

## **TOBACCO AND VAPES BILL**

Supplementary Memorandum (No.1) from the Department of Health and Social Care to the Delegated Powers and Regulatory Reform Committee

### **A. INTRODUCTION**

1. This Supplementary Memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee (DPRRC) by the Department of Health and Social Care to assist with scrutiny of the Tobacco and Vapes Bill (“the Bill”). It supplements the second memorandum that was submitted and published on Thursday 27 March 2025 (“the Delegated Powers Memorandum of 27 March 2025”) to support the introduction of the Bill to the House of Lords.
2. This Supplementary Memorandum describes the delegated powers which would be amended or added to the Bill by amendments tabled by the Government on 17<sup>th</sup> February 2026. It explains in each case why the new powers have been taken and explains the nature of, and the reason for, the procedure selected.
3. The Department has considered the use of powers in the Bill as set out below and is satisfied that they are necessary and justified.

### **B. PURPOSE AND EFFECT OF THE BILL**

4. The DPRRC is referred to the Delegated Powers Memorandum of 27 March 2025 (paragraphs 2-6) for a summary of the Bill.

### **C. DELEGATED POWERS**

5. The relevant delegated powers in the Bill which have been amended are as follows:

#### **I. Part 1: Sale and distribution: England and Wales**

- i. **Clause 1 (Sale of tobacco etc):** This amendment changes the parliamentary procedure for making age verification regulations for the sale of tobacco products from negative to affirmative, as per the recommendation from the DPRRC.
- ii. **Clause 10 (Sale of vaping or nicotine products under 18s):** This amendment changes the parliamentary procedure for making age

verification regulations for the sale of vaping or nicotine products from negative to affirmative, as per the recommendation from the DPRRC.

- iii. **Clause 16 (Prohibition of retail sales of tobacco products etc in England without a licence):** This amendment slightly narrows the existing power by removing combined authorities and combined county authorities from the list of local authorities that can be specified in regulations as licensing authorities.
- iv. **Clause 39 (Power to change amount of fixed penalties: England) and New clause (Power for Welsh Ministers to change the amount of fixed penalties: Wales):** These amendments split out the current powers for England and Wales in clause 39 into two separate clauses as part of a wider bundle of amendments. These amendments do not change the operation of the powers in what was clause 39.
- v. **Clause 45 (Power to extend Part 1 to other products):**
  - a. The existing power (for the Secretary of State to amend Part 1 of the Bill to extend any provision that applies to a tobacco product to a tobacco related device) is amended to also permit the Secretary of State to amend Part 1 to extend such provisions to certain filters.
  - b. A new power is created to amend Part 1 to make the prohibitions in clauses 7-9 against the manufacture, sale, and possession (with intent to supply) of snus apply to filters.

## **II. Part 2: Sale and distribution: Scotland**

- vi. **New Clause (Alignment of definition of “filter” etc):** This amendment broadens an existing power for Scottish Ministers to amend the list of items which are defined as smoking related products for the purposes of Part 1 of the Tobacco and Primary Medical Services (Scotland) Act 2010.
- vii. **Clause 67: (Power to extend 2010 Act to other products):**
  - a. The existing power (for Scottish Ministers to amend Part 1 of the Tobacco and Primary Medical Services (Scotland) Act 2010 to extend any provision that applies to a tobacco product to smoking related products) is slightly amended in concert with other amendments to ensure that it captures filters.
  - b. A new power is created to amend Part 1 of the Tobacco and Primary Medical Services (Scotland) Act 2010 to make the prohibitions inserted by clauses 55-57 against the manufacture, sale, and possession (with intent to supply) of snus apply to filters.

## **III. Part 3: Sale and distribution: Northern Ireland**

- viii. **Clause 68 (Age of sale for tobacco products): Northern Ireland:** This amendment changes the parliamentary procedure for making age verification regulations for the sale of tobacco products in Northern Ireland from negative to affirmative, as per the recommendation from the DPRRC.
- ix. **Clause 76 (Sale of vaping or nicotine products to under 18s): Northern Ireland:** This amendment changes the parliamentary procedure for making age verification regulations for the sale of vaping or nicotine products in Northern Ireland from negative to affirmative, as recommended by the DPRRC for Clause 1, 10 and 68.
- x. **Clause 85 (Power to extend legislation to other products): Northern Ireland:**
  - a. The existing power (for the Department of Health in Northern Ireland to amend Part 2 of the Health and Personal Social Services (Northern Ireland) Order 1978 and the Tobacco Retailers Act (Northern Ireland) 2014 to extend any provision that applies to a tobacco product to a tobacco related device) will now also permit the Department to amend Part 2 to extend such provisions to certain filters.
  - b. A new power is created to amend Part 2 of the same Order to make the prohibitions inserted by clauses 73-75 against the manufacture, sale, and possession (with intent to supply) of snus apply to filters.

#### **IV. Part 4: Snus etc: Seizure and detention powers**

- xi. **New Clause (Extension of section 88 to filters):** This amendment is to allow for the provisions in clause 88 (Power of officer of Revenue and Customs to seize and detain snus etc) to be extended to include any offences made under the new powers in clause 45(1A) and inserted by clauses 67 and 85 to create prohibitions against filters.

#### **V. Part 5: Product and information requirements etc**

- xii. **Clause 89 (Retail packaging):** This amendment is to extend the power for the Secretary of State to make regulations about retail packaging to apply to 'filters'.
- xiii. **Clause 90 (Features of products):**
  - a) This amendment is to extend the power for the Secretary of State to make regulations about features of products to apply to 'filters'.
  - b) A separate amendment extends the power for the Secretary of State to also make regulations about technological features of tobacco related devices or vaping devices and software used in connection with those features.

- xiv. **Clause 91 (Contents and flavours):** This amendment is to extend the power for the Secretary of State to make regulations about contents and flavours to apply to filters.
- xv. **Clause 92 (Substances released into the human body and emissions):** This amendment is to extend the power for the Secretary of State to make regulations about the substances that may be released into the body of a person using or of the emissions released by a product to apply to filters.
- xvi. **Clause 93 (Non-compliant images):** This amendment is to extend the power for the Secretary of State to make regulations about non-compliant images of certain products or their packaging to apply to filters.
- xvii. **Clause 94 (Registration):** This amendment is to extend the power for the Secretary of State to make regulations about a register of certain products to apply to filters.
- xviii. **Clause 95 (Information):** This amendment is to extend the power for the Secretary of State to make regulations about the provision or publication of information to apply to filters.
- xix. **Clause 96 (Studies):** This amendment is to extend the power for the Secretary of State to make regulations about studies in relation to certain products or their ingredients to apply to filters.
- xx. **Clause 97 (Responsible person):** This amendment is to extend the power for the Secretary of State to make regulations requiring the nomination of a person responsible on behalf of producers of certain products for providing information to apply to filters.
- xxi. **Clause 99 (Product safety):** This amendment is to extend the power for the Secretary of State to make regulations about product safety to apply to filters.
- xxii. **Clause 100 (Matters dealt with by 2016 Regulations):** This amendment is to extend the power for the Secretary of State to make provision in regulations which is similar to, or which applies, provisions in the Tobacco and Related Products Regulations 2016 to apply to filters.
- xxiii. **Clause 102 (Offences):** This amendment is consequential to changes made by the Product Regulation and Metrology Act 2025 to enforcement functions previously conferred by the Consumer Protection Act 1987, and is required in order to maintain a flexible and proportionate penalties regime.
- xxiv. **Clause 103 (Enforcement) (supplementary):** This amendment removes and replaces Clause 103 (Enforcement) as a consequence of the same changes made to existing consumer protection enforcement functions by the Product Regulation and Metrology Act 2025. The new clause recasts, and narrows, the powers to ensure effective enforcement of Part 5 of the Bill without reference to legislation which was repealed by that Act.

## VI. Part 6: Advertising and Sponsorship

- xxv. **Clause 132 Power to extend Part 6 and Communications Act 2003 to other products:** This amendment extends the existing power (for the Secretary of State to amend Part 6 of the Bill, and the Communications Act 2003, to extend any provision that applies to a tobacco product to a device of a specified description) to certain filters.

### D. ANALYSIS OF DELEGATED POWERS BY CLAUSE

#### Part 1: Sale and Distribution: England and Wales

##### *Sale of Tobacco etc*

##### **Amendment to Clause 1: Sale of Tobacco etc**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary procedure: Affirmative*

##### Context and purpose

6. As discussed in paragraphs 1-8 of the Delegated Powers Memorandum of 27 March 2025, the Bill will provide the Secretary of State with a power to specify in regulations the steps which may be taken to verify that a customer was born before 1 January 2009 as a defence to the age of sale offence in England and Wales. Specifying the steps that retailers can take as a defence will support retailers and Trading Standards by providing a clear example of what it means to take ‘all reasonable steps’ when verifying a customer’s age.
7. The purpose of the amendment is to change the parliamentary procedure to the affirmative resolution procedure, rather than the negative resolution procedure, as recommended by the DPRRC.
8. This amendment has been tabled by a Peer, Lord Moylan, and the Government supports this amendment.

##### Justification for taking the power

9. As discussed in paragraphs 9-11 of the Delegated Powers Memorandum of 27 March 2025, setting out detailed digital age verification processes in primary legislation would not be appropriate. A regulation-making power is therefore needed to allow for the necessary procedural detail, future technological developments and updates to permissible identity documents.

10. The amendment to Clause 1 does not alter the scope, purpose or effect of the power as originally set out in the Delegated Powers Memorandum of 27 March 2025.

#### Justification for the procedure

11. The amendment will ensure that regulations made under this power will be subject to the affirmative resolution procedure. This is aligned with DPRRC's recommendation that the affirmative procedure is the correct level for this power, given the importance of regulations made under clause 1(2)(a).

### ***Sale of vaping and nicotine products etc***

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

##### **Procedure for making age verification requirements**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary procedure: Affirmative*

#### Context and purpose

12. As discussed in paragraphs 23-26 of the Delegated Powers Memorandum of 27 March 2025, the Bill provides the Secretary of State with a power to specify in regulations the steps which may be taken to verify that a customer was 18 or over as a defence to the age of sale offence in England and Wales.

13. The purpose of the amendment is to change the parliamentary procedure to the affirmative resolution procedure, rather than the negative resolution procedure, as recommended by the DPRRC.

14. This amendment has been tabled by a Peer, Lord Moylan, and the government supports this amendment.

#### Justification for taking the power

15. The justification is the same as that set out in Amendment to Clause 1 (Sale of tobacco etc).

#### Justification for the procedure

16. The justification is the same as that set out in Amendment to Clause 1 (Sale of tobacco etc).

## ***Retail licensing: England***

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

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary procedure: Affirmative*

#### Context and purpose

17. As discussed in paragraph 48 of the Delegated Powers Memorandum of 27 March 2025, Schedule 1 provides further information regarding the potential scope and content of the regulations made under the delegated power in clause 16, in relation to the retail licensing scheme.
18. The purpose of this amendment is to remove combined authorities and combined county authorities from the list of local authorities that can be specified in regulations as licensing authorities. This amendment has been necessary as part of a suite of amendments to enable the licensing provisions to be enforced in England by both local weights and measures authorities and district councils that are licensing authorities (where they are at different tiers of local authority).
19. It is not currently the Government's policy intention to designate combined authorities and combined county authorities as licensing authorities under the Bill. Should the policy position change in future, and were combined authorities and combined county authorities to be designated as licensing authorities, this could be achieved by conferring the enforcement functions on the constituent district and county councils, and then, if desired, rely on making provision under existing legislation to give the function to a combined authority or combined county authority.

#### Justification for taking the power

20. Paragraphs 50-57 in the Delegated Powers Memorandum of 27 March 2025 set out the justification for taking this delegated power. This amendment does not result in taking a new power, but rather slightly narrows the existing power.

#### Justification for the procedure

21. Paragraph 58 in the Delegated Powers Memorandum of 27 March 2025 sets out the justification for taking the affirmative procedure. This amendment makes no changes to this procedure.

### ***Fixed Penalties***

#### **Clause 39 (Power to change amount of fixed penalties: England) and New Clause after clause 39: Power for Welsh Ministers to change the amount of fixed penalties: Wales**

*Power conferred on: Welsh Ministers*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary procedure: Affirmative*

#### Context and purpose

22. As discussed in paragraphs 82-85 in the Delegated Powers Memorandum of 27 March 2025, the Bill provides Welsh Ministers in Wales (and the Secretary of State in England) with the power to change the amount of fixed penalty notices, currently £200 on the face of the Bill.

23. We are amending the Bill to ensure that where a designated licensing authority is at a different tier of local government to a local weights and measures authority, the licensing authority will also be able to issue fixed penalty notices for licensing offences to support enforcement of the scheme. These changes are only necessary for England because of differences in local government structures between the different nations. It has therefore been necessary to separate provisions relating to fixed penalty notices which covered both England and Wales into individual provisions for England and Wales respectively.

24. This amendment is not creating a new power. The existing power was previously included in Clause 39 and has been split into separate provisions for England and Wales. This is necessary to account for amendments to England-specific enforcement references. Therefore, this amendment does not substantially change the purpose of the original power covered in the Delegated Powers Memorandum of 27 March 2025.

#### Justification for taking the power

25. This amendment is not creating a new power. The existing power was previously included in Clause 39 and has been split into separate provisions for England and Wales. This is necessary to account for amendments to England-specific

enforcement references. o Therefore, this amendment does not substantially change the purpose of the original power covered in the Delegated Powers Memorandum of 27 March 2025.

26. As discussed in paragraphs 86-87 in the Delegated Powers Memorandum of 27 March 2025, this power enables Welsh Ministers to change the amount of the fine and the discounted amount in line with economic and social circumstances, like inflation, to ensure the value remains proportionate.

27. This amendment makes a minor, technical change to the structure of the existing delegated power. It does not alter the scope, purpose or effect of the power as originally set out in the Delegated Powers Memorandum of 27 March 2025.

#### Justification for the procedure

28. See paragraph 88 in the Delegated Powers Memorandum of 27 March 2025.

29. The amendment does not alter the procedure of the power as originally set out in the Delegated Powers Memorandum of 27 March 2025.

### ***Powers to adjust scope***

#### **Amendment to Clause 45: Power to extend Part 1 to other products**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary procedure: Affirmative*

#### Context and Purpose

30. As discussed in paragraphs 95-97 of the Delegated Powers Memorandum of 27 March 2025, the Secretary of State has the power to amend Part 1 of the Bill to extend any provision that applies to a tobacco product to also apply to a tobacco related device.

31. The purpose of this amendment is to extend the power for the Secretary of State to amend Part 1 of the Bill so that any provision that applies to a tobacco product can also apply to ‘a filter that does not form part of a tobacco product or herbal smoking product’.

32. The purpose of this power is to ensure that the Government has the ability to act if, after gathering more evidence on the harms of these products, we judge that regulation is necessary. The powers we are taking on filters allow for flexibility to adapt the regulations depending on the development of evidence of harm caused through the use of filters.
33. This amendment also provides a new power to allow for Clauses 7 (Ban on manufacture of snus) 8 (Ban on sale of snus etc) 9 (Possession of snus etc with intent to supply) to be extended to include filters. This means the Secretary of State has the power to ban the sale, manufacture and possession with intent to supply filters if that is decided to be the best course of action following consultation. The equivalent powers can also be found for Scotland in amendments to Clause 67 (Power to extend 2010 Act to other products), and Northern Ireland in amendments to Clause 86 (Power to extend legislation to other products).
34. As with the existing power at clause 45, these powers will be subject to a requirement to obtain consent of the Welsh Ministers if the regulations contain provision which is within the competence of the Senedd Cymru.

#### Justification for taking the power

35. As discussed in paragraphs 98-102 of the Delegated Powers Memorandum of 27 March 2025. The existing power remains narrow in scope. This amendment to the power is also narrow in scope as it only permits the legislation to be extended to filters (as now defined in clause 47) other than a filter forming part of a tobacco product or herbal smoking product.
36. As the evidence base on the harms these products is emerging, a delegated power is required so that the government can ensure the products in scope of the restrictions are appropriate, encompassing products which impact or falsely give the impression of protecting from the harms of these tobacco and herbal smoking products. This future-proofs the policy, as it allows us to act quickly as the evidence emerges.
37. There is evidence of misperceptions that cigarette filters make cigarettes less harmful. There is a risk that this could influence smoking behaviours. There is precedent for regulating other elements of tobacco products that have health misconceptions - e.g. we ban messaging on tobacco packaging that suggests the product may reduce the harm of smoking or have any health or lifestyle benefits. Therefore, we think it is justified to have the power to regulate these products in the future if needed. There is also some evidence to suggest that

filters may have contributed to a rise in lung adenocarcinomas, a type of lung cancer, among smokers. However, the evidence base about the direct health impact is still forming, and if the evidence demonstrates we should be legislating then we need to be able to do so to protect the health of those people still using these products.

38. The Bill already currently regulates tobacco products, herbal smoking products and cigarette papers. The products in scope of the Bill focuses on those that cause or facilitate harm. However, fair concerns have been raised by parliamentarians that during passage that filters may also fall into this category but are not comprehensively addressed within the scope of the legislation.
39. Therefore, it is reasonable that the Government may need to regulate filters in a similar way to these other products (already in scope of the legislation) as the evidence base develops. Given we are already regulating very similar products in the Bill, we judge that it is a better use of parliamentary time to grant powers to allow us to regulate filters via secondary legislation.
40. We have taken a suite of powers to allow us to respond to evidence gathered after passage of the Bill. For Part 1, this includes powers to include filters in provisions on free distribution, display and age of sale of products. This follows the established approach to tobacco related devices where the product category, and accordingly the accompanying evidence base, is emerging, as is the case with filters. The powers, along with the definition of, filters will enable us to target the restrictions to activities and products based on the evidence of harm. This means the power is future proofed to allow regulation to flex to industry innovation, which is set out in more detail in paragraphs 98-102 of the Delegated Powers Memorandum of 27 March 2025.
41. However, it also applies to clauses 7(Ban on manufacture of snus) 8 (Ban on sale of snus etc) 9(Possession of snus etc with intent to supply) allowing for a ban on the sale, manufacture and possession with intent to supply filters. This is required because tobacco is a uniquely harmful product. Filters are very frequently used with tobacco products (and herbal smoking products) and there is emerging evidence that filters may have contributed to a rise in lung adenocarcinomas among smokers and therefore could pose an additional risk. It is also important to note that filters are not integral to someone being able to smoke. Therefore, if the Government decided in the future to introduce a ban on filters, this would not be the equivalent to a ban on smoking but could potentially protect the health of people who use these products. Having the flexibility to be

able to ban filters in the future is therefore reasonable for a narrowly defined product.

42. These amendments are needed to ensure that the legislation is as comprehensive and future-proof as possible; the need to react quickly to emerging evidence indicates that a power is the best way to proceed, to allow us to be responsive given the risk of increasing the harm occasioned.

43. This power will be subject to a requirement to consult before exercising. This ensures that there will be appropriate engagement prior to any provisions being extended to include filters.

#### Justification for the procedure

44. There are two amendments to this clause. The first amends an existing power and therefore justification follows that for the existing power.

45. The second power is a new power to extend the snus provisions to filters. Regulations made under this power will be subject to the affirmative procedure. The affirmative procedure will enable a debate and vote in both Houses of Parliament, so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny to ensure that the right balance has been struck between industry and public health. This is a Henry VIII power that allows for primary legislation to be amended by subordinate legislation and the affirmative procedure is considered to provide the appropriate level of parliamentary scrutiny.

## **Part 2: Sale and distribution: Scotland**

### ***Powers to extend legislation***

#### **New clause (before 63): Alignment of definition of “filter” etc**

*Power conferred on: Scottish Ministers*

*Power exercised by: Regulations made by Scottish Statutory Instrument*

*Parliamentary procedure: Affirmative*

#### Context and Purpose

46. The amendment to section 35(3) of the Tobacco and Primary Medical Services (Scotland) Act 2010 (the 2010 Act) will amend an existing enabling power which allows Scottish Ministers to modify the list in section 35(2) as they consider appropriate.

47. Section 35(2) contains a list of items which are smoking related products for the purposes of Part 1 of the 2010 Act.

Justification for taking the power

48. The amendment is narrow in scope and will ensure that the Scottish Ministers will not be confined to amending the text of section 35(2) but could, for example, insert a new subsection that defines a term used in section 35(2). The delegated power is considered appropriate to provide flexibility in the future when it comes to the list of smoking related products and how the items on the list are defined.

Justification for the procedure

49. The amended enabling power in section 35(3) will be subject to the affirmative procedure which is the same procedure which currently applies by virtue of section 40(4) of the 2010 Act.

**Amendment to clause 67: Power to extend 2010 Act to other products**

*Power conferred on: Scottish Ministers*

*Power exercised by: Regulations made by Scottish Statutory Instrument*

*Parliamentary procedure: Affirmative*

Context and Purpose

50. As discussed in paragraphs 126-132 of the Delegated Powers Memorandum of 27 March 2025, Scottish Ministers will have the power to amend Part 1 of the Tobacco and Primary Medical Services (Scotland) Act 2010 to extend any provision in Part 1 of that Act that applies 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). Clause 67 will also provide 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).

51. Under s.35(2) of the 2010 Act, the list of smoking related products currently includes “cigarette filters”. This is being amended in the new clause above (Alignment of definition of “filter” etc) of our Bill to insert a definition of filters that more expressly aligns with the definition of filters being taken for England, Wales, and Northern Ireland. Once amended, the list of smoking related

products in s.35(2) will include ‘filters that do not form part of a tobacco product or herbal smoking product’.

52. As mentioned in paragraph 50 above, the power in clause 67 will already enable Scottish Ministers to extend any provision in Part 1 of the 2010 Act to some or all smoking related products. The purpose of the amendment to the enabling power is to ensure that the power being inserted by clause 67 will continue to capture ‘a filter that does not form part of a tobacco product or herbal smoking product’ even if such a product were not listed as a smoking related product. This ensures continued alignment in the future if Scottish ministers were to amend the definition of smoking related products in s.35(2) of the 2010 Act.

53. This amendment also provides a new power to allow for sections 9A(Ban on manufacture of snus etc) 9B (Ban on sale of snus etc) and 9C (Possession of snus etc with intent to supply) of the 2010 Act (inserted by clauses 55-57 of this Bill) to be extended to include filters. This means Scottish Ministers will have the power to ban the sale, manufacture and possession with intent to supply filters if that is decided to be the best course of action following consultation.

#### Justification for taking the power

54. The amendment to the power(for Scottish Ministers to amend Part 1 of the 2010 Act to extend any provision that applies to a tobacco product to smoking related products) being inserted by clause 67 will ensure that the power can be used in the future for ‘a filter that does not form part of a tobacco product or herbal smoking product’ even if such a product is not listed as a smoking related product. As mentioned above, this ensures continued alignment in the future if Scottish Ministers were to amend the definition of smoking related products in s.35(2) of the 2010 Act.

55. The new power for extending any provision made by sections 9A to 9C of the 2010 Act has been explained in the equivalent power in clause 45.

#### Justification for the procedure

56. There are two amendments to this clause. The first amends an existing power to ensure that the power can continue to apply to filters (other than a filter forming part of a tobacco product or herbal smoking product) even if they are not listed as a smoking related product in the future. The power will be the same as the power which is currently contained in clause 67 for smoking related products and therefore justification follows that for the existing power. The affirmative procedure will apply by virtue of the amendment to section 40(4) of the 2010 Act in clause 67(3).

57. The second power is a new power to extend the snus provisions in sections 9A, 9B and 9C of the 2010 Act to filters. Regulations made under this power will be subject to the affirmative procedure. The affirmative procedure will enable a debate and vote in the Scottish Parliament, so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny to ensure that the right balance has been struck between industry and public health. This is a Henry VIII power that allows for primary legislation to be amended by subordinate legislation and the affirmative procedure is considered to provide the appropriate level of parliamentary scrutiny.

### **Part 3: Sale and distribution: Northern Ireland**

#### ***Sale of tobacco etc***

#### **Amendment to clause 68 (Age of sale for tobacco products etc)**

*Power conferred on: Department of Health in Northern Ireland*

*Power exercised by: Regulations made by Statutory Rule*

*Parliamentary procedure: Affirmative*

#### Context and purpose

58. As discussed in paragraphs 141-143 of the Delegated Powers Memorandum of 27 March 2025, this power will allow the Department of Health in Northern Ireland to specify in regulations the steps which may be taken to verify that a customer was born before 1 January 2009 as a defence to the age of sale offence in Northern Ireland. This is the same power as the power provided to the Secretary of State in clause 1 (Sale of tobacco etc) for England and Wales.

59. The purpose of the amendment is to change the parliamentary procedure to the affirmative resolution procedure, rather than the negative resolution procedure, to allow greater parliamentary scrutiny as recommended by the DPRRC.

#### Justification for taking the power

60. See paragraphs 9-11 of the Delegated Powers Memorandum of 27 March 2025.

#### Justification for the procedure

61. See justification provided for Amendment to clause 1 (Age of sale of tobacco etc).

#### ***Vaping and nicotine products***

## **Amendment to clause 76: Sale of vaping or nicotine products to under 18s**

*Power conferred on: Department of Health in Northern Ireland*

*Power exercised by: Regulations made by Statutory Rule*

*Parliamentary procedure: Affirmative*

### Context and purpose

62. As discussed in paragraphs 153-155 of the Delegated Powers Memorandum of 27 March 2025, this power will allow the Department of Health in Northern Ireland to specify in regulations the steps which may be taken to verify that a customer was 18 or over as a defence to the age of sale offence in Northern Ireland. This is the same power as the power provided to the Secretary of State in clause 10 (Sale of vaping or nicotine products to under 18s) for England and Wales.

63. The purpose of this amendment is to change the parliamentary procedure to the affirmative resolution procedure, rather than the negative resolution procedure, as recommended by the DPRRC for clause 1 (Sale of tobacco etc), 10 (Sale of vaping or nicotine products to under 18s) and 68 (Age of sale for tobacco products etc).

### Justification for taking the power

64. As discussed in paragraphs 9-11 of the Delegated Powers Memorandum of 27 March 2025.

### Justification for the procedure

65. The DPRRC has recommended changing the parliamentary procedure for powers on how retailers may verify the age of a customer from negative to affirmative, to allow greater parliamentary scrutiny. The Government is accepting these recommendations in full and for consistency is making an equivalent amendment to Clause 76 in relation to Northern Ireland.

66. See justification provided for the amendment to clause 1 (Sale of tobacco etc) for further details.

## ***Powers to extend legislation***

## **Amendment to clause 85: Power to extend to legislation to other products**

### **Filters**

*Power conferred on: Department of Health in Northern Ireland*

*Power exercised by: Regulations made by Statutory Rule*

*Parliamentary procedure: Affirmative*

#### Context and Purpose

67. As discussed in paragraphs 163-165 of the Delegated Powers Memorandum of 27 March 2025, the Department of Health in Northern Ireland has the power to amend Part 2 of the Health and Personal Social Services (Northern Ireland) Order 1978 (the 1978 Order) and the Tobacco Retailers Act (Northern Ireland) 2014 (the 2014 Act) to extend any provision that applies to a tobacco product to also apply to a tobacco related device.

68. The purpose of this amendment is to empower the Department of Health to amend the 1978 Order and/or the 2014 Act to extend any provision that applies to a tobacco product can also apply to a filter that does not form part of a tobacco product or herbal smoking product’.

69. The context and purpose for this power is equivalent to the amendment to clause 45 (Power to extend Part 1 to other products) and therefore covered by paragraphs 30-34 of this document.

70. This amendment also includes an additional power that allows for Articles 4E to 4G to be extended to include filters. This means the Department has the power to ban the sale, manufacture and possession with intent to supply of filters if that is decided to be the best course of action following consultation.

#### Justification for taking the power

71. As discussed in paragraphs 166 - 171 of the Delegated Powers Memorandum of 27 March 2025, the existing power remains narrow in scope. This amendment to the power and the new power to ban filters has been explained in the equivalent amendment to clause 45, and is also narrow in scope as it only permits the legislation to be extended to filters (as now defined in clause 82).

#### Justification for the procedure

72. There are two amendments to this clause. The first amends an existing power and therefore justification follows that for the existing power.

73. The second power is a new power to extend the snus provisions to filters. Regulations made under this power will be subject to the affirmative procedure. The affirmative procedure will enable a debate and vote in the Northern Ireland Assembly, so that the impacts of the regulations can be subject to appropriate

parliamentary scrutiny to ensure that the right balance has been struck between industry and public health. This is a Henry VIII power that allows for primary legislation to be amended by subordinate legislation and the affirmative procedure is considered to provide the appropriate level of parliamentary scrutiny.

## **Part 4: Snus etc: seizure and detention powers**

### **New clause (after 88): Extension of section 88 to filters**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary procedure: Affirmative*

#### Context and Purpose

74. See discussion in paragraphs 30-34, 50-53, and 67-70 of this document which sets out the powers to ban the manufacture, sale and possession with intent to supply filters in line with the current prohibitions on Snus.
75. The purpose of this amendment is to empower the Secretary of State through regulations to provide for the enforcement functions in clause 88 (Power of officer of Revenue and Customs to seize and detain snus etc) to be extended to include relevant offences made in regulations under the new powers to impose prohibitions against filters akin to prohibitions against snus.
76. This means, that if in the future the Government decides to extend the ban on possession with intent to supply currently in clauses 9 (Possession of snus etc with intent to supply (England and Wales)), 57 (Possession of snus etc with intent to supply (Scotland)) and 75 (Displays of products and prices in Northern Ireland) to apply to filters, then an officer of Revenue and Customs can be given the appropriate powers to seize and detain any relevant filter product for 48 hours. This therefore would bring it in line with the current enforcement mechanism for snus and would ensure consistency.

#### Justification for taking the power

77. The power is narrow in scope as it only allows the Secretary of State to extend the provisions in clause 88 (Power of officer of Revenue and Customs to seize and detain snus etc) to apply to filters that are intended to be used when smoking a tobacco product or herbal smoking product (including a filter that

forms part of, or that is intended to be inserted into, an item such as a cigarette holder or pipe).

78. This power is necessary to ensure consistent enforcement if the power to ban the possession with intent to supply filters is ever used. It is important that enforcement is the same across these tobacco products to allow for clarity for not only businesses but also enforcement officers.

79. This power is not subject to a requirement to consult before exercising. This is because this power would only be used if we decide to extend the prohibitions in or inserted by clauses 9, 57 and 75 to apply to filters. The powers to create such a prohibition is already – properly – subject to a requirement to consult before making any such regulations, therefore we do not consider that this power, which would only confer specific enforcement functions on HMRC officials, also needs a consultation requirement.

#### Justification for the procedure

80. Regulations made under this power will be subject to the affirmative procedure. The affirmative procedure will enable a debate and vote in both Houses of Parliament, so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny to ensure that the right balance has been struck between industry and public health. This is a Henry VIII power that allows for primary legislation to be amended by subordinate legislation and the affirmative procedure is considered to provide the appropriate level of parliamentary scrutiny.

## **Part 5: Product and information requirements etc**

**Amendment to clause 89: Retail packaging**

**Amendment to clause 90: Features of products**

**Amendments to clause 91: Contents and flavours**

**Amendments to clause 92: Substances released into the human body and emissions**

**Amendments to clause 93: Non-compliant images**

**Amendments to clause 94: Registration**

**Amendment to clause 95: Information**

**Amendment to clause 96: Studies**

**Amendment to clause 97: Responsible person**

**Amendment to clause 99: Product safety**

**Amendment to clause 100: Matters dealt with by the 2016 Regulations**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary procedure: Affirmative*

#### Context and Purpose

81. As discussed in the Delegated Powers Memorandum of 27 March 2025 at paragraphs:

- a. 182-189 for retail packaging
- b. 190-197 for features of products
- c. 198-205 for contents and flavour
- d. 206-211 for substances released into the human body and emissions
- e. 212-217 for non-compliant images
- f. 218-225 for registration
- g. 226-232 for information
- h. 233-238 for studies
- i. 239-243 for responsible person
- j. 249-253 for product safety, and
- k. 254-259 for matters dealt with by the 2016 regulations

82. The Bill provides the Secretary of State with the powers to regulate the product and information requirements of relevant products such as the retail packaging restrictions, contents and flavours and registration of these products. The purpose of this amendment is to extend these powers so they also include filters as a relevant product that is able to be regulated.

83. The purpose of these amendments is to ensure that filters can be subject to the same regulatory requirements as other relevant products in response to developing evidence of harm from filters or evidence of continued misperception about protecting from harm given by using filters.

#### Justification for taking these powers

84. The relevant paragraphs of the Delegated Powers Memorandum of 27 March 2025 outline how these powers are already narrow in scope and require detailed regulation that is not appropriate for primary legislation.

85. These amendments only allow filters that are intended to be used when smoking a tobacco product or herbal smoking product (including a filter that forms part of, or that is intended to be inserted into, an item such as a cigarette holder or pipe) to be included in the legislation. We already had the powers to regulate these aspects of tobacco products, tobacco related devices, herbal smoking

products, cigarette papers, vaping products and nicotine products. This power just includes filters in the lists of relevant products. Therefore, these amendments are just extending the powers to capture a product that is very close in kind to the products already in scope. It is also important to note that where filters are included in a pre-made tobacco product (e.g. a filtered cigarette), they are already captured under that definition. Therefore, it is only standalone filters that this amendment extends the powers to.

86. Delegated powers are required as they allow the Government time to gather more evidence as it emerges on the harms of these products to ensure the products in scope of the restrictions are appropriate to encompass product which increase or falsely give the impression of protecting from the harms of these tobacco and herbal smoking products. This future-proofs the policy, as it allows us to act quickly following evidence gathering.
87. We have set out further justification for taking these powers and our intention to continue to gather evidence in paragraphs 35-43 above.
88. Having the ability to extend regulations in Part 5 of the Bill such as retail packaging restrictions, contents and flavours and registration to filters will provide the flexibility needed to ensure that the legislation is as comprehensive and future-proof as possible; the need to react quickly to emerging evidence indicates that a power is the best way to proceed, rather than bringing forward primary legislation, the greater time for passage of which would risk increasing the harm occasioned.
89. These powers will be subject to a requirement to consult before exercising. This ensures that there will be appropriate engagement prior to any provisions being extended to include filters.

#### Justification for the procedure

90. Regulations made under these powers will be subject to the affirmative procedure. Rationale for this procedure is set out in the relevant paragraphs of the Delegated Powers Memorandum of 27 March 2025, as referred to above.

#### **Amendment to clause 90: Features of products (Technology)**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

## *Parliamentary procedure: Affirmative*

### Context and purpose

91. As discussed in paragraphs 210-214 of the Delegated Powers Memorandum of 27 March 2025, the Bill provides the Secretary of State with powers to enable the introduction of restrictions on features of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products. The regulations could include provision on the markings on the product, the information on the product, the appearance as well as the size and shape of the product and its technology.
92. The purpose of this amendment is to also include technological features of tobacco related device and vaping devices, and software of connected devices in order to protect public health and to reduce the appeal of vaping devices to children.
93. Regulations made under this power will help to respond to the technological advancements we have seen in vaping devices. This includes adding gaming as a function of a vaping device, which could appeal to children, as well as emerging technology that can track usage for inclusion in leaderboards or to reward users for use.
94. Where necessary, regulations made under this power could also include provisions on software that can be used in connection with the technological features within vaping devices or heated tobacco devices for which regulations are made. For example, this would include mobile phone applications that enable or control gamification or the tracking of usage.

### Justification for taking the power

95. See paragraphs 215-218 of the Delegated Powers Memorandum of 27 March 2025 for context related to clause. This amendment provides for detailed regulations regarding the technological features of tobacco related devices and vaping products, and software of connected devices that would not be appropriate for primary legislation.
96. This amendment only provides powers for those products that could contain technology or hardware, such as vaping devices and heated tobacco devices. Cigarettes, herbal smoking products, cigarette papers, and nicotine products, are not in scope of this amendment, as they do not contain any technological feature that could operate the product.

97. A delegated power is required as it provides the necessary flexibility to adapt as evidence on the harms of technological features emerges and to take into account the technological specifics of each type of technology and software.
98. Regulations made under this power will help reduce the appeal of vaping products to children and non-users, preventing addiction and harm. Industry have recently developed new vaping devices with technological features that increase product appeal and usability, by mimicking consumer devices like handheld consoles and smartphones. Responses from the recent call for evidence suggests that technology and screens can captivate children by serving as entertainment devices, connecting them to games, promoting leaderboards, and implementing token systems that reward ongoing use.
99. Additionally, regulations made under this power could include the regulation of the software that is linked to the vaping device or tobacco related device. For instance, regulations could prohibit or limit the software on mobile applications on phones to stop or regulate features like usage leaderboards and online reward systems that could reinforce use.
100. Regulations made under this power could also include age verification technology if evidence emerged that supported this intervention by government, and/or if the government's policy changed in the future to verify age at the point of use rather than the point of sale.
101. As mentioned in paragraph 218 of the Delegated Powers Memorandum of 27 March 2025, the requirement to consult and the flexibility to adjust restrictions is important given the delicate balance that needs to be struck in relation to vaping products to reduce their appeal to children and non-smokers, while ensuring their accessibility as a smoking cessation tool and the fact that the evidence on these products continues to evolve. This is particularly the case for vaping devices, where technology can be used to increase appeal to children, but could also be used to benefit current vapers, to show important and relevant information, like nicotine content.

Justification for the procedure

102. See paragraph 219 of the Delegated Powers Memorandum of 27 March 2025.

**Amendment to clause 102: Offences**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary procedure: Affirmative*

Context and purpose

103. This clause allows for the creation of offences in regulations made under this Part and specifies further detail, such as how any offences created are to be punishable. This amendment removes the requirement for regulations to provide that any offences must be triable either way and the previously specified maximum penalties. The amended clause sets out that regulations may impose a prison sentence, fine, or both as a penalty, but that this may not exceed two years in prison. The amendment introduces a more flexible approach, while maintaining the safeguards of ensuring that prison terms do not go above the maximum penalty.

Justification for power

104. This is required to enable the creation of offences so that there will be appropriate sanctions for non-compliance with requirements imposed under the Regulations.

105. The amendment is required due to the Product Regulation and Metrology Act 2025, section 11(1) of which repeals Parts 2 and 4 of the Consumer Protection Act 1987 (the CPA). The repeal will come into force on a future date to be specified in regulations under that Act. The CPA created certain enforcement functions and offences. As currently drafted, clauses 102-103 empowered the Secretary of State to create a regime of offences and enforcement under Part 5 including (under clause 103(2)) by applying certain CPA provisions with or without modification. This gave the Secretary of State a discretion to include in Part 5 regulations certain enforcement provisions and offences from the CPA with lesser penalties where appropriate. This discretion and the flexibility it affords is at risk of being lost because of the repeal of the CPA provisions referred to in clause 103(2). In order to maintain a flexible and reasonable approach to imposing penalties in the enforcement framework for regulations made under Part 5 of the Bill, we have amended clause 102 to allow for regulations making offences to prescribe the appropriate penalty for each offence. We have of course maintained the safeguard of the maximum term of imprisonment in the clause, ensuring that regulations may not impose penalties beyond that.

Justification for the procedure

106. Clause 102 empowers the Secretary of State to create offences when making regulations under Part 5. The parliamentary procedure attaching to the relevant regulation-making power will be applicable; in each case, this will be the affirmative procedure. The affirmative procedure will enable a debate and vote in both Houses of Parliament, so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny to ensure that the approach is both flexible and reasonable.

### **Replacement of clause 103: Enforcement**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary procedure: Affirmative*

#### Context and purpose

107. See paragraphs 302-303 of the Delegated Powers Memorandum of 27 March 2025 for context relating to clause 103 (Enforcement). This clause provides the Secretary of State with a power to include enforcement provisions in regulations made under Part 5. The regulations may give the function of enforcement of the regulations to relevant enforcement authorities.

108. As explained above in relation to the amendment to clause 102, clause 103 as originally drafted allowed for regulations under Part 5 to include provision applying certain enforcement provisions within Parts 2 and 4 of the Consumer Protection Act 1987, but these provisions are repealed by the Product Regulation and Metrology Act 2025 (such repeal to be brought into force through regulations).

109. Therefore, the clause has been replaced with a similar clause which no longer relies on powers provided by the 1987 Act. Instead, this clause specifies in particular three examples of provisions which may be included in Part 5 regulations which can no longer be made by applying provisions in the 1987 Act. These three provisions are:

- a. Powers for an enforcement authority to prohibit a person from supplying a product for up to six months if they believe that a person has breached regulations under Part 5;
- b. Powers for enforcement authorities to seek forfeiture of products;
- c. Powers for HMRC officers to seize goods to support enforcement, in a similar manner to the powers in clause 88 (power of officer of Revenue and Customs to seize and detain snus etc).

#### Justification for taking the power

110. This amendment substitutes clause 103 because of the need to make provision dealing with the repeal of Parts 2 and 4 of the 1987 Act. Absent this amendment these references to the 1987 Act will not work and the supplementary powers in clause 103 in respect of enforcement of Part 5 regulations will be flawed. The amendment therefore ensures effective enforcement of Part 5.

111. As far as possible the amendment is deliberately drafted so as not to alter the scope, purpose or effect of the power as originally set out in the Delegated Powers Memorandum of 27 March 2025 prepared for introduction to the House of Lords.

#### Justification for the procedure

112. See paragraph 305 of the Delegated Powers Memorandum of 27 March 2025.

### **Amendments to clause 132: Power to extend Part 6 and Communications Act 2003 to other products**

*Power conferred on: Secretary of State*

*Power exercised by: Regulations made by Statutory Instrument*

*Parliamentary procedure: Affirmative*

#### Context and Purpose

113. As discussed in paragraphs 347-351 in the Delegated Powers Memorandum of 27 March 2025, the Secretary of State has the power to amend Part 6 (Advertising and sponsorship) of the Bill and the Communications Act 2003 to extend any provision that applies to a tobacco product to also apply to ‘a device of a specified description which enables tobacco to be consumed.’

114. The purpose of this amendment is to extend the power for the Secretary of State to amend Part 6 of the Bill and the Communications Act 2003 so that any provision that applies to a tobacco product can also apply to ‘a filter that does not form part of a tobacco product or herbal smoking product’.

115. The purpose of this amendment is to ensure that filters can be subject to the same regulatory as other relevant products in response to developing evidence of harm from filters or evidence of continued misperception about protecting from harm given by using filters. We have set out our justification for taking these powers and our intention to continue to gather evidence in paragraphs 30-34 above

#### Justification for taking the power

116. Paragraphs 352-354 of the Delegated Powers Memorandum of 27 March 2025 sets out the context for how these powers apply to a narrow scope of products.

117. This amendment only allows filters (as defined in clause 111) to be included in the legislation.

118. A delegated power is required as they allow regulation as the evidence emerges on the harms of these products to ensure the products in scope of the restrictions are appropriate to encompass product which increase or falsely give the impression of protecting from the harms of these tobacco and herbal smoking products. This future-proofs the policy, as it allows us to act quickly following evidence gathering.

119. We have set out further justification for taking these powers and our intention to continue to gather evidence in paragraphs 35-43 above.

120. Having the ability to extend advertising provisions to filters will provide the flexibility needed to ensure that the legislation is as comprehensive and future-proof as possible; the need to react quickly to emerging evidence indicates that a power is the best way to proceed, rather than bringing forward primary legislation, the greater time for passage of which would risk increasing the harm occasioned.

121. These powers will be subject to a requirement to consult before exercising. This ensures that there will be appropriate engagement prior to any provisions being extended to include filters.

#### Justification for the procedure

122. Regulations made under this power will be subject to the affirmative procedure. The affirmative procedure will enable a debate and vote in both Houses of Parliament, so that the impacts of the regulations can be subject to the appropriate parliamentary scrutiny to ensure that the right balance has been struck between industry and public health. This is a Henry VIII power that allows for primary legislation to be amended by subordinate legislation and the

affirmative procedure is considered to provide the appropriate level of parliamentary scrutiny.

Department of Health and Social Care 17 February 2026