause 46	Yes	Yes	Yes	No	No	No	No
Clause 47	Yes	Yes	Yes	No	No	No	No
Clause 48	Yes	Yes	Yes	No	No	No	No
2 Sale and distribution: Scotland							
Clause 49	No	No	No	Yes	Yes	No	No
Clause 50	No	No	No	Yes	Yes	No	No
Clause 51	No	No	No	Yes	Yes	No	No
Clause 52	No	No	No	Yes	Yes	No	No
Clause 53	No	No	No	Yes	Yes	No	No
Clause 54	No	No	No	Yes	Yes	No	No
Clause 55	No	No	No	Yes	Yes	No	No
Clause 56	No	No	No	Yes	Yes	No	No
Clause 57	No	No	No	Yes	Yes	No	No
Clause 58	No	No	No	Yes	Yes	No	No
Clause 59	No	No	No	Yes	Yes	No	No

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Clause 60	No	No	No	Yes	Yes	No	No
Clause 61	No	No	No	Yes	Yes	No	No
Clause 62	No	No	No	Yes	Yes	No	No
Clause 63	No	No	No	Yes	Yes	No	No
Clause 64	No	No	No	Yes	Yes	No	No
Clause 65	No	No	No	Yes	Yes	No	No
Clause 66	No	No	No	Yes	Yes	No	No
Clause 67	No	No	No	Yes	Yes	No	No
3 Sale and distribution: Northern Ireland							
Clause 68	No	No	No	No	No	Yes	Yes
Clause 69	No	No	No	No	No	Yes	Yes
Clause 70	No	No	No	No	No	Yes	Yes
Clause 71	No	No	No	No	No	Yes	Yes
Clause 72	No	No	No	No	No	Yes	Yes
Clause 73	No	No	No	No	No	Yes	Yes
Clause 74	No	No	No	No	No	Yes	Yes
Clause 75	No	No	No	No	No	Yes	Yes
Clause 76	No	No	No	No	No	Yes	Yes
Clause 77	No	No	No	No	No	Yes	Yes
Clause 78	No	No	No	No	No	Yes	Yes
Clause 79	No	No	No	No	No	Yes	Yes
Clause 80	No	No	No	No	No	Yes	Yes
Clause 81	No	No	No	No	No	Yes	Yes
Clause 82	No	No	No	No	No	Yes	Yes
Clause 83	No	No	No	No	No	Yes	Yes
Clause 84	No	No	No	No	No	Yes	Yes
Clause 85	No	No	No	No	No	Yes	Yes
Clause 86	No	No	No	No	No	Yes	Yes
Clause 87	No	No	No	No	No	Yes	Yes
4 Snus etc: Seizure and Detention powers							
Clause 88	Yes	Yes	No	Yes	No	Yes	No

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5 Product and Information Requirements etc							
Clause 89	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 90	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 91	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 92	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 93	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 94	Yes	Yes	No	Yes	No	Yes	Yes
Clause 95	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 96	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 97	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 98	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 99	Yes	Yes	No	Yes	No	Yes	No
Clause 100	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 101	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 102	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 103	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 104	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 105	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 106	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 107	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 108	Yes	Yes	No	Yes	No	Yes	Yes
Clause 109	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 110	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 111	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 112	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6 Advertising and sponsorship							
Clause 113	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 114	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 115	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 116	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 117	Yes	Yes	No	Yes	Yes	Yes	Yes

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

Clause 118	Yes	Yes	No	Yes	No	Yes	No
Clause 119	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 120	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 121	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 122	Yes	Yes	No	Yes	Yes	Yes	Yes
Clause 123	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 124	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 125	Yes	Yes	No	Yes	No	Yes	No
Clause 126	Yes	Yes	No	Yes	No	Yes	No
Clause 127	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 128	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 129	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 130	Yes	Yes	Yes	No	No	Yes	Yes
Clause 131	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 132	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 133	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 134	Yes	Yes	Yes	Yes	Yes	Yes	Yes
7 Smoke-free places, vape-free places and other free-from places							
Clause 135	Yes	No	No	No	No	No	No
Clause 136	Yes	No	No	No	No	No	No
Clause 137	Yes	No	No	No	No	No	No
Clause 138	Yes	No	No	No	No	No	No
Clause 139	Yes	No	No	No	No	No	No
Clause 140	Yes	No	No	No	No	No	No
Clause 141	No	No	No	Yes	Yes	No	No
Clause 142	No	No	No	Yes	Yes	No	No
Clause 143	No	No	No	Yes	Yes	No	No
Clause 144	No	No	No	Yes	Yes	No	No
Clause 145	No	No	No	Yes	Yes	No	No
Clause 146	No	Yes	Yes	No	No	No	No
Clause 147	No	Yes	Yes	No	No	No	No
Clause 148	No	Yes	Yes	No	No	No	No

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

Clause 149	No	Yes	Yes	No	No	No	No
Clause 150	No	Yes	Yes	No	No	No	No
Clause 151	No	Yes	Yes	No	No	No	No
Clause 152	No	No	No	No	No	Yes	Yes
Clause 153	No	No	No	No	No	Yes	Yes
Clause 154	No	No	No	No	No	Yes	Yes
Clause 155	No	No	No	No	No	Yes	Yes
Clause 156	No	No	No	No	No	Yes	Yes
Clause 157	Yes	Yes	No	Yes	No	Yes	No
8 General							
Clause 158	Yes	No	No	No	No	No	No
Clause 159	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 160	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 161	No	No	No	Yes	Yes	No	No
Clause 162	No	Yes	Yes	No	No	No	No
Clause 163	No	No	No	No	No	Yes	Yes
Clause 164	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 165	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 166	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 167	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 168	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 169	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 170	Yes	Yes	Yes	Yes	Yes	Yes	Yes

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

Annex B – Products captured

583 Annex B illustrates examples of tobacco and related products, vaping and nicotine products currently on the UK market that are in the government’s view are in scope of each clause of the Bill. This is not intended to be an exhaustive list of products.

Part	Clause	Products Captured
Part 1: Sale and Distribution: England and Wales	1: Sale of tobacco etc 2: Purchase of tobacco etc on behalf of others	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigarette papers • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Herbal Shisha
	3: Tobacco vending machines	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Herbal Shisha • Cigarette papers
	4: Sale of unpackaged cigarettes	<ul style="list-style-type: none"> • Cigarettes
	5: Age of sale notice at point of sale: England 6: Age of sale notice at point of sale: Wales	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigars • Cigarillos

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

	<ul style="list-style-type: none"> • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco
<p>7: Ban on manufacture of snus etc</p> <p>8: Ban of sales of snus etc</p> <p>9: Possession of snus etc with intent to supply</p>	<ul style="list-style-type: none"> • Snus
<p>10: Sale of vaping or nicotine products to under 18s</p>	<ul style="list-style-type: none"> • Flavoured or unflavoured Nicotine vapes- liquid bottles, pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles
<p>11: Purchase of vaping or nicotine products on behalf of under 18s</p> <p>12: Vaping and nicotine product vending machines</p>	<ul style="list-style-type: none"> • Pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches • Future emerging nicotine products that are not: <ul style="list-style-type: none"> (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

13: Displays of products and prices in England

14: Displays of products and prices in Wales

- Flavoured or unflavoured Nicotine vapes- liquid bottles, disposable (single use), pods/cartridges
- Flavoured or unflavoured non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges
- Nicotine shot liquids to be placed in Shortfills/Longfills
- Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes
- Heated nicotine sticks
- Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes)
 - a) Nicotine pouches
 - b) Future emerging nicotine products that are not:
 - c) a tobacco product;
 - d) a herbal smoking product;
- cigarette papers;
- vaping products.
- Cigarettes
- Hand rolling tobacco
- Cigarette papers
- Cigars
- Cigarillos
- Pipe tobacco
- Waterpipe tobacco (e.g shisha)
- Herbal smoking products
- Nasal tobacco (snuff)
- Chewing tobacco
- Heated tobacco
- Blunts tobacco and herbal
- Herbal Shisha
- Devices that enable tobacco to be consumed (not exhaustive):
 - (a) Heated tobacco devices
 - (b) Pipes
 - (c) Bong

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

15: Free distribution and discount of products

- Flavoured or unflavoured Nicotine vapes- liquid bottles, pods/cartridges
- Flavoured or unflavoured non-nicotine vapes- liquid bottles, pods/cartridges
- Nicotine shot liquids to be placed in Shortfills/Longfills
- Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes
- Heated nicotine sticks
- Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes)
- Nicotine pouches
- Future emerging nicotine products that are not:
 - a) a tobacco product;
 - b) a herbal smoking product;
 - c) cigarette papers;
 - d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products;
 - e) vaping products.
- Cigarettes
- Hand rolling tobacco
- Cigarette papers
- Cigars
- Cigarillos
- Pipe tobacco
- Waterpipe tobacco (e.g shisha)
- Herbal smoking products
- Nasal tobacco (snuff)
- Chewing tobacco
- Heated tobacco
- Blunts tobacco and herbal
- Herbal Shisha

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

16: Prohibition of retail sales of tobacco products etc without a licence	Under a licensing scheme, a licence would be required for the retail sale of:
17: Offences in connection with licences	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco
18: Financial penalties for breach of licence conditions	<ul style="list-style-type: none"> • Cigarette papers • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products
19: Prohibition of retail sales of tobacco products etc in Wales without a licence	<ul style="list-style-type: none"> • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal
20: Offences in connection with licences: Wales	<ul style="list-style-type: none"> • Herbal Shisha • Flavoured or unflavoured nicotine vapes- liquid bottles, pods/cartridges
21: Financial penalties for breach of licence conditions: Wales	<ul style="list-style-type: none"> • Flavoured or unflavoured non-nicotine vapes- liquid bottles, pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks (Neafs) • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches • Future emerging nicotine products that are not: <ul style="list-style-type: none"> (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

<p>23: Restricted premises orders</p>	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigarette papers • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Herbal Shisha • Flavoured or unflavoured nicotine vapes- liquid bottles, pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles, pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches • Future emerging nicotine products that are not: <ul style="list-style-type: none"> (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.
<p>28: Restricted sale orders</p>	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigarette papers • Cigars • Cigarillos • Pipe tobacco

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

		<ul style="list-style-type: none"> • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Herbal Shisha • Flavoured or unflavoured nicotine vapes- liquid bottles, pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles, pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches • Future emerging nicotine products that are not: <ul style="list-style-type: none"> (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.
	45: Power to extend Part 1 to other products	<ul style="list-style-type: none"> • Devices that enable tobacco to be consumed (not exhaustive): <ul style="list-style-type: none"> (a) Heated tobacco devices (b) Pipes (c) Bongs
Part 2: Sale and distribution: Scotland	59: Age of sale for tobacco products etc	<p>If amended in accordance with clause 50 (Extension of tobacco legislation to herbal smoking products) of the Bill, sections 4, 4B, 4C, 6 and 9 of the Tobacco and Primary Medical Services (Scotland) Act 2010 will apply to tobacco products, herbal smoking products and cigarette papers.</p> <ul style="list-style-type: none"> • This will therefore cover products such as: <ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigarette papers

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

	<ul style="list-style-type: none"> • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Chewing tobacco • Heated tobacco • Blunts (tobacco and herbal) • Herbal Shisha
50: Sale of unpackaged cigarettes	<ul style="list-style-type: none"> • Cigarettes
53: Extension of tobacco legislation to herbal smoking products	<p>If amended in accordance with the Bill, section 8 of the 2010 Act will apply to a tobacco business, covering (but not limited to) a business which sells products such as:</p> <ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigars • Cigarillos • Herbal smoking product • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts (tobacco)
54: Power to make provision about warning statements	<p>If amended in accordance with the Bill, section 8 of the 2010 Act will apply to a tobacco business, covering (but not limited to) a business which sells products such as:</p> <ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigars • Cigarillos • Herbal smoking product • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts (tobacco)

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

<p>55: Ban on manufacture of snus etc</p> <p>56: Ban on sales of snus etc</p> <p>57: Possession of snus etc with intent to supply</p>	<ul style="list-style-type: none"> • Snus
<p>61: Displays of vaping and nicotine products</p>	<p>The Bill will insert clause 3A into the 2010 Act. This would apply to vaping products and nicotine products.</p> <ul style="list-style-type: none"> • The power would therefore cover products such as: • Flavoured or unflavoured Nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Flavoured or unflavoured Non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Non nicotine liquid in Shortfills/longfills bottles • Vape devices: tank based, single use, cartridge/pod systems includes E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches • Future emerging nicotine products that are not: <ul style="list-style-type: none"> (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.
<p>62: Free distribution and discount of products</p>	<ul style="list-style-type: none"> • Flavoured or unflavoured non-nicotine vapes- liquid bottles, pods/cartridges • Flavoured or unflavoured Nicotine vapes- liquid bottles, pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

<p>65: Extension of retailer register etc.</p>	<p>The Bill amends the existing retailer registration scheme in Scotland which currently applies to retailers of tobacco and vaping products, to also apply to retailers of herbal smoking products and nicotine products. Retailers of the following products will therefore be required to register once the scheme is extended:</p> <ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Herbal Shisha • Cigarette papers • Flavoured or unflavoured Nicotine vapes- liquid bottles, pods/cartridges • Flavoured or unflavoured Non-nicotine vapes- liquid bottles, pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Non nicotine liquid in Shortfills/longfills bottles • Vape devices: tank based, single use, cartridge/pod systems includes E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches • Future emerging nicotine products that are not: <ul style="list-style-type: none"> (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.
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These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

	<p>67: Power to extend 2010 Act to other products</p>	<p>Devices that enable tobacco to be consumed (not exhaustive):</p> <p>(a) Heated tobacco devices</p> <p>(b) Pipes</p> <p>(c) Bongs</p>
		<ul style="list-style-type: none"> • Future emerging nicotine products that are not: <ul style="list-style-type: none"> (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products. • Cigarettes • Hand rolling tobacco • Cigarette papers • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Herbal Shisha
<p>Part 3: Sale and distribution: Northern Ireland</p>	<p>68: Age of sale for tobacco products etc</p> <p>69: Purchase of tobacco on behalf of others</p>	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigarette papers • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Herbal Shisha

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

70: Tobacco vending machines	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Herbal Shisha • Cigarette papers
71: Sale of unpackaged cigarettes	<ul style="list-style-type: none"> • Cigarettes
72: Age of sale notice at point of sale	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Herbal Shisha
73: Ban on manufacture of snus etc 74: Ban of sales of snus etc	<ul style="list-style-type: none"> • Snus
75: Possession of snus etc with intent to supply	<ul style="list-style-type: none"> • Snus
76: Sale of vaping or nicotine products to	<ul style="list-style-type: none"> • Flavoured or unflavoured Nicotine vapes- liquid bottles, pods/cartridges

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

<p>under 18s</p> <p>77: Purchase of vaping or nicotine products on behalf of under 18s</p> <p>78: Vaping and nicotine product vending machines</p>	<ul style="list-style-type: none"> • Flavoured or unflavoured non-nicotine vapes- liquid bottles, pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches • Future emerging nicotine products that are not: <ul style="list-style-type: none"> (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.
<p>79: Displays of products and prices in Northern Ireland</p>	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigarette papers • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Herbal Shisha • Flavoured or unflavoured Nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

	<ul style="list-style-type: none"> • Future emerging nicotine products that are not: <ul style="list-style-type: none"> (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) vaping products. • Devices that enable tobacco to be consumed: <ul style="list-style-type: none"> (a) Heated tobacco devices (b) Pipes (c) Bongos
80: Free distribution and discount of products	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigarette papers • Cigars • Cigarillos
83: Extension of retailer register	<p>The Bill amends the existing retailer registration scheme in Northern Ireland which currently applies to retailers of tobacco products, herbal smoking products and cigarette papers, to also apply to retailers of vaping and nicotine products.</p> <p>Retailers of the following products will therefore be required to register once the scheme is extended:</p> <ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Herbal Shisha • Cigarette papers • Flavoured or unflavoured Nicotine vapes- liquid bottles, pods/cartridges • Flavoured or unflavoured Non-nicotine vapes- liquid bottles, pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Non nicotine liquid in Shortfills/longfills bottles • Vape devices: tank based, single use, cartridge/pod systems

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	<p>includes E-hookah; e-cigars; e-pipes</p> <ul style="list-style-type: none"> • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches • Future emerging nicotine products that are not: <ul style="list-style-type: none"> (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.
<p>84: Prohibition of retail sales of tobacco products etc without a licence</p>	<p>Under a licensing scheme, a licence would be required for the retail sale of:</p> <ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigarette papers • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Herbal Shisha • Flavoured or unflavoured nicotine vapes- liquid bottles, pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles, pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks (Neafs) • Herbal/CBD/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches

These Explanatory Notes relate to the Tobacco and Vapes Bill as brought from the House of Commons on Thursday 27 March 2025 (HL Bill 89).

		<ul style="list-style-type: none"> • Future emerging nicotine products that are not: <ul style="list-style-type: none"> (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.
Part 4: Snus etc: Seizure and Detention Powers	88: Power of officer of Revenue and Customs to seize and detain snus etc	<ul style="list-style-type: none"> • Snus
Part 5: Product and information requirements etc	89: Retail packaging 90: Features of products 91: Contents and flavour 92: Substances released into the human body and emissions 93: Non-compliant images 94: Registration 95: information 96: Studies 97: Responsible person 98: Testing 99: Product safety	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigarette papers • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Herbal Shisha • Flavoured or unflavoured Nicotine vapes- liquid bottles, pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles, pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches <p>Devices that enable tobacco to be consumed (not exhaustive)</p> <ul style="list-style-type: none"> (a) Heated tobacco devices (b) Pipes

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		<ul style="list-style-type: none"> (c) Bongos • Future emerging nicotine products that are not: <ul style="list-style-type: none"> (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) vaping products.
Part 6: Advertising and Sponsorship	113: Publishing advertisements 114: Designing advertisements 115: Printing advertisements 116: Distributing advertisements 117: Causing publication, designing, printing or distribution 118: Internet services 122: Brandsharing 123: Sponsorship: tobacco products 124: Sponsorship: vaping and nicotine and other products 125: Audiovisual services and radio broadcasting 126: Extension of provisions about audiovisual and radio broadcasting	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco • Cigarette papers • Herbal smoking products • Flavoured or unflavoured Nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches • Future emerging nicotine products that are not: <ul style="list-style-type: none"> (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.
	132: Power to extend Part 6 and	Devices that enable tobacco to be consumed (not exhaustive):

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	Communications Act 2003 to other products	<ul style="list-style-type: none"> (a) Heated tobacco devices (b) Pipes (c) Bongos
Part 7: Smoke-free places, Vape-free places and other free-from places	135: Addition of smoke-free places in England	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal Shisha • Herbal smoking products
	138: Vape-free places in England	<ul style="list-style-type: none"> • Flavoured or unflavoured Nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes)
	139: Heated tobacco-free places in England	<ul style="list-style-type: none"> • Heated tobacco
	141: No-smoking premises in Scotland	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal Shisha • Herbal smoking products
	143: Vape-free premises in Scotland	<ul style="list-style-type: none"> • Flavoured or unflavoured Nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks

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	<ul style="list-style-type: none"> Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes)
144: Heated tobacco-free premises in Scotland	<ul style="list-style-type: none"> Heated tobacco
147: Smoke-free vehicles in Wales	<ul style="list-style-type: none"> Cigarettes Hand rolling tobacco Cigars Cigarillos Pipe tobacco Waterpipe tobacco (e.g shisha) Herbal Shisha Herbal smoking products
149: Vape-free places in Wales	<ul style="list-style-type: none"> Flavoured or unflavoured Nicotine vapes- liquid bottles, disposable (single use), pods/cartridges Flavoured or unflavoured non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges Nicotine shot liquids to be placed in Shortfills/Longfills Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes Heated nicotine sticks Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes)
150: Heated tobacco-free places in Wales	<ul style="list-style-type: none"> Heated tobacco
152: Additional smoke-free places in Northern Ireland	<ul style="list-style-type: none"> Cigarettes Hand rolling tobacco Cigars Cigarillos Pipe tobacco Waterpipe tobacco (e.g shisha) Herbal Shisha Herbal smoking products
154: Vape-free places in Northern Ireland	<ul style="list-style-type: none"> Flavoured or unflavoured Nicotine vapes- liquid bottles, disposable (single use), pods/cartridges Flavoured or unflavoured non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges Nicotine shot liquids to be placed in Shortfills/Longfills Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes

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	<ul style="list-style-type: none"> • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes)
155: Heated tobacco-free places in Northern Ireland	<ul style="list-style-type: none"> • Heated tobacco
157: Power to prohibit vaping etc on ships	<ul style="list-style-type: none"> • Flavoured or unflavoured Nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes)

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Annex C – Compatibility with the European Convention on Human Rights

The Bill and Convention Rights

Smoke-free generation policy

Clause 1 – Sale of tobacco etc (E&W)

Clause 49 – Age of sale for tobacco products etc (Scotland)

Clause 68 – Age of sale for tobacco products etc (Northern Ireland)

584 Clause 1 makes it an offence in England and Wales to sell a tobacco product, a herbal smoking product or cigarette papers ('tobacco products') to a person born on or after 1st January 2009. This replaces the current age of sale restriction of 18 for these products. Clauses 49 and 68 make the same provision for Scotland and Northern Ireland by amending the Tobacco and Primary Medical Services (Scotland) Act 2010 and the Health and Personal Social Services (Northern Ireland) Order 1978 respectively.

585 There will be no change to the law for anyone who can presently be sold tobacco products (so is over 18 now) nor for those who reach the age of 18 before 1st January 2027. The cohort in respect of whom the smoke-free generation policy will apply are too young to be sold tobacco products at present. It will not be an offence for someone in this cohort to possess tobacco products nor will smoking be criminalised. The impact for businesses will be on future sales of tobacco products, to a group who cannot currently be sold these products, with a reduction in overall sales of tobacco products in the United Kingdom over time.

Article 1 Protocol 1 Right to Property

586 The smoke-free generation policy which will apply to a cohort of the UK population born on or after 1 January 2009 may engage the right of peaceful enjoyment to the possessions of those businesses affected by an expected reduction in sales of tobacco products to the UK market. If, or to the extent that, Article 1 Protocol 1 (A1P1) is engaged then the Department considers that any interference can be justified and is proportionate.

587 The smoke-free generation policy is provided for by law as it is contained in primary legislation subject to significant parliamentary scrutiny. The provisions pursue legitimate aims including preventing young people from becoming addicted to tobacco and protecting public health by gradually eliminating use of tobacco products. The Department considers that the measures are a proportionate means to achieve these aims with no less restrictive measure achieving the same effect, and do not impose an undue burden on affected businesses.

Article 8 with Article 14 Right to enjoy ECHR rights without discrimination

588 Individuals born before 1 January 2009 will be able to be sold tobacco products from age 18 as now. Someone born on 31 December 2008 will be in a different position from someone born on 1 January 2009. This difference in treatment could potentially engage the right to enjoy ECHR rights without discrimination (Article 14) if this measure is within the ambit of a substantive ECHR right such as Article 8: right to respect for family and private life.

589 The Department's view is that these measures which control the sale of tobacco products without otherwise prohibiting or limiting what individuals can do would not engage the right

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to private and family life. The legislation would not criminalise individuals in the affected cohort for possessing tobacco products or smoking.

590 Alternatively, if these measures are within the ambit of Article 8, the Department considers that any interference (Article 8) and any differential treatment (Article 14) can be justified and is proportionate. The only practical way for the measure to be introduced is with a cut-off date after which individuals cannot be sold tobacco; this prohibition is limited in that it will apply to a subset of individuals only (those born on or after 1 January 2009). The justification for any difference of treatment is that this is necessary in order to introduce the measure to achieve the legitimate aim of the protection of public health. There is no less restrictive way to achieve the aim of ultimately making smoking and use of tobacco obsolete. Any interference with Article 8 is justified under Article 8(2) for being in accordance with the law and necessary and proportionate in a democratic society in pursuit of a legitimate aim to protect public health.

591 Accordingly, the Department considers that these provisions are compatible with Article 1 Protocol 1 of the ECHR and Article 8 of the ECHR read with Article 14.

Vending Machine ban

Clauses 3 and 12 – Tobacco vending machines and vaping and nicotine product vending machines (E&W)

Clause 58 – Extension of offences to vaping and nicotine products (Scotland)

Clauses 70 and 78 – Tobacco vending machines and vaping and nicotine product vending machines (Northern Ireland)

592 Clauses 3, 58 and 70 re-enact the ban on vending machines for the sale of tobacco and extend the ban to vending machines selling herbal smoking products and cigarette papers for England and Wales, Scotland and Northern Ireland respectively. Clauses 12, 58 and 78 ban the sales of vaping products and nicotine products from vending machines. These clauses make it clear that vending machines that dispense products to customers are captured where the sale may have taken place separately from the machine, for example, machines that operate via tokens, coupons, or receipts are captured by the prohibition.

593 Sales of tobacco from vending machines were banned in England and Wales and Scotland in 2010. The impact of these measures will be on businesses that provide vending machines for the sale of products other than tobacco, and on businesses that have such machines available for use on their premises.

Article 1 Protocol 1 Right to property

594 The ban will affect the use of assets held by businesses that own vending machines for the sale of herbal smoking products, cigarette paper and vaping and nicotine products, and therefore it is likely to engage the right of peaceful enjoyment to those possessions by these businesses. In respect of the impact on businesses that make available vending machines for use, it seems less likely that Article 1 Protocol 1 (A1P1) is engaged because anticipated future income is not a possession within scope of A1P1. To the extent that Article 1 Protocol 1 (A1P1) is engaged then the Department considered that any interference can be justified and is proportionate.

595 The ban on vending machines for the sale of tobacco products was challenged in the Courts: *R (Sinclair Collis Ltd) v Secretary of State for Health* [2011] EWCA Civ 437; [2012] QB 394. The Court taking the view that the ban was to be considered as an interference with property

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amounting to a control of use rather than a deprivation. This interference would be 'provided for by law' as it would be contained in primary legislation.

596 The ban on vending machines for these products pursues the legitimate aim of protecting children's health by restricting children's use of, and exposure to, tobacco and herbal smoking products, products containing nicotine and cigarette papers which enable smoking. The further aim is to limit access to tobacco products and to nicotine products for adults who do not smoke and reduce visibility of these products due to the presence of vending machines. The existence of vending machines for these products is a form of promotion.

597 The Department considers that the measures are a proportionate means to achieve these aims with no less restrictive measure achieving the same effect, and do not impose an undue burden on affected businesses. Accordingly, the Department considers that these provisions are compatible with Article 1 Protocol 1 of the ECHR.

Advertising and sponsorship

Clauses 113 – 118 – Publishing advertisements, designing advertisements; printing advertisements; distributing advertisements; causing publication, designing, printing or distribution; and internet services

Clause 123 – Sponsorship which promotes tobacco products

Clause 124 – Sponsorship which promotes herbal smoking, vaping or nicotine products or cigarette papers

598 Clauses 113-118 contain provisions relating to advertisement. These make it unlawful to publish or cause to be published any advertisement promoting tobacco, herbal smoking products, vaping and nicotine products and cigarette papers in the course of business, as well as to print, design or distribute such an advertisement in electronic or physical formats.

599 Clause 123 makes it an offence to be party to an agreement and contribute in the course of a business if the purpose or effect of the agreement is to promote a tobacco product. This clause re-enacts the current ban on tobacco sponsorship in the Tobacco Advertising and Promotion Act 2002. Clause 122 creates a new offence to be a party to an agreement and contribute such that this has the purpose or effect of promoting a herbal smoking product, a vaping or nicotine product and cigarette papers.

600 The new offence under clause 124 applies to agreements entered into after the section comes into force when contributions are made under the agreement on or after a later date which will be specified in regulations. Agreements entered into before the section comes into force will not be affected by the prohibition. A reasonable time period will be allowed for agreements entered into after the section comes into force to be concluded. Parties to sponsorship agreements entered into after clause 124 comes into force will be aware that their agreement will have to be terminated when the prohibition comes into effect.

Article 1 Protocol 1

601 The Department's view is that the introduction of the ban under clause 124 would not engage the right to peaceful enjoyment of possessions under A1P1. It should be possible for businesses to avoid the prohibition applying to existing sponsorship agreements and, therefore, the prohibition will not cause any loss to be suffered under existing contracts. To the extent that Article 1 Protocol 1 (A1P1) is engaged then the Department considers that any interference can be justified and is proportionate.

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602 The prohibition pursues the legitimate aims of improving public health by making such products less visible and so less attractive to children and non-smokers. The Department considers that the restriction is a proportionate means to achieve the stated public health policy aims. Accordingly, the Department considers that these provisions are compatible with Article 1 Protocol 1 of the ECHR.

Article 10 right to freedom of expression

603 The European Court of Human Rights has established that freedom of expression extends to commercial expression in a series of cases and that advertising is a form of expression protected under Article 10. Consequently, these provisions have the potential to interfere with the right to freedom of expression.

604 Freedom of expression is a qualified right and, therefore, can be legitimately interfered with where there is sufficient justification and provided the interference is proportionate. Article 10(2) specifically provides that the exercise the right to freedom of expression may be subject to conditions and restrictions prescribed by law (among other reasons) in the interest of public safety and the protection of health.

605 In this case, the limitations on advertising tobacco, herbal smoking products, vaping and nicotine products and cigarette papers pursue the legitimate aims of improving public health by making these harmful products less visible and so less attractive to children and non-smokers, thereby reducing uptake amongst new users.

606 The Department considers that the restrictions on the advertising and sponsorship of these products contained are proportionate. They are contained in primary legislation and so have been subject to significant parliamentary scrutiny. Furthermore, governments are generally granted a wide margin of appreciation in respect of measures seeking to achieve public health objectives.

607 Accordingly, the Department considers these provisions are compatible with A1P1 and Article 10 of the ECHR.

Powers of entry, search and seizure

Clause 32 – Enforcement by local weights and measures authorities

Clause 88 – Power of officer of Revenue and Customs to seize and detain snus etc

Clause 103 – Enforcement

608 Clause 32 makes provision for enforcement in England and Wales by local weights and measures authorities (Trading Standards officers), in relation to the smoke-free generation policy and associated offences in Part 1 of the Bill. To enforce these offences, Trading Standards officers are given the investigatory powers set out in Schedule 5 to the Consumers Rights Act 2015. These include powers to request the production of specified information or documents, a power to enter premises and a power to inspect, seize and test documents, good or products.

609 To facilitate enforcement by Trading Standards officers, clause 88 enables an officer of Revenue and Customs to seize any relevant oral tobacco products that have been imported and detain them for not more than 48 hours.

610 Regulations made under Clause 103 may make provision about enforcement in relation to regulations made under Part 5, including applying provisions of the Consumer Protection Act 1987 to provide Trading Standards officers with investigatory powers such as to enter premises, search and seize documents or goods.

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A1P1 and Article 8

- 611 The powers of entry, search and seizure which are or may be conferred by these clauses may be used to enter premises to obtain information for the purposes of an investigation or seize goods, and therefore engage Article 8 and A1P1.
- 612 The purpose of providing these powers is to facilitate high quality investigations to support effective enforcement. They will only be used for this purpose and there are safeguards provided in Schedule 5 of the Consumer Rights Act 2015 and the Consumer Protection Act 1987 to ensure that these powers are compatible with ECHR rights. Furthermore, the powers are exercisable only by local weights and measures authorities and Revenue and Customs Officers, public bodies who are required by section 6 of the Human Rights Act 1998 to act compatibly with ECHR rights.
- 613 The Department considers that any interference with Article 8 is justified under Article 8(2) for being in accordance with the law and necessary in a democratic society and any interference with A1P1 is justified on the basis that it is prescribed by law, in pursuit of a legitimate aim and proportionate. These powers have a clear and rational connection to the pursuit of a legitimate aim in preventing crime as well as protection of health. The safeguards in place for the exercise of these powers will ensure that they are exercised proportionately.
- 614 Accordingly, the Department considers the powers which are or may be conferred by these clauses are compatible with Article 8 and A1P1 of the ECHR.

TOBACCO AND VAPES BILL

EXPLANATORY NOTES

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