

Research Briefing

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Tobacco and Vapes Bill 2024-25



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Summary

[The Tobacco and Vapes Bill 2024-25](#) (HC Bill 121) had its first reading on 5 November 2024, in the House of Commons. The bill's second reading will take place on Tuesday 26 November 2024.

The bill aims to create the first “smoke-free generation” by ensuring children turning 15 this year or younger can never be legally sold tobacco.

The bill includes other provisions which focus on making vaping less attractive and accessible to children and young people, strengthening smoke-free restrictions, and strengthening enforcement around the sale of tobacco and vaping products.

The government has [called the bill the “biggest public health intervention in a generation”](#).

Provisions in this bill are similar to those proposed in the [Tobacco and Vapes Bill 2023-24](#). The Conservative government introduced the previous bill in April 2024. It did not complete its parliamentary stages prior to the general election, and consequently fell when Parliament was dissolved.

1.1

What would the bill change?

Ensuring a consistent legislative approach across the UK

The bill would ensure that a consistent approach to tobacco and vaping regulation was applied across the UK. It would do this primarily by amending existing tobacco and vaping legislation that has been implemented at a national level in England, Scotland, Wales and Northern Ireland.

The bill would also consolidate existing tobacco and vaping control measures to provide a consistent legislative framework and strengthen enforcement.

Tobacco

In relation to tobacco products, the bill would:

- introduce a generational ban on the sale of tobacco across the UK:
 - The bill would make it an offence to sell tobacco products, herbal smoking products and cigarette papers to anyone born on or after 1

January 2009. This would replace the current age of sale restriction of 18 years for these products.

- strengthen and expand smoke-free legislation across the UK:
 - The bill provides regulation-making powers that would enable the government to extend smoke-free restrictions to a wider range of premises (such as outside schools and hospitals). This would apply to England, Scotland and Northern Ireland. The Welsh Government already has powers to do this.
 - The bill provides regulation-making powers that would enable the four UK governments to designate places as being heated tobacco-free places, but only where they are already designated as smoke-free places.
- introduce new restrictions on oral tobacco products across the UK:
 - The bill would make it an offence to possess an oral tobacco product (such as snus) with the intent to supply it in the course of business.
- provide the Secretary of State with powers to make regulations about tobacco products that would apply across the UK:
 - The regulations would apply to tobacco products, tobacco-related devices, herbal smoking products, cigarette papers, vaping products and nicotine products.
 - The regulations could establish requirements for product substances and flavours.
 - The regulations could require producers or importers to provide information and facilitate studies, product safety and testing in relation to the products.

Vaping and nicotine products

In relation to vaping and nicotine products, the bill would::

- extend the existing age of sale restriction, so that it covered non-nicotine vapes and a wider range of vaping products:
 - In England and Wales, the bill would widen the scope of nicotine and vaping products that are subject to an age of sale restriction (18 years). For the first time, it would be an offence to sell non-nicotine vapes, e-liquids and refills to under 18s. There is an existing ban on the sale of nicotine vapes to under 18s.
 - In Northern Ireland, the bill would widen the scope of nicotine products that are subject to an age of sale restriction (18 years). For the first time, it would be an offence to sell non-nicotine vapes, e-

liquids and refills to under 18s. It is already an offence to sell nicotine vapes to under 18s.

- In Scotland, it is already an offence to sell non-nicotine vapes to a person under 18.
- prohibit the sale of vaping and nicotine products from vending machines in the UK.
- prohibit the free distribution, advertising, sponsorship and brandsharing of vaping and nicotine products to people of all ages.
- extend ‘smoke-free’ restrictions to vaping:
 - The bill would provide regulation-making powers enabling the devolved administrations to designate places as being vape-free places, but only where they are already designated as smoke-free places.
- provide the Secretary of State with regulation-making powers to regulate vaping and nicotine products, including contents and flavour, packaging, and product requirements. These regulations would apply across the UK.

Enforcement and retailer licensing

In relation to enforcement and retailer licensing, the bill would introduce:

- the provision of regulation-making powers to create a retailer licensing scheme for the sale of tobacco products, herbal smoking products, cigarette papers, vaping and nicotine products.
- in Scotland, a strengthening of the existing retail register by expanding its scope to herbal smoking products and nicotine products.
- in England and Wales, the provision of enforcement authorities with the power to issue fixed penalty notices for offences related to the underage sale, proxy sale and free distribution of tobacco and vaping products (£200) and offences in connection with licensing (£2,500).

Advertising and sponsorship

In relation to advertising and sponsorship, the bill would:

- introduce a UK-wide ban on the advertising, brandsharing and sponsorship of herbal smoking products, cigarette papers, vaping and nicotine products.

- The advertising prohibitions would cover the publishing, designing, printing and distributing of an advert or causing the publication, designing, printing or distribution, of an advert including online.
- A statutory defence for a person charged with an advertising or sponsorship offence would be made available.
- Specialist tobacconists (a term strictly defined in the bill) would be excluded from liability for offences in relation to an advertisement whose purpose or effect is to promote a tobacco product.
- extend provisions of the [Communications Act 2003](#) about audiovisual and radio broadcasting to all herbal smoking products, cigarette papers, vaping and nicotine products.
- make a “relevant person” (such as a director or manager of a company or a partner in a firm) potentially liable for an advertising or sponsorship offence committed by a “body” (such as a body corporate, a partnership, or an unincorporated association). It would be necessary to show that the offence was committed with their consent, connivance, or neglect.
- impose a duty on relevant enforcement authorities to enforce the provisions in part 6 of the bill and regulations made under powers in part 6.
- empower the appropriate national authority to take over enforcement functions or proceedings instead of the relevant local enforcement authority.

Ensuring that future products will be subject to the existing regulatory framework

The bill would enable the UK Government and devolved administrations to expand the extent of provisions in existing legislation and within the bill itself that regulate the sale and distribution of tobacco products.

The devolved administrations would be empowered to bring tobacco products intended to be consumed other than by smoking (such as heated tobacco) into the scope of existing legislation.

The bill would grant the Secretary of State powers to amend the [Tobacco and Related Products Regulations 2016](#) (TRPR 2016) so that its provisions could be extended to products it does not currently cover. The TRPR 2016 sets out requirements on the labelling of tobacco products, substances included in tobacco products and vaping products, and restrictions on the advertising of vaping products. The TRPR 2016 applies across the UK.

1 Background to the bill

1.1 The previous Tobacco and Vapes Bill 2023-24

The Conservative government introduced the [Tobacco and Vapes Bill 2023-24](#) in April 2024. In common with the 2024-25 bill, the 2023-24 bill aimed to:

- introduce a generational ban, across the UK, on the sale of tobacco products by making it an offence to sell tobacco products to anyone born on or after 1 January 2009
- reduce the appeal and availability of vapes to children and strengthen enforcement around tobacco and vaping sales

Information about the 2023-24 bill is available in the Library briefing, [Tobacco and vapes bill 2023-24](#).

The 2023-24 bill had completed committee stage in the Commons by 14 May 2024. As it had not completed its parliamentary stages when the general election was called, the bill fell when Parliament was dissolved in May 2024, and made no further progress.

In this briefing, references to “the previous bill” refer to the 2023-24 bill, as introduced. References to ‘the bill’, ‘the current bill’ and ‘the new bill’ refer to the 2024-25 bill.

1.2 Territorial extent of the bill

Clause 167 of the bill sets out the territorial extent of the bill; that is the jurisdictions where the bill forms part of the law:

- Part 1 on the sale and distribution of tobacco extends to England and Wales only.
- Part 2 on vaping extends to Scotland only.
- Part 3 on nicotine products extends to Northern Ireland only.
- Parts 4 to 8 of the bill extend to the UK.¹

¹ Adapted from Tobacco and Vapes Bill 2024-25, [Explanatory notes](#), 5th November 2024

1.3 Terminology and scope of products captured by the bill

Annex B to the bill's explanatory notes includes a table, listing products that, in the government's view, are in scope of each clause of the bill. While extensive, the annex is not intended to be an exhaustive list.²

Vapes are also known as e-cigarettes. References to other briefing material may use the term 'e-cigarettes' in place of 'vapes'.

1.4 Further reading

Press releases and guidance from the UK governments

- Department of Health and Social Care (England) and Rt Hon Wes Streeting MP, [Smoking ban introduced to protect children and most vulnerable](#), 5 November 2024
- Department of Health and Social Care (England), [The Tobacco and Vapes Bill: What you need to know](#), 5 November 2024
- [UK Tobacco and Vapes Bill](#), Letter from Jenni Minto, (Scottish) Minister for Public Health and Women's Health, to Claire Haughey, Convener, Health, Social Care and Sport Committee (PDF), 6 November 2024
- [Written Statement: The UK Tobacco and Vapes Bill](#), Sarah Murphy MS, (Welsh) Minister for Mental Health and Wellbeing, 5 November 2024
- Guidance, [Tobacco and Vapes Bill 2024: creating a smoke-free generation and tackling youth vaping](#), Welsh Government, 5 November 2024
- Department of Health (Northern Ireland), [Tobacco and Vapes Bill opportunity to reduce preventable deaths and health inequalities– Nesbitt](#), Health Minister Mike Nesbitt, 5 November 2024

Documents published alongside the bill

Accompanying the bill, the Department of Health and Social Care has published the following documents which provide further context and interpretation of the bill:

- [Explanatory notes](#), 5 November 2024

² Tobacco and Vapes Bill 2024-25, [Explanatory notes](#), 5th November 2024

- [Delegated powers memorandum](#), 5 November 2024
- [Impact assessment](#), 5 November 2024
- [Policy paper and factsheet](#), 13 November 2024

2 Background on tobacco and vaping policy

2.1 Legislation on tobacco, vaping and nicotine products in the UK

The Tobacco and Related Products Regulations 2016

The [European Union Tobacco Products Directive](#) (TPD) entered into force on 19 May 2014. It provides a framework for the regulation of tobacco and vaping products in the European Union.

The [Tobacco and Related Products Regulations 2016](#) (TRPR 2016) implemented the TPD in full, across the UK.

The TRPR 2016 set out requirements for tobacco products and vapes. These include labelling requirements for tobacco products, labelling and presentation requirements for herbal products for smoking and notification requirements for vape manufacturers.

Section 3 of the Library briefing, [The regulation of e-cigarettes](#), provides more information on the TPD and TRPR 2016.

While the TRPR applies across the UK, the devolved administrations can introduce domestic legislation to further regulate tobacco and nicotine products and e-cigarettes. Where relevant, such regulations are highlighted in this briefing.

2.2 Policy background

In its 2024 manifesto, the Labour Party said it would introduce a generational ban on tobacco sales and take measures on vape branding and advertising to reduce their appeal to children.³

³ [Labour Party manifesto, 2024](#)

The King's Speech set out the Labour government's intention to bring forward a Tobacco and Vapes Bill that would introduce this generational ban on tobacco sales and impose limits on the sale and marketing of vapes.⁴

The UK Government and the devolved administrations have proposed and implemented a range of measures designed to reduce tobacco smoking and vaping rates in the general population, and particularly among young people. These include restricting the advertising and retail display of tobacco products, prohibiting the sale of nicotine vapes to under-18s and proposing restrictions on vape flavours.

Dr Javed Khan OBE, led an independent review into England's Smokefree 2030 target – achieved when adult smoking prevalence falls to 5% or below.

The resulting report, [Khan Review: making smoking obsolete](#), was published in June 2022.⁵ One of its recommendations was that the government increase the age of sale for tobacco, from 18, by one year every year. Further background on the Khan review is available in a Library briefing, [The smokefree 2030 ambition for England](#).

The following Library briefings provide more background on the concerns surrounding smoking and vaping prevalence, and measures being taken by the UK Government and devolved administrations to address it:

- [The smokefree 2030 ambition for England](#), Commons Library
- [Youth vaping in England](#), Commons Library
- [Advertising, marketing and promotion of vaping products](#), Commons Library
- [Shop displays of tobacco and vaping products](#), Commons Library

Additional briefings are available on the [Library's tobacco and vaping hub](#).

The bill's explanatory notes include a detailed policy overview, setting out the government's rationale for introducing the bill.⁶

The government expressed concern about smoking's cost to the economy and wider society, harm associated with second-hand smoking, and the unknown long term harms of nicotine and vaping products.⁷

⁴ Prime Minister's Office, [10 Downing Street and His Majesty King Charles III](#), The King's Speech 2024, 17 July 2024

⁵ Office for Health Improvements and Disparities, [Making smoking obsolete: summary](#), updated 25 August 2022

⁶ Tobacco and Vapes Bill, [Explanatory Notes](#), 5 November 2024

⁷ DHSC, [Tobacco and Vapes Bill: creating a smoke-free UK and tackling youth vaping factsheet](#), 13 November 2024

3 Part 1: Sale and distribution of tobacco and vaping products in England and Wales

3.1 Overview

Part 1 of the bill concerns the sale and distribution of tobacco and vaping products in England and Wales. Part 1 would:

- provide for the bill's landmark provision: introducing a generational ban on the sale of tobacco products.
- consolidate existing legislation and ban the manufacture and sale of oral tobacco products, such as snus.
- introduce a new offence of possession of oral tobacco products with intent to supply.
- make it an offence to sell vaping products to under 18s, meaning that the sale of nicotine-free vapes and vaping products to children becomes an offence for the first time.
- ban vaping and nicotine product vending machines for the first time.
- allow the Secretary of State for Health, and Welsh Ministers to introduce regulations that impose prohibitions, requirements or limitations on how retailers display tobacco products, herbal smoking products, cigarette papers, vaping products, or nicotine products. The regulations could also determine how product packaging and prices are displayed in retail outlets.
- make it an offence to give away nicotine and non-nicotine vaping products, cigarette papers, or herbal smoking products or coupons for these products.
- enable the Secretary of State for Health and Welsh Ministers to introduce a licensing scheme for retailers who sell, offer for sale or possess for sale, tobacco products, herbal smoking products, cigarette papers, vaping and nicotine products.

3.2

Clause 1: Raising the age of sale for tobacco

Clause 1 would make it an offence to sell a tobacco product, herbal smoking product or cigarette paper to a person born on or after 1 January 2009.

A person charged with this offence would have a defence if they could prove that they were shown an acceptable identity document, such as a passport or driving licence, indicating that the person purchasing the product was born before 1 January 2009.

While the previous bill provided a defence for a person who could prove they took “all reasonable steps” to avoid committing the offence, the current bill’s provision relating to identity documents is new.

The offence set out in clause 1 relates to the sale of products; it does not make it an offence for a person born on or after 1 January 2009 to use these products.

This clause would come into force on 1 January 2027, which is when children born on or after 1 January 2009 would turn 18.

The previous bill contained identical provisions relating to raising the age of sale.

Legislative background

In England and Wales, the current age of sale for tobacco is 18 years.

[The Children and Young Persons Act 1933](#) introduced a minimum age of sale of 16 years for tobacco products and cigarette papers in England and Wales.

[The Children and Young Persons \(Sale of Tobacco etc\) Order 2007](#) amended the 1933 act, increasing the minimum age of sale of tobacco products to 18 years in England and Wales.

Policy background

The Khan Review

In 2019, the government announced an ambition for England to become ‘smokefree’ by 2030. ‘Smokefree’ was defined as the point at which adult smoking prevalence falls to 5% or less.⁸

In February 2022, the government commissioned Javed Khan, former CEO of children’s charity Barnardo’s to carry out a review of progress towards this ambition. Mr Khan published his independent review, the [Khan Review](#):

⁸ Cabinet Office and Department of Health and Social Care, [Advancing our health: prevention in the 2020s- consultation document](#), 22 July 2019

[making smoking obsolete](#), in June 2022.⁹ It found that “without further action, England will miss the smokefree 2030 target by at least 7 years, and the poorest areas in society will not meet it until 2044”.¹⁰

The review put forward 15 recommendations. These included four “critical” recommendations, including that the government should increase the age of sale of tobacco, by one year, every year, effectively phasing out tobacco smoking within a generation.

More detailed information on the Khan Review, and the government’s response, is set out in the Library briefing [The smokefree 2030 ambition for England](#).

New Zealand smoking age policy

In December 2022, the [New Zealand Government introduced measures](#) to prohibit the sale or supply of smoked tobacco products to people born on, or after, 1 January 2009.¹¹ This was intended to “significantly reduce retail availability and to create a ‘Smokefree Generation’ to [children], and the generations born after them, from ever taking up smoking”.¹²

Following a change of government in January 2023, the legislation underpinning this policy was repealed.

Further information about this policy, and responses from the UK Government and Opposition are available in a House of Lords briefing, [Smoke-free legislation: The UK and New Zealand](#).

Government proposals and consultation

In October 2023, the Conservative government announced its intention to introduce legislation making it an offence to sell tobacco products to anyone born on or after 1 January 2009.¹³

[The government consulted](#) on raising the age of sale and other tobacco proposals between October and December 2023.¹⁴ [The government published](#)

⁹ Office for Health Improvement and Disparities, [The Khan review: making smoking obsolete](#), published 9 June 2022

¹⁰ Office for Health Improvement and Disparities, [The Khan review: making smoking obsolete](#), published 9 June 2022

¹¹ New Zealand Ministry of Health, [Smokefree Environments and Regulated Products Act](#), accessed 16 June 2023

¹² New Zealand Ministry of Health, [Proposals for the smoked tobacco regulatory regime](#), 4 January 2023

¹³ See; Prime Minister's Office, 10 Downing Street and The Rt Hon Rishi Sunak MP, [Prime Minister to create ‘smokefree generation’ by ending cigarette sales to those born on or after 1 January 2009](#), published 4 October 2023, and DHSC, [Stopping the start: our new plan to create a smokefree generation](#), published 4 October 2023

¹⁴ Department of Health and Social Care, The Scottish Government, Welsh Government, and Department of Health (Northern Ireland), [Creating a smokefree generation and tackling youth vaping](#), published 12 October 2023

[its response](#) to the consultation on 29 January 2024.¹⁵ It included an analysis of the almost 28,000 responses that were submitted.

One of the questions asked in the consultation was whether respondents agreed or disagreed that the age of sale for tobacco products should be changed so that anyone born on or after 1 January 2009 would never be legally sold tobacco products. Of those responding to this question:

- 63.2% agreed
- 32.3% disagreed
- 4.6% said they didn't know

Stakeholder response

When the previous bill was introduced under the Conservative government, Wes Streeting, then shadow Health Secretary, said that Labour would vote for the proposal to raise the smoking age, year on year.¹⁶

The Conservative Party

Kemi Badenoch, then Business and Trade Secretary, had “significant concerns” about the previous bill. She expressed concern about “equality under the law and treating adults differently”.¹⁷ She said the bill “would mean a 50-year-old could do something and a 49-year-old couldn't”.

Health organisations and campaign groups

The Smokefree Action Coalition (SFAC) is a group of over 300 organisations across the UK that are committed to ending smoking by 2030. Its membership includes Cancer Research, the Royal College of Physicians, the Royal College of General Practitioners, the Royal College of Paediatrics and Child Health, the Royal Society for Public Health and the King's Fund. SFAC is coordinated by Action on Smoking and Health (ASH), a smoking cessation charity.

[SFAC published a brief for MPs](#) expressing its own support for the previous bill and asking MPs to do the same.¹⁸ SFAC suggested raising the age of sale would reduce pressure on the NHS by improving health and wellbeing, highlighting the association between smoking and a range of physical and mental ill health issues.

¹⁵ Department of Health and Social Care, The Scottish Government, Welsh Government, and Department of Health (Northern Ireland), [Creating a smokefree generation and tackling youth vaping](#), published 12 October 2023

¹⁶ The Pharmacist, [Labour pledges 'tough action' against junk food and vaping industries](#), 11 October 2023

¹⁷ LBC, ['Road to hell is paved with good intentions': Kemi Badenoch criticises Sunak's smoking ban after it passes key vote](#), 16 April 2024

¹⁸ SFAC, [Brief for parliamentarians](#), not dated

In relation to the current bill, the chair of ASH, Professor Nick Hopkins, said it would start “the journey towards creating a country where young people will never start smoking and can live their lives free from the premature disability and death caused by the tobacco industry.”¹⁹ [An ASH press release](#) includes a comment from several health organisations and charities, expressing support for raising the age of sale.²⁰

In response to the previous bill, ASH reported comments from individual health organisations, all expressing support for increasing the age of sale for tobacco.²¹

Bob Blackman (Con), Chairman of the All-Party Parliamentary Group (APPG) on Smoking and Health, said the previous bill was “welcomed by the APPG and by our fellow backbenchers across both houses of parliament committed to protecting future generations from the death and disease caused by smoking”.²²

Industry, trade and retail

Responding to the previous bill, John Herriman, Chief Executive of the Chartered Trading Standards Institute said there is “resounding support from the profession for the proposed Smokefree Generation Policy”. He further commented:

The eradication of smoking in the next generation will be an incredibly positive change to public health with smoking being the UK’s most preventable killer. Enforcing the new age restriction will present its own new challenges, but trading standards welcomes the increased protections it will provide.²³

There had been some concern from small or independent retailers about how enforcement for the previous bill would be carried out. One retailer considered the previous bill to be a “deeply impractical law, which means at some point retailers will be expected to distinguish between 36 and 37-year olds when deciding who to sell tobacco products to”. They also noted concern about the burden on retailers of increased ID checks.²⁴

Andrew Chevis, founder and CEO of CitizenCard (a provider of UK photo identification cards), responded to the previous bill and suggested the annual

¹⁹ ASH, [New Tobacco and Vapes Bill backed by public, health charities and politicians](#), 5 November 2024

²⁰ ASH, [New Tobacco and Vapes Bill backed by public, health charities and politicians](#), 5 November 2024

²¹ ASH, [Leading health organisations urge Parliament to put the Tobacco and Vapes Bill on the statute book before the general election](#), 20 March 2024

²² ASH, [Cross party support for raising the age of sale for tobacco from voters and Parliamentarians](#), 20 March 2024

²³ Chartered Trading Standards Institute, [80% of Trading Standards professionals support the Smokefree Generation Policy](#), 20 March 2024

²⁴ Asian Trader, [Generational tobacco ban will negatively impact business, retailers say](#), 21 November 2023

change in the smoking age would threaten the success of other age verification campaigns:

25 years of working to prevent underage sales tells me that everything retailers, manufacturers and enforcement agencies have achieved in supporting and enforcing the ‘No ID, No Sale!’ and ‘Challenge 21’ messaging could be put at risk by this plan to annually move the age goalposts.²⁵

Advocates of the freedom to smoke

Forest is a campaign group that seeks to protect the interests of adults who choose to smoke or consume tobacco.²⁶ Forest’s Director, Simon Clark, was concerned that the proposal, as set out in the previous bill, would infringe on personal freedoms:

No-one wants children to smoke, but the idea that Government should take away people’s freedom to choose long after they have grown up is absurd.²⁷

3.3

Clause 2: Purchase of tobacco etc on behalf of others

Clause 2 would make it an offence for a person aged 18 years or over to make, or attempt to make, a proxy purchase of tobacco products, herbal smoking products or cigarette papers for a person born on or after 1 January 2009.

Clause 2 provides a defence for a person, if they had no reason to suspect the person was born on or after 1 January 2009. In relation to cigarette papers, a person has a defence if they had no reason to suspect the other person intended to use them for smoking.

Legislative background

Section 91 of the [Children and Families Act 2014](#) makes it an offence 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.

3.4

Clause 3: Tobacco vending machines

Clause 3 would make it an offence for a person to have management or control of a premises where a tobacco vending machine is available for use.

²⁵ The House, [Smoking ban plans threaten to undo good work of ID schemes](#), 16 November 2023

²⁶ Forest, [News releases](#), accessed 27 March 2024

²⁷ Guardian-Series, [Bill banning next generation from buying cigarettes introduced to Commons](#), 20 March 2024

For this purpose, a tobacco vending machine is an automatic machine from which tobacco products, herbal smoking products or cigarette papers can be bought.

Legislative background

Section 3A of the [Children and Young Persons \(Protection from Tobacco\) Act 1991](#) enables regulations to be made that would prohibit the sale of tobacco from an automatic machine in England and Wales.

[The Protection from Tobacco \(Sales from Vending Machines\) \(England\) Regulations 2010](#) were subsequently laid using this regulation-making power. The regulations prohibit the sale of tobacco from an automatic machine.

Schedule 6(5) of the bill would repeal section 3A of the [Children and Young Persons \(Protection from Tobacco\) Act 1991](#). Therefore, clause 3 would re-enact and consolidate legislation prohibiting the sale of tobacco from vending machines.

3.5

Clause 4: Sale of unpacked cigarettes

Clause 4 would make it an offence for a tobacco retailer to sell cigarettes that are not in the original packaging.

Legislative background

This provision is already set out in section 3 of the [Children and Young Persons \(Protection from Tobacco\) Act 1991](#).

Schedule 6(5) of the bill would repeal section 3 of the 1991 Act, so, in effect, clause 4 re-enacts and consolidates legislation setting out this provision.

3.6

Clause 5: Age of sale notice (England)

Clause 5 would require tobacco retailers who sell tobacco products in premises in England to display an age of sale notice on those premises with the following statement:

It is illegal to sell tobacco products to anyone born on or after 1 January 2009.²⁸

The notice must be displayed prominently, where it is readily visible to people at the point of sale for tobacco products.

²⁸ Clause 5, Tobacco and Vapes Bill 2024-25

Subsection 5(4) stipulates the notice would need to comply with requirements set out in regulations. These requirements could relate to size or appearance of the statement to be displayed on the notice, or any other aspect of the notice. Regulations made under subsection 5(4) would be subject to the [negative resolution procedure](#).

The penalty for failure to display a notice is a fine of up to £1,000 (level 3 on the standard scale).

Legislative background

Section 4 of the [Children and Young Persons \(Protection from Tobacco\) Act 1991](#) sets out a requirement for retailers to display an age of sale notice relevant to the current age restriction. The provision applies to England, Wales and Scotland.

Schedule 6(5) of the bill would omit parts of section 4 of the 1991 Act, and otherwise amend it to reflect the new age of sale notice requirements.

3.7

Clause 6: Age of sale notice (Wales)

Clause 6 contains the same requirement as clause 5, but for Wales. In addition, it would require the statement to include equivalent wording in Welsh.

Legislative background

Article 4(3) of the [Children and Young Persons \(Protection from Tobacco\) Act 1991](#) provides a regulation-making power for the Secretary of State. Regulations under this power could prescribe the size of the notice and the statement to be displayed on it. Schedule 14 of the bill would repeal this article.

3.8

Clauses 7, 8 and 9: Oral tobacco products such as snus

Snus

Snus is one type of many ‘smokeless tobacco’ products which are consumed without combustion (burning). Products differ in their form and method of consumption. There is no official definition of these products, and different names are sometimes used interchangeably.

The US Food and Drug Administration (FDA) defines snus as “cut tobacco that can be loose or pouched and placed in the mouth”.²⁹ The FDA dismisses the notion that the absence of ‘smoke’ when consuming smokeless tobacco products means they are safe. It notes that such products contain over 4,000 chemicals, 30 of which have been linked to cancer.

Current regulation of snus

Part 2 of the [Tobacco and Related Products Regulations 2016](#) offers the following definitions:

- a ‘tobacco product’ is a product that can be consumed and consists, even partly, of tobacco
- a ‘tobacco for oral use’ is a tobacco product that is both:
 - (a) intended for oral use, unless it is intended to be inhaled or chewed
 - (b) in powder or particulate form or any combination of these forms, whether presented in a sachet portion or a porous sachet, or in any other way

Snus is therefore defined, under the 2016 regulations, as a tobacco product for oral use.

Section 17 of the [Tobacco and Related Products Regulations 2016](#) prohibits the production and sale of snus (and all tobacco products for oral use). The regulations apply across the UK.

Defining oral tobacco products in clauses 7, 8 and 9

For the purposes of part 1 of the bill (and therefore clauses 7, 8 and 9), a tobacco product is defined as:

a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked, chewed or consumed in any other way.³⁰

Snus is therefore defined as a tobacco product under part 1 of the bill.

For the purposes of clauses 7 to 9, a ‘relevant oral product’ is defined as a tobacco product that:

- a) is intended for oral use
- b) is not intended to be inhaled or chewed

²⁹ FDA, [Smokeless tobacco products, including dip, snuff, snus, and chewing tobacco](#), last updated 6 July 2023

³⁰ Tobacco and Vapes Bill 2024-25, section 48, interpretation

- c) consists wholly or partly of tobacco in powder or particulate form³¹

Clauses 7, 8 and 9 on oral tobacco products consolidate existing legislation prohibiting their sale, supply and possession with intent to supply in the UK.

Ban on the manufacture of snus etc (clause 7)

Clause 7 would make it an offence to manufacture a ‘relevant oral tobacco product’.

A person who commits an offence under this section is liable:

- a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both
- b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both

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.

Legislative background

Section 17 of the [Tobacco and Related Products Regulations 2016](#) prohibits the production and sale of tobacco for oral use. The regulations apply across the UK.

Schedule 6 of the bill would repeal section 17 of the 2016 regulations. Clause 7 re-enacts this ban on the manufacture of oral tobacco products in England and Wales.

Ban on the sale of snus etc (clause 8)

Clause 8 makes it an offence to sell, or offer to sell, a relevant oral tobacco product. A defence is provided in clause 8(3) if a person proves they took “all reasonable steps” to avoid the commission of the offence.

Clause 8 provides a defence for a person charged under this section, if they can prove they took “all reasonable steps” to avoid commission of the offence.

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.

Legislative background

Section 17 of the [Tobacco and Related Products Regulations 2016](#) prohibits the production and supply of tobacco for oral use. Clause 6 of schedule 23 of the bill would repeal section 17 of the 2016 regulations. The explanatory notes to the bill state that section 17 of the 2016 regulations relates to oral tobacco

³¹ Tobacco and Vapes Bill 2024-25, clause 7(2)

that is intended for consumption within the UK or through the travel retail sector. The explanatory notes explain that the new bill goes beyond this:

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.³²

Possession of snus etc with intent to supply (clause 9)

Clause 9 would make it an offence to possess an oral tobacco product with the intent to supply in the course of business. This is a new provision that does not exist under current legislation.

It is not currently an offence to possess an oral tobacco product for personal use. This would remain the case if clause 9 were to take effect.

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.

3.9

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

Clause 10 would make it an offence to sell a vaping product or nicotine product to a person under the age of 18.

The sale of nicotine inhaling products to under 18s is prohibited under existing legislation. Clause 10 would extend this age of sale restriction to non-nicotine vapes and a wider range of vaping products. Clause 48 of the bill offers an interpretation of part 1 (which contains clause 10), and provides definitions for a 'vaping product', 'vape' and 'vaping substance'.

Annex B to the explanatory notes provides a non-exhaustive list of products within the scope of clause 10:

- flavoured or unflavoured nicotine vapes: liquid bottles, disposable (single use), pods/cartridges,
- flavoured or unflavoured non-nicotine vapes: liquid bottles, disposable (single use)³³

Clause 10 would ensure that nicotine and non-nicotine vapes were subject to the same age of sale restrictions. The inclusion of 'vaping substances' within the scope of clause 10 ensures that the bill provides powers to regulate e-

³² Tobacco and Vapes Bill 2024-25, [Explanatory notes](#), 5th November 2024

³³ [Explanatory Notes, Tobacco and Vapes Bill](#), 5 November 2024

liquids and refills, which fall outside the scope of current age of sale restrictions.

Clause 10 provides a defence for a person if they were “shown what appeared to be an identity document” confirming the purchaser’s age as at least 18 years old, or if they otherwise took all reasonable steps to avoid committing the offence.

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).

Legislative background

Clause 10 replaces the existing age of sale restriction for nicotine inhaling products. This is set out in section 3 of the [Nicotine Inhaling Products \(Age of Sale and Proxy Purchasing\) Regulations 2015](#), which makes it an offence to sell a nicotine vape to children under the age of 18.

Non-nicotine vaping products fall outside the scope of the 2015 regulations and are not subject to any other age of sale restrictions.

Proposals in the youth vaping consultation (October to December 2023)

The Conservative government held a consultation between October and December 2023 on measures to reduce smoking and vaping prevalence in young people: [Creating a smokefree generation and tackling youth vaping](#).³⁴ The government’s response to the consultation acknowledged feedback showing “widespread support for regulating non-nicotine vapes and other consumer nicotine products under a similar regulatory framework as nicotine vapes”.³⁵

For non-nicotine vapes, the government committed to imposing an age of sale restriction of 18 and above and introducing regulations that would extend this restriction to other nicotine products.³⁶

³⁴ DHSC, Scottish Government, Welsh Government and Department of Health for Northern Ireland, [Creating a smokefree generation and tackling youth vaping: your views](#), updated 12 February 2024

³⁵ DHSC, Scottish Government, Welsh Government and Department of Health for Northern Ireland, [Creating a smokefree generation and tackling youth vaping consultation: government response](#), updated 12 February 2024

³⁶ DHSC, Scottish Government, Welsh Government and Department of Health for Northern Ireland, [Creating a smokefree generation and tackling youth vaping consultation: government response](#), updated 12 February 2024

3.10

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

Clause 11 would make it an offence for a person aged 18 or over to buy, or attempt to buy, a vaping product or nicotine product on behalf of a person who is under the age of 18.

Clause 11 replaces provisions in existing legislation so that restrictions on proxy purchasing are extended to include non-nicotine vapes and products.

A defence is provided if the person charged with this offence proves they had no reason to suspect the other person was under the age of 18.

Anyone convicted of an offence under this provision may receive a fine of up to £2,500 (level 4 on the standard scale).

This clause would take effect six months after the passing of the bill.

Legislative background

Schedule 6 of the bill amends section 91 of the [Children and Families Act 2014](#) (the '2014 act'), which made it an offence for someone over 18 to buy, or attempt to buy, tobacco, cigarette papers or a 'relevant nicotine product' on behalf of a person under 18.

Section 92(9) of the 2014 act defines 'nicotine product' as:

- a) a device which is intended to enable nicotine to be consumed by an individual or otherwise to be delivered into the human body,
- b) an item which is intended to form part of a device within paragraph (a), or
- c) a substance or item which consists of or contains nicotine, and which is intended for human consumption or otherwise to be delivered into the human body

Clause 11 would ensure the prohibition on proxy purchases also extends to non-nicotine vapes and products.

1 Nicotine pouches

‘Nicotine pouches’ are small, fibrous pouches that are typically placed between the gum and upper lip, where the nicotine is absorbed into the body.³⁷ They are not intended to be heated or combusted (burned). They do not contain tobacco but are sometimes referred to as snus.³⁸

Nicotine pouches are currently regulated as general consumer products under the [General Products Safety Regulations \(GPSR\) 2005](#). Legislation does not currently set out an age of sale requirement for nicotine pouches.

Nicotine pouches are within the definition of ‘nicotine product’ for the purposes of part 1 of the bill (as set out by Annex B to the explanatory notes).³⁹ This means they are subject to clauses 10 (sale of vaping or nicotine products to under 18s) and 11 (purchase of vaping or nicotine products on behalf of under 18s).

The bill, therefore, would prohibit the sale of nicotine pouches to, or on behalf of, under 18s.

3.11

Clause 12: Vaping and nicotine product vending machines

Clause 12 makes it an offence for a person who manages or controls a premises to have a vape or nicotine product vending machine available for use on the premises.

The offence come into force six months after the bill received Royal Assent. This would allow time for those managing or controlling premises to remove the relevant products, or replace them with alternatives.⁴⁰

A person convicted of the offence set out in clause 12 may receive a fine of up to £2,500.

Legislative background

The clause provides for a new offence. There are no current restrictions on the use of vape vending machines or nicotine product vending machines. This is in contrast to a ban on the sale of tobacco products from vending machines set

³⁷ FDA, [Other tobacco products](#), last updated 31 May 2024

³⁸ [PQ8538](#), 16 January 2024

³⁹ Tobacco and Vapes Bill 2024-25, [Explanatory notes](#), 5th November 2024

⁴⁰ Tobacco and Vapes Bill 2024-25, [Explanatory notes](#), 5th November 2024

out in the [Children and Young Persons \(Protection from Tobacco\) Act 1991](#) (which applies in England and Wales).

3.12

Clauses 13 and 14: Displays of products or prices

The bill includes powers to regulate the display of products UK-wide. The powers are devolved to Scotland, Wales and Northern Ireland.

Regarding England and Wales, under clauses 13 and 14, which are identical, the Secretary of State for Health and Welsh Ministers would be empowered to make regulations to impose prohibitions, requirements or limitations on how retailers display tobacco products, herbal smoking products, cigarette papers, vaping products, or nicotine products. In addition to the products themselves, the regulations could cover the display of:

- empty retail packaging of relevant products in a place in England or Wales where the products are offered for sale
- prices of relevant products in a place in England or Wales where the products are offered for sale

For the avoidance of doubt, subsection (3) states that a ‘product’ would include anything that represents the product and that is intended to be exchanged for it at the point of sale.

Any regulations made under subsections 13(1) or 14(1) could create offences for non-compliance. Under subsection (5), the regulations must provide for any offence to be triable summarily in a magistrates’ court or on indictment in the Crown Court and be punishable:

- on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both
- on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both

However, before making regulations, subsection (6) would require the Secretary of State to consult with appropriate persons. Finally, subsection (7) stipulates that any new regulations made under clauses 13 or 14 must be subject to the affirmative resolution procedure.

Policy background

Under the [Tobacco Advertising and Promotion Act 2002](#) (TAPA 2002) and regulations made under it, the sale of tobacco cigarettes is strictly regulated: they must have plain packaging and be held in a storage unit behind the

counter out of sight This prohibition on tobacco displays applies to large and small shops.

By contrast, there are currently no restrictions around the display of vapes at the point of sale in shops. They can be displayed prominently on countertops, at the till point in supermarkets, or in eye-catching display towers on the shop floor.

The [Local Government Association](#) (LGA) has campaigned for vapes to be out of sight and out of reach of children:

It is not right that stores are able to prominently display vaping paraphernalia for all to see, such as in a shop window, often in bright, colourful packaging that can appeal to children. Vapes should only be used as an aid to quit smoking. While research has shown vaping poses a small fraction of the risks of smoking, it is deeply worrying that more and more children – who have never smoked – are starting vaping. This has become a major concern for councils, who are seeing a sharp rise in cases of shops and other outlets selling vaping products to people under 18.⁴¹

The LGA has called on the government to introduce strict new measures to regulate the display and marketing of vaping products in the same way as tobacco products.⁴²

Action on Smoking and Health ([ASH](#)) has also called for tighter regulation on the marketing of vapes “in light of growing evidence of increases in underage vaping”.⁴³ ASH has made a number of recommendations to reduce the appeal of vapes to children, including putting them behind the counter out of sight.⁴⁴

In its policy paper, [Stopping the start: our new plan to create a smokefree generation](#) (4 October 2023), the previous government proposed stricter controls on shop displays of vaping products:

“It is unacceptable that children can see and pick up vapes in retail outlets easily due to them being displayed within aisles, close to sweets and confectionary products and on accessible shelves.”⁴⁵

In explaining its policy rationale, it drew on analysis from Imperial College London data collected in the annual ASH survey of youth vaping.⁴⁶ Comparing 12,445 responses with an online survey by children aged between 11 to 18 years over the five years period from 2017 to 2022, researchers found an increase in

⁴¹ [Vapes need to be “out-of-sight and out-of-reach” to tackle underage sales](#) (login required), LGA, 11 February 2023

⁴² As above

⁴³ [ASH policy briefing on vaping](#), Action on Smoking and Health (ASH), February 2023, (accessed 18 November 2024)

⁴⁴ As above

⁴⁵ Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-I, 4 October 2023 (last updated 12 October 2023)

⁴⁶ [Changing awareness and sources of tobacco and e-cigarettes among children and adolescents in Great Britain](#), Parnham JC, Vrinten C, Cheeseman H, and others, *British Medical Journal* (BMJ), 30 July 2023

the proportion of children reporting that they had seen vapes on display in shops. In supermarkets, the likelihood of noticing vapes increased from 57.4% in 2018 to 66.5% in 2022.⁴⁷ In small shops, the likelihood increased from 70.8% to 71.6%.⁴⁸ Conversely, the number of children reporting seeing tobacco cigarettes over the same period had decreased from 81% in 2018 to 66% in 2022 for small shops and from 67% to 59% in supermarkets.⁴⁹ The government said it wanted to mirror this trend for vaping products.⁵⁰

A recent observational study published in 2022 investigated the nature and prevalence of point of sale vape displays in major retailers in two areas of England.⁵¹ The study found that point of sale displays were “near ubiquitous” and “highly visible” in major tobacco retailers.

The bill would give the Secretary of State (clause 13), Welsh Ministers (clause 14), Scottish Ministers (clause 61), and the Department of Health in Northern Ireland (clause 79) the power to make regulations on shop displays of tobacco products, herbal smoking products, cigarette papers, vaping products, or nicotine products. As well as the products themselves, the new regulations could cover the display of empty retail packaging and prices. Their scope may also extend to other products.

If the bill is enacted, the TAPA 2002 would be repealed.

Further information is provided in a separate Library briefing [Shop displays of tobacco and vaping products](#).

3.13

Clause 15: Free distribution and discounts

The free distribution, in the course of a business, of any product or coupon where the purpose or effect is to promote a tobacco product is already banned under [section 9 of TAPA 2002](#). However, there are currently no restrictions on businesses giving away for marketing purposes free samples of nicotine and non-nicotine vaping products, cigarette papers, or herbal smoking products.

Clause 15 of the bill would replace [section 9 of TAPA 2002](#) and would make it an offence for a person to:

- give away a product or coupon to a member of the public or to sell a product or coupon at a substantial discount, or

⁴⁷ [Changing awareness and sources of tobacco and e-cigarettes among children and adolescents in Great Britain](#), Parnham JC, Vrinten C, Cheeseman H, and others, British Medical Journal (BMJ), 30 July 2023

⁴⁸ As above

⁴⁹ As above

⁵⁰ As above

⁵¹ [Electronic cigarette and smoking paraphernalia point of sale displays: an observational study in England](#), Brocklebank and others, National Library of Medicine, 2022

- cause or permit that to happen, and either (i) their purpose in doing so is to promote a ‘relevant product’, or (ii) the effect of their doing so is to promote a relevant product and they know, or have reason to suspect, that will be the effect.

For the purposes of this clause, a “relevant product” would be a tobacco product, herbal smoking product, cigarette papers, a vaping product, or a nicotine product. A “coupon” would mean anything (whether in physical or electronic form) which, by itself or together with something else, could be redeemed for a product or service or for cash or other benefit.⁵²

A person guilty of an offence under clause 15(1) would be liable:

- on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both
- on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both

However, under clause 15(3) it would be a defence for a person charged with the offence of giving away a vaping product or nicotine product, or a coupon for such a product, if they could prove it was done in accordance with arrangements made by a public authority. For example, a government-funded smoking cessation programme that gave away free vapes.

Policy background

Concerns have been raised about children obtaining free samples of nicotine and non-nicotine vaping products. The LGA and others have called for a ban on free samples of vaping products being given out to people of any age.⁵³

In May 2023, then Prime Minister, Rishi Sunak, said the government would “close this legal loophole” at the next legislative opportunity.⁵⁴ The Chief Medical Officer, Professor Chris Whitty, argued that children should not be encouraged to start vaping:

There has been a particularly worrying rise in the number of children using vapes, with companies clearly marketing these products at children using colours, flavours and cheap disposable options. Closing the loophole that allows companies to give out free samples of vaping products to under 18s is a very welcome step in tackling some of the harms caused by the vaping industry.⁵⁵

⁵² This definition of a coupon is adapted from the [Tobacco Advertising and Promotion Act 2002](#) but includes a reference to electronic forms (such as a QR code)

⁵³ [Vapes need to be “out-of-sight and out-of-reach” to tackle underage sales](#) (login required), Local Government Association, 11 February 2023

⁵⁴ [No more free vapes for kids](#), press notice by the Department of Health and Social Care, The Rt Hon Rishi Sunak MP and Neil O’Brien MP, 30 May 2023

⁵⁵ As above

The [Independent British Vape Trade Association](#) (IBVTA) supported this proposal:

The loophole allowing free samples to be distributed regardless of consumer age is a gap that no self-respecting business should ever have considered exploiting. The IBCTA applauds the announcement that such activity will soon be illegal.⁵⁶

In June 2023, in response to the previous government’s call for evidence on youth vaping,⁵⁷ the [Children’s Commissioner for England](#), Dame Rachel De Souza, said she welcomed proposals to close the loophole that allows companies to give away free samples to children, “but this should have never been legal”.⁵⁸

According to the bill’s explanatory notes, the government has decided to put the clause 15 prohibition on the face of the bill (rather than rely on regulation-making powers), because “it has no intention to permit selling a product or coupon at a substantial discount to circumvent the restriction on free distribution”.⁵⁹

3.14

Clauses 16 to 39: Retail licensing

There is currently no legal requirement for a retailer to obtain a licence to sell tobacco, vaping or nicotine products in the UK.

The bill would empower the Secretary of State in England (clauses 16 to 18), Welsh Ministers (clauses 19 to 22), and the Department of Health in Northern Ireland (clause 85) to introduce a licensing scheme for the retail sale of tobacco products, herbal smoking products, cigarette papers, vaping and nicotine products. There is no equivalent provision to create a licensing scheme in Scotland. Instead, the bill would expand the existing retailer registration scheme (clause 65). Taken together, the clauses aim to tackle the illicit market and protect legitimate businesses. They are entirely new provisions not in the previous bill.

Prohibition of retail sales of tobacco products etc in England without a licence (clause 16 and schedule 1)

The licensing scheme set out in the bill provides for personal and premises licences and new licensing regulations.

⁵⁶ [No more free vapes for kids](#), press notice by the Department of Health and Social Care, The Rt Hon Rishi Sunak MP and Neil O’Brien MP, 30 May 2023

⁵⁷ Office for Health Improvement and Disparities, [A call for evidence: Youth vaping](#), 11 April 2023, (last updated 4 October 2023)

⁵⁸ [The Children’s Commissioner’s response to ‘youth vaping: call for evidence’](#), Children’s Commissioner website, 9 June 2023

⁵⁹ [Bill 121-EN](#)

Specifically, clause 16(1) would prohibit 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 a personal licence.

Clause 16(2) would prohibit 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 a premises licence.

The Secretary of State may, by regulations, create exceptions to the prohibition in subsection (1) or (2).

In effect, the licensing scheme set out in the bill would function by requiring that retailers hold the appropriate licence (and adhere to a particular set of requirements of the licence) in order to legally sell the products. The licences would be granted by a local authority. Retailers found selling products without a licence, or breaching the conditions of the licence, would face penalties.

The structure and details of the licensing regulations, including the fee structure and license conditions, would be developed through consultation (subsection 2). The new regulations would be subject to the affirmative resolution procedure.

Schedule 1 sets out further detail on what the licensing regulations could include. In summary, the regulations could:

- Describe the licensing authority with responsibility for granting licences.
- Make provisions regarding the granting of a licence. For instance, not granting licences to premises in a particular area (or in close proximity to a school) or limiting the number of licences within a particular area.
- Require a licensing authority to inspect premises before the granting of a licence.
- Make provisions about the duration of the licence or the conditions of the licence. For instance, requiring that retailers comply with specific tobacco and vape regulations (such as age of sale regulations) or displaying a licence within a retail premise.
- Allow a licensing authority to charge and set a fee on application for a licence or its renewal.
- Make provisions for the publication of a list of licensed retailers (or other licence information) by the licensing authority.
- Establish a reviews and appeals process for decisions made on granting a licence. For instance, giving a person the right of appeal to a

magistrates' court against a decision taken on a review (subject to specified time limits).

- Require a licensing authority to adhere to guidance published by the Secretary of State when carrying out its functions under the licensing regulations.

Offences in connection with licences: England (clause 17)

The bill sets out new offences in connection with personal and premises licences in England.

Under clause 17(1), a person who breaches the prohibitions set out in clauses 16(1) and 16(2) would commit an offence. It would also be an offence under clause 17(2) 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
- provide false or misleading information to a licensing authority in carrying out of any other obligation imposed by or under licensing regulations

However, it would only be an offence if the information was false or misleading in a material respect, and the person knew, or ought to reasonably know this about the information. A person who commits an offence under clause 17 would be liable on summary conviction to a fine. In addition, the court may order the forfeiture or destruction of the relevant products to which the offence relates.

Instead of pursuing a criminal prosecution, a local weights and measures authority (Trading Standards) could issue a fixed penalty notice (FPN) for these offences (see clause 37).

Financial penalties for breach of licence conditions: England (clause 18 and schedule 2)

Clause 18 deals with financial penalties for breaches of conditions attached to a personal or premises licence in England.

Under subsection (1), a local weights and measures authority in England (that is, Trading Standards) would be able to impose a financial penalty on a person if satisfied that:

- the person has breached a condition attached to a personal licence or a premises licence
- the breach of that condition does not constitute an offence under section 17

Subsection (2) stipulates that the amount of this financial penalty must not exceed £2,500. However, subsection (3) would empower the Secretary of State to amend, by regulations, this maximum amount to account for inflation.

Any regulations made under clause 18 would be subject to the negative resolution procedure. According to the explanatory notes, this is because the scope of the power is narrow.

Schedule 2 to the bill details the procedure to be followed by Trading Standards when imposing financial penalties for breach of retail licence conditions in England. In outline, it is proposed that:

- before imposing a financial penalty, Trading Standards must issue a written notice of intent and allow for a period of representation, to give the accused person an opportunity to challenge the penalty. If, after the period for representation, the local authority decides to impose the financial penalty, they must give a final written notice.
- both the notice of intent and the final notice can be withdrawn or amended to reduce the penalty amount at any time by written notice.
- 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. Schedule 2 establishes the appeals procedure to be followed.
- 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.
- 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.

Prohibition of retail sales of tobacco products etc in Wales without a licence (clauses 19 to 22, schedules 3 and 4)

The bill would give Welsh Ministers the identical powers to make regulations to establish a licensing scheme in Wales.

Clause 19(1) deals with the granting of personal licences. This subsection would prohibit an individual from selling, exposing for sale, or possessing tobacco products, herbal smoking products, cigarette papers, vaping products and nicotine products without a personal licence.

Clause 19(2) deals with premises licences. This subsection would prohibit a person from using or permitting the use of premises in Wales to store for the purpose of their sale (by them or another person), expose for sale, or supply

tobacco products, herbal smoking products, cigarette papers, vaping, or nicotine products to retail customers except under a premises licence.

It is important to note that clauses 19 to 21 (concerning the detail of licensing regulations, the creation of offences and the imposition of financial penalties in Wales) are identical to clauses 16 to 18 and the approach taken in England.

Similarly, schedule 3 is identical to schedule 1, detailing regulations for a retail licensing scheme in Wales and England, respectively. The only difference is that licensing regulations in Wales would require a licensing authority to adhere to guidance published by Welsh Ministers.

Schedule 4 sets out the procedure to be followed by Trading Standards when imposing financial penalties for breach of retail licence conditions in Wales. Again, this schedule is identical to schedule 2 with regards to England. The only difference is that any proceeds received from financial penalties must be returned to the [Welsh Consolidated Fund](#) (after enforcement costs to investigate and issue the penalty have been deducted).

The [Public Health \(Wales\) Act 2017 \(section 30\)](#) provides for a register of retailers of tobacco and nicotine products in Wales. However, this registration system has not yet been implemented. Clause 22 of the bill would amend the 2017 act. The effect would be to repeal existing provisions for a retailer register in Wales once licensing scheme provisions in this bill come into force by order of Welsh Ministers.

As already mentioned, the bill would also allow for the introduction of a retail licensing scheme in Northern Ireland, subject to consultation. Further information is provided under clause 85 of part 3 of the bill.

Policy background

In June 2022, the independent [Khan Review](#) recommended the government introduce a retailer licensing scheme for the sale of tobacco to strengthen enforcement, prevent illicit and underage sales, and limit the availability of tobacco across the country.⁶⁰

The All Party Parliamentary Group (APPG) on Smoking and Health also called for the introduction of a licensing scheme in its report, [Delivering a smokefree 2030](#) (June 2021).⁶¹ It was suggested that a licensing scheme would “equip local authorities with the powers to better protect their local communities from those who sell illicit tobacco and tobacco products to children”.⁶²

Various public health stakeholders, including Fresh NorthEast and ASH, have called for a licensing scheme as a means to better enforce tobacco

⁶⁰ Office for Health Improvement and Disparities, [Independent report: Making smoking obsolete: Summary](#), 25 August 2022

⁶¹ [Delivering a Smokefree 2030: The All Party Parliamentary Group on Smoking and Health recommendations for the Tobacco Control Plan 2021](#), June 2021

⁶² As above

restrictions and support tobacco control. A [2022 ASH survey](#), for example, 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.^{63, 64} A [2023 Ash survey](#) found that 83% of the public supported tobacco retail licensing.⁶⁵

There are international examples of tobacco licensing schemes, including in Finland, Hungary, and some states in the USA and Australia. According to the explanatory notes, there is evidence that introducing or strengthening licensing leads to a decrease in tobacco retail density (For example, a 28% decrease in Finland and a 24% decrease in Australia (state of South Australia)).⁶⁶ However, in most European countries retailers do not need a licence to sell tobacco products.⁶⁷

The bill's impact assessment explains that the policy rationale for introducing a licensing scheme is to strengthen the enforcement of regulations, support legitimate businesses, act as a deterrent to rogue retailers, and support public health:

The objective of a licensing scheme for the sale of tobacco, vaping and nicotine products is to strengthen the enforcement of regulations, supporting legitimate businesses and acting as a deterrent to rogue retailers, and so supporting public health.⁶⁸

Regarding enforcement, it is suggested that a retail licensing scheme would strengthen retailers' adherence to existing regulations:

Strengthening retailers' adherence to existing regulations. As a minimum, the requirements to apply for and hold a licence would require retailers to continue to adhere to existing tobacco and vape regulations (such as age of sale restrictions). Retailers who breach the conditions of the licence could face financial penalties, or revocation of the licence (which would therefore mean the retailers would lose their ability to legally sell tobacco, vape, and other nicotine products).

A licensing scheme would also provide an opportunity to introduce further restrictions in the interest of public health (for example, conditions to control retail density).⁶⁹

⁶³ Fresh NorthEast set up the UK's first regional tobacco control programme in 2005 to address smoking-related illness

⁶⁴ [Regulation is not a dirty word: Local retailers' views of proposals for new tobacco laws](#), ASH, November 2022

⁶⁵ [Public support for Government action on tobacco in Great Britain: Results of the 2023 ASH Smokefree survey](#), ASH, undated

⁶⁶ Department of Health and Social Care, [Tobacco and Vapes Bill: Impact Assessment](#) (PDF), 5 November 2024

⁶⁷ [Tobacco retail licencing systems in Europe](#) (PDF), Mirte A G Kuipers , Paulien A W Nuyts, Marc C Willemsen, Anton E Kunst, Department of Public and Occupational Health, Amsterdam UMC, 8 May 2020

⁶⁸ Department of Health and Social Care, [Tobacco and Vapes Bill: Impact Assessment](#) (PDF), 5 November 2024

⁶⁹ As above

The impact assessment estimates that there are 50,387 convenience stores, of which 71% are independently operated and 5,944 Supermarkets, which are assumed to all sell tobacco and vape products.⁷⁰ In addition, there are estimated to be 3,573 specialist vape shops.⁷¹ Under a tobacco and vape licensing scheme, it would be expected that all these businesses would require a licence to sell these specific products.⁷²

It is suggested that the introduction of a licensing scheme would be attractive to legitimate businesses since it would help tackle the illicit market:

[...] since it would help to tackle rogue traders who breach tobacco and vape restrictions and place themselves at an unfair competitive advantage – a licensing scheme would, therefore, support legitimate businesses on the high street who sell tobacco, vaping and nicotine products responsibly.⁷³

However, in the impact assessment it is also recognised that the measure would affect local authority Trading Standards who would be required to set up and run the licensing scheme for their local area:

To support local authorities with enforcement costs, proceeds from the financial penalties issued by Trading Standards for licensing offences or breaches of licence conditions will be able to be used by local authorities to cover the cost of issuing the penalties, and the licensing fee collected by the licensing authority will be able to be used by the enforcement authority to cover the cost of enforcing the licensing scheme.⁷⁴

3.15

Restricted premises & sale orders

The bill would retain elements of the current enforcement approach for tobacco and vape regulations, including the use of fines and restricted premises orders and restricted sale orders against persistent offenders.

[Section 12A of the Children and Young Persons Act 1933](#) introduced restricted premises orders, where retail premises found to have persistently breached age-of-sale legislation are banned from selling tobacco and nicotine products. If enacted, clause 23 of the bill would replace section 12A of the 1933 act.

Similarly, [section 12B of the Children and Young Persons Act 1933](#) introduced restricted sale orders, where an individual who is found to have persistently breached age-of-sale legislation is banned from selling tobacco and nicotine products. If enacted, clause 28 of the bill would replace section 12B of the 1933 act.

⁷⁰ As above

⁷¹ As above

⁷² As above

⁷³ As above

⁷⁴ As above

Detail on clauses 23 and 28 is provided below.

Restricted premises orders (clause 23)

Clause 23(1) would enable an enforcement authority to apply to the magistrates' court for a restricted premises order against a 'persistent offender': someone who commits a 'relevant offence' in relation to the premises on at least two other occasions within a two-year period. A similar provision appeared in the previous bill.

As set out in subsection (3), a 'restricted premises order' would prohibit a retail business at the location where the offences took place from selling one or more of the following: tobacco products, herbal smoking products, cigarette papers, vaping products, and any nicotine products. The prohibition attaches to the premises. It would apply to sales, whether made by the offender or any other person, or by means of any machine kept on the premises or any other means. However, the order would not affect other businesses within the same group or chain.

It would be for the court to decide the duration of the order, up to a maximum period of 12 months. For many businesses, but especially small corner shops, the impact of a restricted premises order could be serious.

For the purposes of clause 23, 'relevant offences' would include those under the following clauses of the bill:

- clause 1 (sale of tobacco etc)
- clause 3 (tobacco vending machines)
- clause 10 (sale of vaping or nicotine products to under 18s)
- clause 12 (vaping and nicotine product vending machines)

However, under clause 23(8)(b), relevant offences would also include the following existing offences up until the point they are repealed:

- [Section 7 of the Children and Young Persons Act 1933](#) (sale of tobacco, etc to under 18s)
- [Section 3A of the Children and Young Persons \(Protection from Tobacco\) Act 1991](#) (tobacco vending machines)
- [Section 92 of the Children and Families Act 2014](#) (sale of nicotine products to under 18s)

Significantly, a restricted premises order would be treated as a local land charge for the purposes of the [Local Land Charges Act 1975](#). This would mean that where business premises were sold before the expiry of the restricted premises order, the order would remain in force and bind the new buyer.

Restricted premises orders and interested persons (clause 24)

Clause 24 of the bill says that enforcement authorities must, when applying for a restricted premises order, notify ‘interested persons’. For the purposes of this clause, an interested person could mean the occupier of the premises or any other person who has an interest in the premises where tobacco or vaping products are sold (for example, the manager or owner of the business).⁷⁵

Under subsection (2), an interested person would be able to make representations to the court as to why the order should not be made. Under subsection (3), if a restricted premises order is made without an interested person having been given notice, and without them having made representations to the court, the person may apply to vary or discharge the order. It would be for the court to decide whether to do so.

Restricted premises orders: appeals (clause 25)

Clause 25 would enable an appeal against an order made under clause 23 or clause 24 to be brought to the Crown Court.

Breach of restricted premises orders (clause 26)

Clause 26(1) of the bill is concerned with a breach of a restricted premises order.⁷⁶ Under subsection (1), a person would commit an offence if the person:

- sells anything on premises in breach of a restricted premises order
- knows, or ought reasonably to know, that the sale is in breach of the order

Under clause 26(2), a person guilty of an offence under this section would be liable on summary conviction to a fine (no maximum amount is specified).

However, it would be a defence for a person charged with an offence under this section to prove that they took all reasonable steps to avoid the commission of the offence.

Power to extend restricted premises orders in Wales (clause 27)

Clause 27 of the bill would enable Welsh Ministers, by regulations, to amend clause 23 to add an offence to the definition of “relevant offences” for the purposes of restricted premises orders, where that offence is committed in

⁷⁵ Clause 24 is based on the approach outlined in [section 12A of the Children and Young Persons Act 1933](#) for restricted premises orders for breaches of the tobacco legislation

⁷⁶ Clause 26 is based on [section 12C of the Children and Young Persons Act 1933](#), which introduced fines for a breach of a restricted premises order

Wales. However, before making regulations, Welsh Ministers would be required to consult interested stakeholders. Regulations made under clause 27 would be subject to the affirmative resolution procedure.

According to the explanatory notes, if enacted, clause 27 would replace an existing power given to Welsh Ministers in [section 51 of the Public Health \(Wales\) Act 2017](#) to specify a “tobacco or nicotine offence”.

Restricted sale orders (clauses 28 to 30)

A restricted sale order would apply to a named individual regardless of where they were employed. Restricted sale orders are different to restricted premises orders, which are applied to retail premises.

Under clause 28, if a person convicted with a “relevant offence” is a “persistent offender”, the person who brought the proceedings for the offence (that is, Trading Standards) would be able to apply to the magistrates’ court for a restricted sale order. This order would prohibit the offender from selling tobacco, herbal smoking, vaping or nicotine products as well as cigarette papers. It would also prohibit them from having any management functions related to the sale of such products (whether by a person or a machine).

For the purposes of this clause, a ‘persistent offender’ would be someone who had committed a ‘relevant offence’ on at least two other occasions within two years. A ‘relevant offence’ would include those under the following clauses of the bill:

- clause 1 (sale of tobacco)
- clause 3 (tobacco vending machines)
- clause 10 (sale of vaping products to under 18s)
- clause 12 (vaping and nicotine product vending machines)

Relevant offences would also include the following existing offences up until the point they are repealed:

- [Section 7 of the Children and Young Persons Act 1933](#) (sale of tobacco, etc., to under 18s)
- [Section 3A of the Children and Young Persons \(Protection from Tobacco\) Act 1991](#) (tobacco vending machines)
- [Section 92 of the Children and Families Act 2014](#) (sale of nicotine products to under 18s)

The duration of the order would be determined by the court but could not exceed 12 months.

Restricted sale orders: appeals (clause 29)

Clause 29 would give a right to appeal to the Crown Court against a restrictive sale order made by a magistrates' court under clause 28.

Breach of restricted sale orders (clause 30)

Clause 30(1) of the bill would make it an offence to not comply with a restricted sale order. A person guilty of an offence under this clause would be liable on summary conviction to a fine (no maximum amount is specified). It would, however, be a defence under clause 30(2) for someone charged with the offence to prove that they took all 'reasonable' steps to avoid committing the offence.

Liability of others for certain offences committed by bodies (clause 31)

Clause 31(1) would make a 'relevant person' potentially liable for an offence under clause 26 (breach of restricted premises orders) or any other offence under part 1 or any regulations made under clauses 13 and 14 (displays of products of prices in England and Wales) committed by a 'body'. For the purposes of this clause, a 'body' would mean a company, partnership or an unincorporated association. A 'relevant person' might be anyone who has management responsibilities for the organisation, such as the director or manager of a company or a partner in a firm.

In effect, both the relevant person and the body could be held responsible for the offence. However, for proceedings to be taken against the relevant person, it would be necessary to show that the offence was committed with their consent, connivance or neglect.

3.16

Clauses 32 to 29: Enforcement and fixed penalties in England and Wales

A key aim of the bill is to strengthen enforcement activity. Specifically, it aims to enable local authority Trading Standards to take swifter and more proportionate enforcement action in cases of tobacco, vaping, and nicotine product offences.⁷⁷ To achieve this, the bill would:

- impose a duty on Trading Standards in England and Wales to enforce part 1 of the bill.

⁷⁷ Department of Health and Social Care, [Tobacco and Vapes Bill: Impact Assessment](#) (PDF), 5 November 2024

- impose, via clause 32(1), a duty on Trading Standards in England and Wales to enforce part 1 of the bill and any regulations made under clauses 13 and 14 (displays of products or prices in England and Wales) (as outlined above).
- require local authority Trading Standards in England and Wales to consider, at least once a year, whether it is appropriate to carry out an “enforcement programme of action” in its area.
- empower ministers to take over enforcement functions and proceedings in circumstances where local Trading Standards are unable or unwilling to act.
- provide local authority Trading Standards offices in England and Wales with the ability to issue fixed penalty notices (FPNs) to the value of £200 for the underage sale, proxy sale, and free distribution of tobacco, vaping and nicotine products, retail display offences, and tobacco notice offences.

Further detail on these measures is set out below.

Enforcement by weights and measures authorities (clause 32)

As outlined above, clause 32(1) would impose a duty on Trading Standards in England and Wales to enforce the provisions in part 1 of the bill and any regulations made under clauses 13 and 14 (displays of products or prices in England and Wales).

For the purposes of this enforcement, Trading Standards would have access to the investigatory powers in [schedule 5 of the Consumer Rights Act 2015](#). The generic set of investigatory powers provided by schedule 5 includes:

- the power to purchase products and observe the activities of a business.
- the power to issue statutory notices to request information, require the production of documents or to seize documents required as evidence.
- the power to gather evidence on business premises. In effect, the power to enter premises with or without warrant, inspect products, seize and detain goods (including breaking open a container), and if necessary to require assistance from persons on the premises.

Programme of enforcement action: England and Wales (clauses 33 and 34)

The aim of clauses 33 and 34 is to ensure that Trading Standards in England and Wales regularly considers whether it is enforcing offences effectively.

Under clause 33(1), each local weights and measures authority in England (Trading Standards) would be required, at least once a year, to consider:

- whether it is appropriate to carry out an ‘enforcement programme’ of action in its area
- what an ‘enforcement programme’ should involve if it is appropriate to carry one out

For the purposes of clause 33(1), a programme of enforcement action would involve one or more of the following:

- investigating complaints regarding an alleged offence under part 1 or any regulations under clause 13 (displays of products or prices in England)
- bringing prosecutions for alleged offences under part 1 or any regulations under clause 13
- taking other measures intended to reduce the incidence of offences under part 1 or any regulations under clause 13

Clause 34 is almost identical to clause 33, requiring enforcement authorities in Wales, at least once a year, to consider carrying out a programme of enforcement in their areas. However, in addition to investigating alleged offences under part 1 or regulations under clause 14 (displays of products or prices in Wales), a programme of enforcement action might involve investigating possible offences under either of the following provisions:

- [section 51 A of the Public Health \(Wales\) Act 2017](#), the offence of handing over tobacco etc to a person born on or after 1 January 2009)
- [section 52 of the Public Health \(Wales\) Act 2017](#), the offence of handing over vaping or nicotine products to under 18s.

Powers of ministers to take over enforcement functions and proceedings (clauses 35 and 36)

Clause 35 would provide a power for the Secretary of State or Welsh Ministers to take over the enforcement duty (imposed by clause 32) from a local enforcement authority for certain cases.

Clause 36 would empower the Secretary of State or Welsh Ministers to take over the conduct of any proceedings from a local enforcement authority regarding an offence committed under part 1 of the bill or regulations made under clause 13 or clause 14 (displays of products or prices in England and Wales).

A national authority might need to undertake enforcement action and, possibly, court proceedings in circumstances where local Trading Standards are unable or unwilling to act in a certain case.

Fixed penalty notices (clause 37)

Clause 37 of the bill would introduce a FPN regime in England and Wales, allowing enforcement authorities to act without involving the courts. Trading Standards officers would have the option to issue ‘on the spot’ fines for breaches of part 1 of the bill as an alternative to pursuing enforcement through the courts.

Specifically, subsection (1) would introduce FPNs where Trading Standards have reason to believe that a person has committed an offence under (or under regulations made under) any of the following provisions of part 1 of the bill:

- clause 1 (sale of tobacco etc to people born on or after 1 January 2009)
- clause 2 (proxy purchase of tobacco etc on behalf of others)
- clause 5 (age of sale notice at point of sale: England)
- clause 6 (age of sale notice at point of sale: Wales)
- clause 10 (sale of vaping or nicotine products to under 18s)
- clause 11 (purchase of vaping or nicotine products on behalf of under 18s)
- clause 13 (displays of products or prices: England)
- clause 14 (displays of products or prices: Wales)
- clause 15 (free distribution and discount of products)
- clause 17 (offences in connection with retail licences: England)
- clause 20 (offences in connection with retail licences: Wales).

For underage sales, either the business or the retail worker would be liable to receive the FPN, to be decided by the Trading Standards officer. For proxy purchases, the person who bought (or attempted to buy) a tobacco or vaping product on behalf of someone under the age of sale would be liable to receive the FPN.

The amount of the FPN for offences in connection with retail licences (clauses 17 and 20) would be set at level four on the standard scale (currently £2,500). For all other offences, the fine would be set at £200. Subsection (7) stipulates that a person may not be convicted of the offence if they pay either:

- the full amount of the FPN before the end of the 28-day payment period
- 50% of the full amount before the end of the period of 14 days beginning with the day on which the relevant 28-day payment window starts

Crucially, powers to issue FPNs to individuals or businesses would be in addition to existing powers Trading Standards have to prosecute a case in

court. However, where a FPN has been issued, it would not be possible to begin legal proceedings before the end of the “relevant period” (that is, 28 days from the date of the FPN).

For the individual, a FPN would provide an opportunity to avoid prosecution for an alleged offence. However, they could choose not to pay the fine and instead challenge the prosecution in court.

Trading Standards can already impose a FPN for the proxy purchase of tobacco and vaping products under [section 91 of the Children and Families Act 2014](#). If enacted, this provision in the 2014 act would be replaced by the FPN regime in the bill.

Fixed penalties: use of proceeds (clause 38)

Under clause 38 of the bill, monies received from FPNs issued for offences in connection with retail licensing in England (clause 17) and Wales (clause 20) must be paid to the relevant Consolidated Fund. For all other offences, monies received from FPNs would be retained by local authorities to be used for the enforcement of the tobacco and vaping controls in:

- this act (that is, the bill if enacted)
- [Part 1 of the Health Act 2006](#) (smoke-free premises in England)
- [Part 3 of the Public Health \(Wales\) Act 2017](#)
- the [Tobacco and Related Products Regulations 2016](#) (SI 2016/507)

Amount of fixed penalties (clause 39)

Clauses 39(1) and (2) would give the Secretary of State and Welsh Ministers regulation-making powers to change the amount of FPNs and the percentage discount for early payment to ensure they remain proportionate. However, the scope of this power would not extend to changing the amount of the FPN for licensing offences.

For all other offences, the maximum amount the FPN could be changed to would be equivalent to level 3 on the standard scale of fines for summary offences (currently £1,000). Regulations made under clause 39 would be subject to the affirmative procedure in Parliament.

According to the bill’s explanatory notes, the purpose of the power in clause 39 is to ensure there is flexibility within the new FPN regimes to adapt to changing economic and social circumstances.

Policy background

Currently, Trading Standards in England can bring a prosecution for the underage sale of a tobacco product or cigarette papers under [Children and Young Persons Act 1933](#) and nicotine products under the [Children and Families](#)

[Act 2014](#). The magistrates court can impose a fine of up to £2,500 upon conviction. Where a business or individual has persistently breached tobacco or nicotine product restrictions, Trading Standards can also use powers under the 1933 act to apply to the court for a restricted premises order or restricted sale order to prohibit the business or a named individual from selling these products for up to 12 months.⁷⁸

The difficulty is that the current penalty regime in England and Wales requires Trading Standards to bring a prosecution against the individual or business and to secure a conviction in the magistrates' court. According to Trading Standards officers, "this time-consuming court procedure limits their ability to issue fines and is a significant gap in their operational capabilities".⁷⁹

Trading Standards in England and Wales have only limited powers to issue FPNs to enforce restrictions on the purchase of tobacco, cigarette papers or a relevant nicotine product. Under the [Proxy Purchasing of Tobacco, Nicotine Products etc. \(Fixed Penalty Notice\) \(England\) Regulations 2015](#), Trading Standards officers can issue a FPN of £90 to individuals for purchasing, or attempting to purchase, tobacco products and vapes for someone under 18.⁸⁰ It is the adult making, or attempting to make, the purchase who commits the offence, not the retailer.⁸¹ In addition, the [Health Act 2006](#) 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.

The position is different in Scotland and Northern Ireland, where enforcement authorities already have powers to issue FPNs to retailers and individuals for the age-of-sale and proxy-purchasing offences relating to the sale of tobacco products, cigarette papers and vapes. They were introduced by the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) and the [Tobacco Retailers Act \(Northern Ireland\) 2014](#).

[Statistics cited in the previous bill's Explanatory Notes](#) (PDF) show that FPNs are regularly used in Scotland to enforce age-of-sale legislation; over 500 notices for underage tobacco sales were issued from 2015/16 to 2022/23 and nearly 200 notices for underage vape sales were issued from 2017/18 to 2022/23.⁸² In Northern Ireland, three notices were issued for underage tobacco sales and 34 for underage vape sales in the six months from 1 April to 30 September 2023.⁸³

These FPN regimes in Scotland and Northern Ireland will continue irrespective of the proposed measures in the bill.

⁷⁸ Under section 12A and section 12B of the [Children and Young Persons Act 1933](#)

⁷⁹ Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-1, 4 October 2023 (last updated 8 November 2023)

⁸⁰ [Section 91\(1\) of the Children and Families Act 2014](#)

⁸¹ The [Health Act 2006](#) also introduced fixed penalty notices for breaches of the smoke-free premises legislation and the requirement to display 'no-smoking' signs in smoke-free premises in England and Wales

⁸² [Bill 189-EN, para.33](#)

⁸³ [Bill 189-EN](#)

Past consultations, research and announcements on enforcement

In its policy paper, [Stopping the start: our new plan to create a smokefree generation](#) (4 October 2023), the previous government estimated that tobacco smuggling cost the UK over £2.8 billion in lost tax and duty revenue each year.⁸⁴ It announced that it would provide £30 million of additional funding each year (from April 2024) to support enforcement agencies.⁸⁵

In the [factsheet for the previous bill](#) (March 2024), the government expressed particular concern about the sale of illicit vapes, which “frequently targets children and young people in disadvantaged communities, widening health disparities”.⁸⁶ National Trading Standards, which seized an estimated 2.1 million illicit vapes across England in 2022 to 2023, said that illicit vapes “often contain unknown ingredients, higher levels of nicotine and are often made easily available through markets that target children”.⁸⁷

Of 78 councils that undertook test purchasing between 2019 and 2020, 50% reported that cigarettes or tobacco products were sold to people who were underage in at least one premises.⁸⁸ The previous government also highlighted National Trading Standards data for 2022 to 2023, which found that 27% of the 1,000 retail test purchases for vapes had resulted in an illegal sale.⁸⁹

The previous government said a strong approach was needed to enforce its youth tobacco and vaping policy.⁹⁰ On 11 April 2023, during a speech at the Policy Exchange think tank, Neil O’Brien, then Health Minister, announced a new “illicit vapes enforcement squad” led by National Trading Standards to prevent the sale of illicit vapes and underage sales.⁹¹

On 12 October 2023, the government published a UK-wide consultation on [creating a smokefree generation and tackling youth vaping](#).⁹² It sought views on whether FPNs should be issued for breaches of age-of-sale legislation for tobacco products and vapes.⁹³ In its [formal response](#) (12 February 2024), the

⁸⁴ Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-I, 4 October 2023 (last updated 8 November 2023)

⁸⁵ As above

⁸⁶ Department of Health & Social Care, [Policy paper: Tobacco and Vapes Bill: enforcement factsheet](#), 20 March 2024, (accessed 11 November 2024)

⁸⁷ Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), CP 949-I, 4 October 2023 (last updated 8 November 2023)

⁸⁸ [Tobacco Control Survey 2019/20](#) (PDF), Chartered Trading standards Institute, undated, (accessed 27 March 2024)

⁸⁹ Department of Health & Social Care, [Stopping the start: our new plan to create a smokefree generation](#), , CP 949-I, 4 October 2023 (last updated 8 November 2023)

⁹⁰ As above

⁹¹ [Crackdown on illegal sale of vapes – Bold new measures to combat rising levels of youth vaping expected to be announced](#), Department of Health & Social Care and Neil O’Brien MP press notice, 9 April 2023, (accessed 18 November 2024)

⁹² Department of Health and Social Care, [Creating a smokefree generation and tackling youth vaping: your views](#), 12 October 2023

⁹³ The question was only open to respondents in England and Wales since Scotland and Northern Ireland have already introduced FPNs for underage tobacco and vape sales

government said that 83% of respondents who answered this question agreed that FPNs should be introduced.⁹⁴ This led to the government announcing its intention to strengthen enforcement activity in England and Wales.⁹⁵

On 7 November 2023, following the announcement of the previous Tobacco and Vaping Bill, the [Association of Convenience Stores](#) (ACS) called for stronger enforcement action to tackle illicit products:

In both the tobacco and vaping markets, current and future regulations must be enforced far better. It is unacceptable that responsible retailers are being undermined by others selling products that are already illegal, often to children. We need to see funding for Trading Standards to carry out more local enforcement activity against rogue vape sellers.⁹⁶

The government's position

In the current bill's impact assessment, the government states that FPNs will enable local authorities in England and Wales to take more swift and proportionate enforcement action in cases of underage sales of tobacco, vapes and nicotine products.⁹⁷ Explaining its policy rationale, it said:

Following consultation, the government has decided to introduce an FPN of £200 to enforce age of sale legislation for tobacco products, vaping and nicotine products in England (FPNs are already in place through existing legislation for proxy purchases at £90 – the new legislation would increase this to £200). The FPN will also be used to enforce free distribution, display offences, and the offence related to tobacco notices at point of sale. Powers to issue FPNs to the individual or business in question would be in addition to existing powers local authorities have to enforce age of sale legislation and will support the enforcement of the new age of sale for tobacco products outlined in the Bill. FPNs will enable local authorities to take more swift and proportionate enforcement action in cases of underage sales of tobacco, vaping, and nicotine products.⁹⁸

3.17

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

Clause 40 introduces schedule 5 to the bill. This schedule contains technical amendments to chapter 4 of part 3 of the [Public Health \(Wales\) Act 2017](#).

⁹⁴ Department of Health and Social Care, [Creating a smokefree generation and tackling youth vaping: Government response](#), 12 February 2024

⁹⁵ As above

⁹⁶ [ACS calls for clarity on tackling retail crime in King's Speech](#), Association of Convenience Stores (ACS) press notice, 7 November 2023

⁹⁷ Department of Health and Social Care, [Tobacco and Vapes Bill: Impact Assessment](#) (PDF), 5 November 2024

⁹⁸ As above

3.18 **Clause 41: Consequential amendments to do with part 1**

Clause 41 set out the consequential amendments to existing legislation that result from provisions in part 1. The amendments are listed in schedules 6 and 7 of the bill.

3.19 **Clause 42: Application of programmes of enforcement to previous age of sale offences**

Clause 42 ensures that clauses 33 and 34 (on the programme of enforcement in England and Wales) apply to existing tobacco control measures set out in:

- section 7 of the [Children and Young Persons Act 1933](#). This section makes provision about the sale of tobacco and cigarette papers to people aged under 18.
- section 4 of the [Children and Young Persons \(Protection from Tobacco\) Act 1991 \(age of sale notices\)](#). This section makes provision about the display of warning statements in retail premises and on vending machines.

Clauses 33 and 34 would apply to these sections up until the new measures in the bill come into force on 1 January 2027.

Clauses 33 and 34 are set to come into force with the majority of the bill's provisions, six months after the bill is passed.

The overall effect of clause 42 is that the programme of enforcement set out in the bill would apply to existing tobacco control measures, as detailed above.

3.20 **Clause 43: Application of fixed penalty regime to previous age of sale offences**

Clause 43 allows for the fixed penalty notice (FPN) regime (clause 37, fixed penalty notices), to apply to offences that already exist. These are:

- the sale of tobacco products to a person under 18, as set out in section 7 of the [Children and Young Persons Act 1933](#)
- the purchase of tobacco products on behalf of a person under 18, as set out in section 91 of the [Children and Families Act 2014](#)

The FPN regime would apply to existing offences from six months after the bill received Royal Assent.

The FPN regime would apply to the bill's new age of sale restrictions for tobacco products, herbal smoking products and cigarette papers when they come into force on 1 January 2027.

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 2014](#).

3.21 Clause 44: Transitional provision: general

Clause 44 provides transitional provisions.

3.22 Clause 45: Power to extend part 1 to other products

Clause 45 enables the Secretary of State to make regulations, to extend any provision in part 1 of the bill (which currently applies to tobacco products) to include:

- any device that enables a tobacco product to be consumed (such as a heated tobacco device or pipe)
- any item intended to form part of such a device

Before making regulations under this section, the Secretary of State must consult and obtain consent from Welsh Ministers if the regulations include provisions within the [legislative competency](#) of the Welsh Senedd.

Regulations made under this section would be subject to the [affirmative procedure](#).

3.23 Clause 46: Power to amend lists of identity documents

Clause 46 enables the Secretary of State and Welsh Ministers to make regulations amending the definition of “identity document” in clause 1 (sale of tobacco etc) and clause 10 (sale of vaping or nicotine products to under 18s).

This would allow changes to be made to the list of accepted identity documents that are used to verify a customer's age in relation to age of sale restrictions.

Regulations made under this section would be subject to the [affirmative procedure](#).

3.24 Clause 47: Crown application

Clause 47 provides that part 1 of the bill, and any regulations made under it, bind the Crown.

This means that the new age of sale restrictions would apply to all bodies and persons acting on behalf of the Crown, such as government departments, prisons run by His Majesty's Prison Service, and the armed forces.

Clause 47 stipulates that the Crown may not be criminally liable for offences under part 1. Persons working on behalf of the Crown (such as civil servants or prison employees) may be prosecuted for an offence and held criminally liable.

3.25 Clause 48: Interpretation of part 1

Clause 48 provides definitions of terminology used in part 1.

3.26 Clause 49: Meaning of 'nicotine product'

Clause 49 defines 'nicotine product' in relation to part 1.

4 Part 2: Sale and distribution in Scotland

Part 2 of the bill would only apply to Scotland. It sets out how provisions that are almost identical to those set out in part 1 (England and Wales) and part 3 (Northern Ireland) of the bill would be enacted in Scotland.

4.1 Clause 50: Age of sale for tobacco products etc

Clause 50 would make it an offence to sell a tobacco product, herbal smoking product or cigarette paper, to a person born on or after 1 January 2009.

[The Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) (the ‘2010 act’) sets out restrictions on the sale of tobacco products and cigarette papers. The act prohibits the sale of tobacco products to under 18s.

Clause 50 would amend the 2010 act so that references to the age of sale restriction (over 18) are updated to reflect the new one.

Clause 50 would also amend the 2010 act’s provision on proxy purchases, so that offences relate to the new age of sale restriction.

Under section 4B(3) of the 2010 act, a retailer’s age verification policy must require the retailer to establish the age of a customer attempting to buy the relevant products, if the customer appears to be under the age of 25 (or older if specified by the age verification policy).

Clause 50 would require this provision to remain in force until the end of 2033. A person born on or after 1 January 2009 would be 23 or 24 years old at the end of 2033.

Measures about the age of sale of tobacco would come into force on 1 January 2027, when children born on or after 1 January 2009 would turn 18.

4.2 Clause 51: Sale of unpacked cigarettes (clause 51)

Clause 51 would have a consolidatory effect. It would effectively move a provision banning the sale of unpacked cigarettes from existing legislation to

the current bill. There is no change to the offence, which is a fine of up to £1,000 (level 3 on the standard scale).

Legislative background

Section 3 of the [Children and Young Persons \(Protection from Tobacco\) Act 1991](#) (the ‘1991 act’) makes it an offence to sell cigarettes outside their original packaging. This provision applies to England, Wales and Scotland.

Schedule 6 of the bill revokes section 3 of the 1991 act.

Clause 51 would insert section 4E into [the Tobacco and Primary Medical Services \(Scotland\) Act 2010 \(asp 3\)](#) (the ‘2010 act’). Section 4E effectively transposes the offence set out in section 3 of the 1991 act to the 2010 act.

4.3 Repeal of offence of purchasing tobacco products by under 18s (clause 52)

The effect of clause 52 is that it would no longer be an offence for somebody under the age of 18 to buy, or attempt to buy, a tobacco product or cigarette papers in Scotland.

Clause 52 would bring this about by omitting section 5 of [the Tobacco and Primary Medical Services \(Scotland\) Act 2010](#), which sets out this offence.

The bill’s explanatory notes explain that this is intended to ensure consistency with the current position in England and Wales, where the age of sale restriction applies to the sale, and not the purchase, of tobacco products.⁹⁹

4.4 Repeal of power to confiscate tobacco products from under 18s (clause 53)

Clause 53 would mean a constable would no longer be able to confiscate tobacco products or cigarette papers from a person they reasonably suspect to be under 18 and in possession of these products, in a public place, in Scotland.

Clause 53 would effect this by omitting section 7 of [the Tobacco and Primary Medical Services \(Scotland\) Act 2010](#).

⁹⁹ Tobacco and Vapes Bill 2024-25, [Explanatory notes](#), 5th November 2024

The bill’s explanatory notes explain that this is intended to provide consistency with England and Wales, where such powers are not available.¹⁰⁰

4.5 Extension of tobacco legislation to herbal smoking products (clause 54)

The bill brings herbal smoking products within the scope of age of sale restrictions in England and Wales. Clause 54 would ensure consistency across the UK.¹⁰¹

Clause 54 would amend the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) (the ‘2010 act’). It would extend the scope of the 2010 act’s provisions so that herbal smoking products would now be within the scope of:

- section 4, on the sale of tobacco products to under 18s
- section 4B, on age verification policy
- section 4C, on the sale of tobacco or nicotine vapour products by persons under 18
- section 6, on the purchase of tobacco products on behalf of persons under 18

Clause 54 also inserts a definition of ‘herbal smoking products’ into the 2010 act:

“herbal smoking product” means a product consisting wholly or partly of vegetable matter and intended to be smoked but not containing tobacco.

The bill otherwise brings herbal smoking products within the scope of age of sale restrictions in England and Wales. Clause 54 intends to ensure consistency across the UK.¹⁰²

4.6 Clause 55: Power to make provision about warning statements

Clause 55 would amend the wording required to be displayed on warning statements so that it corresponds with the new age of sale restriction.

¹⁰⁰ Tobacco and Vapes Bill 2024-25, [Explanatory notes](#), 5th November 2024

¹⁰¹ Tobacco and Vapes Bill 2024-25, [Explanatory notes](#), 5th November 2024

¹⁰³ Tobacco and Vapes Bill 2024-25, [Explanatory notes](#), 5th November 2024

Section 8 of the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) (the ‘2010 act’) requires tobacco businesses in Scotland to display a notice saying “It is illegal to sell tobacco products to anyone under the age of 18”. Clause 50 would require the warning to say “It is illegal to sell tobacco products to anyone born on or after 1 January 2009”.

4.7

Clause 55 would enable Scottish Ministers to make regulations setting out particulars for the notice to be displayed. Clause 56: Ban on manufacture of snus etc

Clause 56 would make it an offence to manufacture oral tobacco products, such as snus.

It would add new section 9A to the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#), which sets out the offence of manufacturing relevant oral tobacco products.

The definition of ‘relevant oral tobacco product’ is the same as set out in clause 7.

A person guilty of an offence under section 9A is liable:

- a) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both
- b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

Clause 56 ensures that Scotland would be aligned with the position in England, Wales and Northern Ireland as proposed by the bill.

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.

Legislative background

Section 17 of the [Tobacco and Related Products Regulations 2016](#) (the ‘2016 regulations’) prohibits the production and sale of tobacco for oral use. The regulations apply across the UK.

Clause 6 of schedule 23 of the bill would repeal section 17 of the 2016 regulations. Clause 56 would re-enact this ban on the manufacture of oral tobacco products in Scotland.

4.8

Clause 57: Ban on sales of snus etc

Clause 57 would make it an offence to sell a relevant oral tobacco product such as snus.

It would add new section 9B to the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#). Section 9B sets out the offence of a person selling, offering or exposing a relevant oral tobacco product for sale.

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.

Section 9B provides the same defence against this offence as the defence in clause 8.

A person guilty of an offence under section 9B is liable:

- a) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both
- b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both

A 'relevant oral tobacco product' has the same meaning as defined in clause 7 of the bill.

Legislative background

Section 17 of the [Tobacco and Related Products Regulations 2016](#) (the '2016 regulations') prohibits the production and supply of tobacco for oral use. The regulations apply across the UK.

Clause 6 of schedule 23 of the bill would repeal section 17 of the 2016 regulations. Clause 57 would re-enact this ban on the sale of oral tobacco products in Scotland.

The explanatory notes to the bill state that section 17 of the 2016 regulations relate to oral tobacco that is intended for consumption within the UK or through the travel retail sector. The explanatory notes explain that the new bill goes beyond this:

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.¹⁰³

¹⁰³ Tobacco and Vapes Bill 2024-25, [Explanatory notes](#), 5th November 2024

4.9

Clause 58: Possession of snus etc with intent to supply

Clause 58 would make it an offence to possess an oral tobacco product with the intent to supply in the course of business. This is a new provision that does not exist under current legislation.

Clause 58 would add new section 9C to the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#).

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.

It is not currently an offence to possess an oral tobacco product for personal use. This would remain the case if clause 58 were to take effect.

4.10

Clause 59: Extension of offences to vaping and nicotine products

Clause 59 would make it an offence to sell a vaping or nicotine product to a person under 18 in Scotland.

Section 4A of the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) (the '2010 act') makes it an offence to sell a 'nicotine vapour product' to a person under 18.

The relevant definition of nicotine vapour product is set out in section 25 of the 2010 act and includes non-nicotine vapes:

In this Part, a "nicotine vapour product" is—

(a) a device which is intended to enable the inhalation of nicotine-containing vapour by an individual,

(b) a device which is intended to enable the inhalation of other vapour by an individual but is intended to resemble and be operated in a similar way to a device within paragraph (a)¹⁰⁴

Clause 59 would amend section 4A, so that its reference to "nicotine vapour product" became "vaping product or nicotine". This would align definitions used in the 2010 act with other vaping legislation across the UK.

Clause 59 would extend provisions in the following sections of the 2010 act, so that they included nicotine products:

¹⁰⁴ Section 35A, [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#)

- section 4A, which makes it an offence to sell nicotine vapour products to under 18s
- section 4B, which makes it an offence for businesses to sell tobacco or nicotine vapour products without having an age verification policy in place
- section 4C, which makes it an offence for a “responsible person” to allow the sale of tobacco products, cigarette papers and nicotine vapour products to a person under 18
- section 6A, which makes it an offence for a person over 18 to knowingly buy, or attempt to buy, a nicotine vapour product on behalf of a person under 18

Vending machines

Clause 59 would replace section 9 (prohibition of vending machines for the sale of tobacco products) of the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#).

Section 9 would make it an offence for a person to have management or control of a premises where a ‘prohibited vending machine’ is available for use.

In this section, a ‘prohibited vending machine’ is one that facilitates the sale of tobacco products, herbal smoking products, cigarette papers, vaping products and nicotine products.

Clause 59 would also repeal section 7 (power to extend vending machines prohibition) of the [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016](#).

4.11

Clause 60: Meaning of ‘nicotine product’

Clause 60 inserts new section 35B into the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) (the ‘2010 act’).

Section 35B defines ‘nicotine product’ for the purposes of part 1 of the 2010 act (which sets out restrictions on nicotine and vaping products).

4.12

Clause 61: Displays of products or prices

The bill includes powers to regulate the display of herbal smoking products, vaping products or nicotine products (“relevant products”) in Scotland.

Specifically, clause 61 of the bill would amend the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) by inserting a new section 3A. This new section would empower Scottish Ministers to introduce regulations around the display of herbal smoking products, vaping products and nicotine products ('relevant products'), representations of them (such as empty packaging), and their prices in a place where they are sold (that is, in Scottish shops).

For the purposes of section 3A(1), a reference to a product would include anything that represents the product and is intended to be exchanged for it at the till. For example, an empty vape package displayed in a shop that can be taken to the till and exchanged for the good. However, clause 3A(6) makes it clear that a website would not fall within the meaning of 'place', meaning Scottish Ministers could not use this provision to regulate the display of relevant products online.

Contravention of regulations made under new section 3A would be an offence.¹⁰⁵ It would be punishable on summary conviction with a fine not exceeding level 4 on the standard scale (£2,500).¹⁰⁶

Importantly, under subsection 7, Scottish Ministers would be required to consult before making regulations under clause 3A.

The power in new section 3A of the bill to introduce display regulations would not cover tobacco products. In this regard Scottish Ministers do not have an equivalent power in the bill to that of the Secretary of State, Welsh Ministers or the Department of Health in Northern Ireland. This is because provisions about retail tobacco displays in Scotland are made under the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) (rather than under TAPA 2002) and the bill would not repeal the 2010 Act.

4.13

Clause 62: Free distribution and discounts of products

Clause 62 of the bill would amend the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) by inserting new sections 8A and 8B. In detail, the provisions in section 8A are identical to those in clause 15 which apply to England and Wales.

Specifically, new section 8A(1) would make it an offence for a person:

- to give away a product (such as a tobacco product, herbal smoking product, smoking related product, vaping product or nicotine product) or coupon (whether in physical or electronic form) to a member of the public or sell by retail a product or coupon at a substantial discount

¹⁰⁵ New section 3A(4)

¹⁰⁶ New section 3A(5)

- who causes or permits the above to happen, and either (i) their purpose in doing so is to promote the relevant product, or (ii) the effect of their doing so is to promote a relevant product and they know, or have reason to suspect, that will be the effect.

In other words, it would be an offence to give away products or coupons to the public or to sell a product or coupon at a substantial discount. The intention is to avoid a loophole in the legislation where a person could offer a relevant product for sale at a substantial discount to circumvent the restriction on free distribution.

Under subsection (3), a person who commits an offence under this section would be liable:

- on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both
- on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both

However, under new section 8B it would be a defence to show that a vaping or nicotine product (or a coupon for such a product) was given away in accordance with arrangements made by a public authority. For example, vapes being given away as part of a government-funded smoking cessation programme. Section 8B(2) would empower Scottish Ministers to create, by regulations, further defences against the offence under section 8A.

Policy background

In Scotland, there are currently no restrictions on businesses giving away for marketing purposes free samples of nicotine and non-nicotine vaping products, cigarette papers, or herbal smoking products or cigarette papers.

However, [section 18 of the Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016](#) gives a power to Scottish Ministers to make regulations to prohibit or restrict the free distribution of nicotine vaping products. If enacted, clause 62 of the bill would repeal this section of the 2016 act.

4.14

Clauses 63 and 64 and schedule 8: Alignment of definitions

Clause 63 of the bill would amend the definition of “tobacco product” in [section 35 of the Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) so that it aligns with the definition used in this bill.

Clause 64 would introduce schedule 8. Provision in this schedule would align the definition of “vaping product” in the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) with the definition used in this bill.

4.15 Clause 65: Extension of retailer register etc

If enacted, the bill would introduce a new licensing scheme for retailers selling tobacco products, herbal smoking products, cigarette papers, vaping products and nicotine products in England, Wales and Northern Ireland (clauses 16, 19 and 85 respectively). The aim of the new licensing scheme is to tackle the illicit market and to protect legitimate businesses.

There is no equivalent provision in the bill to introduce a licensing scheme in Scotland. This is because under the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#), Scotland already operates a national [Register of Tobacco and Nicotine Vapour Products Retailers](#). This register has been active for tobacco retailers since 2011 and for retailers of nicotine vapes since 1 April 2017. It operates in conjunction with Scotland's FPN scheme and the power of the courts to impose banning orders.

Clause 65 of the bill introduces schedule 9. This schedule would amend the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) by extending chapter 2 of part 1 of the 2010 act so that retailers in Scotland selling herbal smoking products and nicotine products are subject to the same registration requirements as retailers who sell tobacco and vaping products.

4.16 Clause 66: Crown application of 2010 act

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

4.17 Clause 67: Power to extend 2010 act to other products

Clause 67 provides Scottish Ministers with regulation-making powers to amend Part 1 of the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) (the 2010 Act) by inserting new section 34A.

They would be able to extend the scope of any provision that applies to tobacco products to:

- any device that enables a tobacco product to be consumed other than by being smoked (such as a heated tobacco device)
- an item that is intended to form part of such a device
- some, or all, smoking-related products (as defined in section 35(2) of the 2010 act)

The clause is intended to ensure that devices which enable the consumption of harmful tobacco products can be subject to the same regulatory framework.¹⁰⁷

Scottish Ministers would be required to consult before exercising powers under this clause.

¹⁰⁷ DHSC, Tobacco and Vapes Bill, [Delegated powers memorandum](#) (PDF), 5 November 2024

5 Part 3: Sale and distribution in Northern Ireland

Part 3 of the bill would only apply to Northern Ireland. It sets out how provisions that are almost identical to those set out in part 1 (England and Wales) and part 2 (Scotland) of the bill would be enacted in Northern Ireland.

5.1 Clause 68: Age of sale for tobacco products etc

Clause 68 would make it an offence to sell a tobacco product, herbal smoking product or cigarette paper to a person born on or after 1 January 2009 in Northern Ireland. Existing legislation currently provides for proxy purchasing offences in line with the current age of sale restriction.

A person charged with this offence would have a defence if they could prove that they were shown an identity document indicating that the person purchasing the product was born before 1 January 2009.

The clause lists acceptable identity documents for the purposes of this section.

An individual convicted of an offence under clause 68 may receive a fine of up to £5,000 (level 5 on the standard scale).

Legislative background

Article 3 in the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#) (the ‘1978 order’) makes it an offence to sell tobacco or cigarette papers to anyone under the age of 18.

It also makes it an offence for someone to conduct a proxy purchase of tobacco, cigarette papers or relevant nicotine products (such as nicotine vapes) for a person under 18.

Clause 68 substitutes article 3 so that it becomes an offence to sell tobacco products, herbal smoking products and cigarette papers to anyone born on or after 1 January 2009.

Measures about the age of sale of tobacco would come into force on 1 January 2027, when children born on or after 1 January 2009 would turn 18.

5.2

Clause 69: Purchase of tobacco etc on behalf of others

Clause 69 would amend existing legislation to align proxy purchasing offences with the new age of sale legislation. It would make it an offence for a person aged 18 or over to buy, or attempt to buy, a tobacco or herbal smoking product, or cigarette papers, for a person born on or after 1 January 2009.

A defence is provided if the person charged can prove they had no reason to suspect the other person was born on or after 1 January 2009, or that they had no reason to suspect they intended to use cigarette papers for smoking.

Existing legislation currently provides for proxy purchasing offences in line with the current age of sale restriction.

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

Legislative background

Clause 69 would substitute section 4A of the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#) (the 1978 order) with an amended version. It would change references to anyone “under the age of 18” to anyone “born on or after 1 January 2009”.

5.3

Clause 70: Tobacco vending machines

Clause 70 would make it an offence for a person to have control or management of a premises where a tobacco vending machine is available. This provision is in force in existing legislation.

Tobacco products, herbal smoking products and cigarettes are captured in the scope of this clause.

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).

Legislative background

Clause 70 inserts new article 4B in the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#) (the ‘1978 order’).

Clause 70 consolidates existing legislation, as well as extend the existing ban to include cigarette papers.

Tobacco vending machines were effectively banned through the [Protection from Tobacco \(Sales from Vending Machines\) Regulations \(Northern Ireland\) 2012](#) (the ‘2012 regulations’).

Article 4 of the 1978 order, which requires the owner of a tobacco machine to implement precautionary measures if it is found that sales to under 18s have been conducted, is still in force.

Schedule 14 of the bill would revoke article 4 of the 1978 order, which became redundant when a ban was introduced in the 2012 regulations.

5.4 **Clause 71: Sale of unpacked cigarettes**

Clause 71 would make it an offence to sell cigarettes that are not in their original packaging. This provision is in force in existing legislation.

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).

Legislative background

Article 4 of the [Children and Young Persons \(Protection from Tobacco\) \(Northern Ireland\) Order 1991](#) (the ‘1991 order’) currently provides for this provision. Schedule 14 of the bill would omit section 4 from the 1991 order.

5.5 **Clause 72: Age of sale notice at point of sale**

Clause 72 would require a tobacco retailer to display an age of sale notice on the premises stating, “It is illegal to sell tobacco products to anyone born on or after 1 January 2009”. Existing legislation currently provides for age of sale notice requirements in line with the current age of sale restriction.

Clause 72 enables the Department of Health in Northern Ireland to make regulations about the size or appearance of the statement written on the notice, which must be displayed in a prominent place.

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

Legislative background

Clause 72 would insert new article 4D, ‘age of sale notice at point of sale’ into the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#).

Schedule 14 of the bill would amend existing provisions about the age of sale notice, currently set out in article 5 of the [Children and Young Persons](#)

[\(Protection from Tobacco\) \(Northern Ireland\) Order 1991](#) (the ‘1991 order’) to align with the new age of sale requirement. These amendments would come into force six months after the bill’s passing, and would remain in force until schedule 15 comes into effect.

5.6 **Clause 73: Ban on manufacture of snus etc**

Clause 73 would make it an offence to manufacture a relevant oral tobacco product, by inserting article 4E to the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#).

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.

Legislative background

Section 17 of the [Tobacco and Related Products Regulations 2016](#) (the ‘2016 regulations’) prohibits the production and sale of tobacco for oral use. The regulations apply across the UK.

Clause 6 of schedule 23 of the bill would repeal section 17 of the 2016 regulations. Clause 73 re-enacts this ban on the manufacture of oral tobacco products in Northern Ireland.

5.7 **Clause 74: Ban on sale of snus etc**

Clause 74 would make it an offence to sell, or offer or expose for sale, relevant oral tobacco products.

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.

Legislative background

Section 17 of the [Tobacco and Related Products Regulations 2016](#) (the ‘2016 regulations’) prohibits the production and supply of tobacco for oral use. The regulations apply across the UK.

Clause 6 of schedule 23 of the bill would repeal section 17 of the 2016 regulations. Clause 74 would re-enact this ban on the sale of oral tobacco products in Northern Ireland.

The explanatory notes to the bill state that section 17 of the 2016 regulations relate to oral tobacco that is intended for consumption within the UK or

through the travel retail sector. The explanatory notes explain that the new bill goes beyond this:

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.¹⁰⁸

5.8 Clause 75: Possession of snus etc with intent to supply

Clause 75 would make it an offence to possess an oral tobacco product with the intent to supply in the course of business. This is a new provision that does not exist under current legislation.

Clause 75 would do this by adding article 4F to the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#).

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.

It is not currently an offence to possess an oral tobacco product for personal use. This would remain the case if clause 75 were to take effect.

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

Clause 76 would make it an offence to sell a vaping product or nicotine product to a person under the age of 18. It amends existing legislation so a wider range of nicotine products fall within the scope of the age of sale restriction.

Clause 76 provides a defence for a person, if they were shown what appeared to be an identity document confirming the purchaser's age as at least 18 years old, or that they otherwise took all reasonable steps to avoid committing the offence.

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).

¹⁰⁸ Tobacco and Vapes Bill 2024-25, [Explanatory notes](#), 5th November 2024

Legislative background

Clause 76 would insert new article 4G into the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#) (the ‘1978 order’). It would make it an offence to sell a vaping or nicotine product to under 18s.

Currently, there are no age of sale restrictions for nicotine products other than vapes in Northern Ireland.¹⁰⁹ This is set out in section 4 of the [Nicotine Inhaling Products \(Age of Sale and Proxy Purchasing\) Regulations \(Northern Ireland\) 2021](#).

Clause 76 would expand the restriction to a wider range of products, as set out in clause 83 of the bill, and annex B of the explanatory notes. These include non-nicotine vapes, e-liquids and refills.

5.10

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

Clause 77 would make it an offence for a person aged 18 or over to buy, or attempt to buy, a vaping product or nicotine product on behalf of a person who is under the age of 18.

A defence could be provided if the person charged with this offence proved they had no reason to suspect the other 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).

Legislative background

Clause 77 would insert new article 4H into the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#) (the ‘1978 order’).

Article 4A of the 1978 order sets out a proxy purchase offence related to tobacco, cigarette papers and nicotine products only.

Clause 77 would allow for vaping products to be within the scope of this offence.

In the case of nicotine products, the explanatory notes state that the current proxy purchase offence (which refers to ‘nicotine products’) only applies to nicotine vapes, and not other nicotine products.¹¹⁰ Clause 77 would therefore

¹⁰⁹ [Explanatory Notes, Tobacco and Vapes Bill](#), 5 November 2024

¹¹⁰ Currently, there are no age of sale restrictions for nicotine products other than vapes in Northern Ireland. This is set out in section 4 of the [Nicotine Inhaling Products \(Age of Sale and Proxy Purchasing\) Regulations \(Northern Ireland\) 2021](#).

allow for nicotine products that are not vapes, to be captured within the scope of this offence.

5.11

Clause 78: Vaping and nicotine product vending machines

Clause 78 would make it an offence for a person who manages or controls a premises to have a vape or nicotine product vending machine available for use.

Anyone convicted of an offence under these provisions may receive a fine of up to £5,000 (level 5 on the standard scale).

Currently, there is no prohibition on the sale of vaping and nicotine products from vending machines in Northern Ireland.

Legislative background

Clause 78 would insert new article 4J into the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#) (the ‘1978 order’).

Section 2 of the [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016](#) provides the Department of Health, Social Services and Public Services in Northern Ireland with powers to make regulations prohibiting the sale of nicotine products from vending machines. Regulations have not been introduced using powers in this section. Schedule 14 of the bill would repeal section 2.

5.12

Clause 79: Displays of products and prices in Northern Ireland

As in England, Wales and Scotland, the bill includes powers to regulate the display of tobacco products, herbal smoking products, vaping products or nicotine products (“relevant products”) in Northern Ireland.

Specifically, clause 79 would insert a new article 4K into the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#).¹¹¹ Under this new article, the Department of Health in Northern Ireland would be empowered to make regulations to impose prohibitions, requirements or limitations on retailers in relation to the display, in the course of a business, of:

¹¹¹ S.I. 1978/1907 (N.I. 26)

- relevant products in a place where those products are offered for sale
- empty retail packaging of relevant products in a place where the products are offered for sale
- prices of relevant products in a place where the products are offered for sale

For the avoidance of doubt, article 4K(3) states that a ‘product’ would include anything that represents the product and that is intended to be exchanged for it at the point of sale.

Regulations made under article 4K(1) could create offences for non-compliance. Anyone convicted of this offence could be subject to imprisonment for a term not exceeding 2 years, or a fine, or both.

Before making regulations, the Department of Health in Northern Ireland would be required to hold a consultation. In addition, article 4K(7) stipulates that regulations may not be made by the department unless a draft of the regulations has been approved by a resolution of the Assembly.

In detail, the provisions contained in article 4K for making display regulations in Northern Ireland are the same as those contained in clauses 13 and 14 (and which apply to England and Wales).

Policy background

Currently, there are no restrictions in Northern Ireland on where vaping products, herbal smoking products, nicotine products, and cigarette papers, as well as their prices, can be displayed in retail premises. If the bill is enacted, it would bring these products and their prices within the scope of the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#).

5.13

Clause 80: Free distribution and discounts

Clause 80 would insert new article 4L into the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#). This new article would make it an offence for a person:

- to give away a product (such as a tobacco product, herbal smoking product, cigarette papers, a vaping product, or a nicotine product) or a coupon to a member of the public or to sell a product or coupon at a substantial discount
- who causes or permits the above, and either (i) their purpose in doing so is to promote a relevant product, or (ii) the effect of their doing so is to promote a relevant product and they know, or have reason to suspect, that will be the effect

A person guilty of an offence under this new article would be liable:

- on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both
- on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both

However, under new article 4L(3) it would be a defence to show that a vaping or nicotine product (or a coupon for such a product) was given away in accordance with arrangements made by a public authority. For example, vapes being given away as part of a government-funded smoking cessation programme in Northern Ireland.

Policy background

It is already prohibited under [section 9 of TAPA 2002](#) to give away in the course of business any product or coupon where the purpose or effect is to promote a tobacco product. However, there are no restrictions on businesses freely distributing nicotine and non-nicotine vaping products, nor for herbal smoking products and cigarette papers.

If enacted, clause 80 would replace section 9 of the 2002 Act. It would also prohibit the free distribution and discount of herbal smoking products, cigarette papers, vaping products and nicotine products in Northern Ireland.

5.14

Clause 81: Programme of enforcement action by district councils

Clause 81 would insert new article 6A into the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#). This new article would require each district council, at least once a year, to consider whether it would be appropriate to carry out a programme of enforcement action in its area, and if so, what that programme should involve. For the purposes of this new article, a “programme of enforcement action” would mean a programme involving one or more of the following:

- the investigation of complaints in respect of an alleged offence under part 3 or regulations made under article 4K (displays of products and prices in Northern Ireland) or the [Tobacco Retailers Act \(Northern Ireland\) 2014](#)
- the bringing of prosecutions relating to such an offence
- the taking of other measures intended to reduce the incidence of such offences

Clause 80 would have a similar effect in Northern Ireland as clause 33 would have in England and clause 34 would have in Wales. The aim of all three clauses is to ensure effective enforcement action.

5.15 Clause 82: Power to amend lists of identity documents

Clause 82 would amend the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#) Article 3 (Sale of tobacco etc) and Article 4H (Sale of vaping or nicotine products to under 18s) of the 1978 Order.¹¹²

This is a future-proofing measure. It is designed to enable the list of identity documents that can be used by retailers to verify a customer's age to be updated if new forms of identification are developed or others are ceased to be used.

5.16 Clause 83: Interpretation of 1978 Order

Clause 83 is a technical clause. It would substitute article 7 of the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#) for a new article 7 (interpretation of part 2) and new article 7A (meaning of nicotine product). This would be 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.

5.17 Clause 84: Extension Retailer register and licensing

Since 6 April 2016, a registration scheme for tobacco retailers has operated in Northern Ireland. Under the [Tobacco Retailers Act \(Northern Ireland\) 2014](#), anyone selling tobacco products, herbal smoking products and cigarette papers must be registered on the [Tobacco Retailers Register](#). It is an offence not to be registered. If prosecuted by a local council and convicted of the offence, the retailer is liable to pay a fine (up to a maximum of £5,000). Alternatively, a fixed penalty notice (FPN) might be issued.

Clause 84 of the bill would extend the scope of the [Tobacco Retailers Register](#) to include vapes and other nicotine products. Schedule 10 to the bill would amend the [Tobacco Retailers Act \(Northern Ireland\) 2014](#). It would extend

¹¹² 1978 No. 1907 (NI 26)

certain provisions about the registration of tobacco retailers so they apply in relation to retailers of vaping products and nicotine products.

5.18

Clause 85: Prohibition of retail sales of tobacco products etc without a licence

The bill would allow for the introduction of a retail licensing scheme in the longer term to replace the current registration scheme in Northern Ireland. This would be subject to public consultation.

Specifically, clause 85 would insert new articles 4A, 4B and 4C into the [Tobacco Retailers Act \(Northern Ireland\) 2014](#) 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.

The bill would give the Department of Health in Northern Ireland the power to make regulations to establish a licensing scheme, This would be identical to the power given to the Secretary of State (clause 16) and the Welsh Ministers (clause 19).

New article 4A(1) deals with personal licences. This article would prohibit an individual from selling, exposing for sale, or possessing tobacco products, herbal smoking products, cigarette papers, vaping products or nicotine products without a personal licence.

Subsection 2 of article 4A deals with premises licences. It would prohibit a person from using or permitting the use of premises in Wales to store for the purpose of their sale (by them or another person), expose for sale, or supply tobacco products, herbal smoking products, cigarette papers, vaping products or nicotine products to retail customers except under a premises licence.

The provisions in subsections (1) and (2) of article 4A would come into force when regulations for the licensing scheme are laid. However, regulations may create exceptions to the prohibition in subsection (1) or (2).

Subsection (4) of article 4A requires that licensing regulations must make provision for and in connection with the grant of personal licences and premises licences. Before excising the power to make regulations, the Department of Health in Northern Ireland would be required to hold a consultation.

Schedule 11 to the bill would insert new schedule 1 into the [Tobacco Retailers Act \(Northern Ireland\) 2014](#). Schedule 1 makes further provision about regulations under subsection (4). Its aim is to provide clarity about the intended purpose of the regulation-making powers. This new schedule is largely identical to schedules 1 and 3 to part 1 of the bill, detailing regulations for a licensing scheme in England and Wales, respectively. The only difference

is that regulations may require a licensing authority to adhere to guidance published by the Department of Health in Northern Ireland when carrying out its functions.

New article 4B would create new offences. Under subsection (1), anyone who breaches the prohibitions set out in Article 4A(1) or (2) would commit an offence. Under subsection (2), it would also be 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. However, it would only be an offence if the information was false or misleading in a material respect, and the person knows, or ought to reasonably know this about the information.

Under subsection 3, a person who commits a licensing offence would be liable on summary conviction to a fine not exceeding level 5 on the standard scale (currently set at £5,000). In addition, the court could order the forfeiture or destruction of relevant products to which the offence relates.

However, instead of a criminal prosecution, a council might issue a FPN for offences provided for under the [Tobacco Retailers Act \(Northern Ireland\) 2014](#).

Under new article 4C, a district council would be able to impose a financial penalty on a person if satisfied that:

- they have breached a condition attached to a personal or premises licence
- the breach of that condition does not constitute a criminal offence under article 4B

The maximum amount for the financial penalty would be set at £2,500, but this could be amended by regulations (to account for inflation). On the basis that these are civil penalties, district councils could issue them.

Further details on financial penalties for breach of retail licence conditions in Northern Ireland are set out in schedule 12.

Schedule 12 to the bill would insert new schedule 2 into the [Tobacco Retailers Act \(Northern Ireland\) 2014](#). Schedule 2 sets out the procedure to be followed by a district council when imposing financial penalties. The procedural detail contained in this schedule is largely identical to schedules 2 and 4 to part 1 of the bill with regards to England and Wales. The only difference is that a district council would be required to use the proceeds received from financial penalties to support its functions under the [Tobacco Retailers Act \(Northern Ireland\) 2014](#) or for any other functions the Department of Health in Northern Ireland might specify in regulations. In addition, district councils would be under a duty to provide the Department with information on the use of financial penalty receipts, if required.

Schedule 13 to the bill contains consequential amendments to existing legislation relating to the licensing of retail sales of tobacco products, herbal smoking products, cigarette papers, vaping and nicotine products in Northern Ireland. Notably, schedule 13 would:

- amend the [Tobacco Retailers Act \(Northern Ireland\) 2014](#) so that the existing tobacco retailer register in Northern Ireland would be removed once the licensing regulations commence
- add licensing offences to the list of offences for which a FPN could be issued in Northern Ireland

For England and Wales, the value of the FPN for licensing offences is established in the bill (clauses 37(3) and (4)) but this is not the case for Northern Ireland. Instead, the value of the FPN would be set by regulations in accordance with the existing statutory framework for setting FPN values in Northern Ireland.

5.19

Clause 86: Power to extend legislation to other products

Clause 86 of the bill would give the Department of Health in Northern Ireland a power, by regulations, to amend any of the provisions that apply to tobacco products in [part 2 of the Health and Personal Social Services \(Northern Ireland\) Order 1978](#) 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. However, before exercising this power, the department must hold a consultation.

5.20

Clause 87: Consequential etc transitional and transitory provision

Clause 87 introduces schedules 14 and 15 to the bill.

Schedule 14 sets out any consequential amendments that will be made to existing legislation that are to do with part 3 of the bill and will commence six months after the bill has passed. The schedule includes the:

- [Health and Personal Social Services \(Northern Ireland\) Order 1978](#)¹¹³

¹¹³ 1978 No. 1907 (NI 26)

- [Children and Young Persons \(Protection from Tobacco\) \(Northern Ireland\) Order 1991](#)¹¹⁴
- [Health Act 2009](#)
- [Digital Markets, Competition and Consumers Act 2024](#)
- [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016](#)

This schedule would also amend the [Tobacco Retailers Act \(Northern Ireland\) 2014](#). Specifically, the amendments would update the list of offences that are classified as a tobacco, vape or nicotine offence. The amendments would also update the list of offences for which a person can be issued with a FPN.

Schedule 15 sets out any consequential amendments that would be made to existing legislation that are to do with part 3 and will commence on 1 January 2027. The schedule includes the:

- [Health and Personal Social Services \(Northern Ireland\) Order 1978](#)
- [Children and Young Persons \(Protection from Tobacco\) \(Northern Ireland\) Order 1991](#)
- [Police \(Northern Ireland\) Act 2003](#)
- [Smoking \(Northern Ireland\) Order 2006](#)¹¹⁵
- [Digital Markets, Competition and Consumers Act 2024](#)
- [Tobacco Retailers Act \(Northern Ireland\) 2014](#)

5.21

Clause 88: Transitional provision

Clause 88 provides transitional provisions.

¹¹⁴ 1991 No. 2872 (NI 25)

¹¹⁵ 2006 No 2957 (NI 20)

6 Part 4: Snus etc: Seizure and detention powers

6.1 Clause 89: Power of officer of Revenue and Customs to seize and detain snus

The main type of consumer ‘nicotine product’ currently on the market is oral nicotine pouches.

Clause 89(1) would enable an officer of Revenue and Customs to seize and detain any “relevant oral tobacco products” that have been imported in order to enable an “enforcement authority” to carry out any of its functions in relation to the enforcement of a “relevant offence”.

For the purposes of this clause, a “relevant oral tobacco product” would mean a tobacco product that is intended for oral use (not intended to be inhaled or chewed) and consists wholly or partly of tobacco in powder or particulate form. An “enforcement authority” would mean local authority trading standards in relation to England and Wales; a council constituted under [section 2 of the Local Government etc. \(Scotland\) Act 1994](#) in relation to Scotland; and a district council in relation to Northern Ireland. Finally, a “relevant offence” would mean an offence relating to the possession of relevant oral tobacco products with intent to supply.

Under subsection (2), customs officials would have complete discretion regarding how the oral tobacco products are dealt with whilst held in detention. However, they may not be detained for a period of more than 48 hours (not including weekends or bank holidays).

7

Part 5: Product and information requirements

Provisions in part 5 of the bill would apply across the UK. They provide the Secretary of State with a range of regulation-making powers. The regulations could be used to set requirements relating to product standards, packaging and features of products.

Products within the scope of these regulations are tobacco products, tobacco-related devices, herbal smoking products, cigarette papers, vaping products and nicotine products.

Part 5 also builds on existing requirements for manufacturers relating to the provision of information, conduct of studies, testing and product safety.

Before making regulations under this part of the bill, the Secretary of State would be required to gain consent from Welsh Ministers, Scottish Ministers and the Executive Office of Northern Ireland if the regulations would be within the legislative competence of the devolved governments.

Any regulations made under part 5 are subject to the [affirmative procedure](#).

7.1

Clause 90: Retail packaging

Clause 90 enables the Secretary of State to make regulations about the retail packaging of:

- tobacco products
- tobacco related devices
- herbal smoking products
- cigarette papers
- vaping products
- nicotine products

The regulations could set out prohibitions, requirements or limitations about the production, importation or supply of these products for business purposes.

The clause provides further detail on the nature of the provisions that the regulations might cover:

- the markings on packaging (including the use of branding, trademarks or logos)
- the information provided on packaging or otherwise supplied with a product
- the appearance of packaging
- the materials used for packaging
- the texture of packaging
- the size of packaging
- the shape of packaging
- the means by which packaging is opened
- any features of packaging that could be used to distinguish between different brands
- the number of individual products contained in an individual packet
- the quantity of a product contained in an individual packet

Regulations made under this section would be subject to the [affirmative procedure](#).

Legislative background

Existing legislation already makes some provision related to the packaging and presentation of products:

- [The Children and Families Act 2014](#) (section 94(8)) enables the Secretary of State to make regulations about the retail packaging of tobacco products. This provision applies across the UK.
- [The Standardised Packaging of Tobacco Products \(SPoT\) Regulations 2015](#) were introduced using powers in section 94 of the [Children and Families Act 2014](#). Sections 3 to 12 set out restrictions on the appearance and packaging used for cigarettes and hand rolling tobacco. These provisions apply across the UK.
- Section 94(8) of the [Children and Families Act 2014](#) defines a “tobacco product” as one consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed. This provision applies across the UK. Tobacco-related devices and cigarette papers are therefore outside its scope. Clause 90 would bring these products into the scope of packaging regulation for the first time.

- [The Tobacco and Related Products Regulations 2016](#) (section 37) sets out information and labelling requirements for vaping products. This includes requiring information to be supplied with a product leaflet advising on safe use, storage and health information, and including a health warning on the addictiveness of nicotine. This provision applies across the UK.

Clause 90 would primarily consolidate existing legislation on retail packaging and bring products like tobacco-related devices and cigarette papers under its scope for the first time.

Policy background

In an October 2023 [consultation on tackling youth vaping](#), the government set out several proposals aimed at reducing youth vaping, including regulating vape packaging and presentation.¹¹⁶

In its response to the consultation, the government said feedback from the consultation showed support for policies to regulate vape flavours, packaging and product presentation.¹¹⁷

The government said it would introduce regulation-making powers to restrict flavours, point of sale and packaging for vaping products (nicotine and non-nicotine) as well as other consumer nicotine products.¹¹⁸

In its January 2024 [Child Health Action Plan](#), Labour committed to banning vapes from being branded and advertised to appeal to children.¹¹⁹

7.2

Clause 91: Features of products

Clause 91 enables the Secretary of State to make regulations about the features on tobacco products, tobacco-related devices, herbal smoking products, cigarette papers, vaping products and nicotine products. These features concern the product itself, rather than its packaging. This provision would apply across the UK.

¹¹⁶ Department of Health and Social Care, The Scottish Government, Welsh Government and Department of Health (Northern Ireland), [Creating a smokefree generation and tackling youth vaping](#), published 12 October 2024

¹¹⁷ Department of Health and Social Care, The Scottish Government, Welsh Government and Department of Health (Northern Ireland), [Creating a smokefree generation and tackling youth vaping consultation: government response](#), updated 12 February 2024

¹¹⁸ Department of Health and Social Care, The Scottish Government, Welsh Government and Department of Health (Northern Ireland), [Creating a smokefree generation and tackling youth vaping consultation: government response](#), updated 12 February 2024

¹¹⁹ Labour, [Labour's Child Health Action Plan will create the healthiest generation of children ever](#), 11 January 2024

Regulations made under this section would be subject to the [affirmative procedure](#).

The explanatory notes suggest the provision in clause 91 could be used to specify the colour of the products, what can be printed on the body of the product (such as images), the appearance of the products and its shape.¹²⁰

[Regulation 94 of the Children and Families Act 2014](#) already enables the Secretary of State to make regulations that regulate the features of tobacco product. This provision applies across the UK.

The bill widens this power, so that tobacco-related devices, herbal smoking products, cigarette papers, vaping products and nicotine products are now within the scope of regulations.

7.3

Clause 92: Contents and flavour

Clause 92 enables the Secretary of State to make regulations about the substances in, and the flavour of, tobacco products, tobacco-related devices, herbal smoking products, cigarette papers, vaping products or nicotine products. The regulations could also be used in relation to products used to give flavour to any of these products.

The explanatory notes suggest that regulations could prohibit certain ingredients from being used in these products. Examples include vitamins, colourings or prohibited additives (including those which impart a particular flavour).¹²¹

In particular, the regulations could impose prohibitions, requirements or limitations relating to the production, importation or supply of these products in the course of business or for retail by the travel sector.¹²²

The explanatory notes explain that regulations made under this provision could stipulate how the flavour of a product would be determined. For example, an expert advisory panel could be established to help the Secretary of State decide if a product had a certain flavour.

Regulations made under this section would be subject to the [affirmative procedure](#).

Legislative background

[The Tobacco and Related Products Regulations 2016](#) already:

¹²⁰ [Explanatory Notes, Tobacco and Vapes Bill](#), 5 November 2024

¹²¹ [Explanatory Notes, Tobacco and Vapes Bill](#), 5 November 2024

¹²² [Explanatory Notes, Tobacco and Vapes Bill](#), 5 November 2024

- prohibit the production and supply of flavoured cigarettes and hand rolling tobacco across the UK (regulation 15)
- prohibit the production and supply of heated tobacco products in Northern Ireland (regulation 15A)
- restrict the production and supply of tobacco and nicotine vaping products that contain vitamins and specified additives (regulations 16 and 36)

7.4

Stakeholder response to clauses 90 to 92

Government, health charities and organisations

The Sunday Times reported that the Health Secretary, Wes Streeting, was concerned that banning all vape flavours could discourage adult smokers from switching to vapes. It also reported that the Chief Medical Officer for England, Sir Chris Whitty, favours a complete ban on flavourings to reduce the appeal of vape products.¹²³

Caroline Cerny, deputy chief executive at campaign group Action on Smoking and Health (ASH), said new measures on flavours would “need to strike the right balance between restricting flavours and descriptions aimed at children, such as candy floss [...] while not discouraging use by adult smokers to quit”.¹²⁴

ASH Scotland welcomed provisions in the previous 2023-24 bill (clause 61), that would have enabled the Secretary of State to make regulations about the retail packaging of vaping or nicotine products. This provision is similar to clause 90 of the current 2024-25 bill. ASH Scotland urged the UK and Scottish governments to “move swiftly to prevent the use of imagery, colours and branding on vaping devices and packaging to reduce their attractiveness to young people”.¹²⁵

Industry and trade groups

Ahead of the current 2024-25 bill’s publication, the UK Vaping Industry Association (UKVIA) wrote to the Health Secretary, Wes Streeting.¹²⁶ UKVIA said it looked forward to working with Wes Streeting and the Department of Health and Social Care (DHSC) to “ensure that any regulations regarding flavours, packaging and display are fit for purpose, establishing a balanced

¹²³ The Sunday Times, [Flat flavours and plain packaging as vape laws come into force](#), 5 November 2024

¹²⁴ The Sunday Times, [Flat flavours and plain packaging as vape laws come into force](#), 5 November 2024

¹²⁵ ASH Scotland, [ASH Scotland welcomes the UK Government’s Tobacco and Vapes Bill](#), 20 March 2024

¹²⁶ UKVIA, [UKVIA issues letter to Health Secretary Wes Streeting on the inclusion of licensing in the Tobacco and Vapes Bill](#), not dated

approach to vaping policy”. UKVIA cautioned that the approach should “safeguard against the challenges posed by youth vaping and illicit products while preserving and promoting vaping as the most successful stop-smoking tool available for adults”.¹²⁷

The Independent British Vape Trade Association (IBVTA) welcomed some measures in the bill, but cautioned against the consequences of excessive regulation:

There are things to be welcomed in this Bill, such as strengthened powers of enforcement against retailers who engage in illegal sales. However, there is also a danger that with so many legislative avenues being sought to reduce youth uptake of vaping, ‘regulatory overkill’ may hamper the future of vaping as the UK’s leading quit aid for adults.¹²⁸

IBVTA expressed further concern about potential restrictions on flavours, and the potential impact on adult smoking cessation:

Excessive restrictions on the types of products that our members can provide may reduce the products’ appeal. Even worse, they may contribute to continued misperceptions about the harm of vaping relative to tobacco smoking. Specifically, the role of flavours in supporting adult smokers to a successful quit attempt is accepted and understood by most public health stakeholders, and we believe to have been fundamental to the success of vaping in reducing smoking rates. Therefore, any reference to potential powers to restrict flavours is very worrying, as it threatens the government’s own goal of the UK becoming smoke free by 2030.¹²⁹

Mark Oates, founder of the Campaign group We Vape, also expressed concern about the effect that restricting available vape flavours could have on people using vape products as a smoking cessation tool.¹³⁰ The previous bill also included provisions that would allow the Secretary of State to introduce regulations that could restrict the use of flavours in vaping products.¹³¹ For stakeholder responses to this provision at the time of the previous bill’s introduction, see section 12.2 of the Commons Library bill briefing [Tobacco and Vapes Bill 2023-24](#).

¹²⁷ UKVIA, [UKVIA issues letter to Health Secretary Wes Streeting on the inclusion of licensing in the Tobacco and Vapes Bill](#), not dated

¹²⁸ IBVTA, [IBVTA statement on the Tobacco & Vapes Bill](#), 5 November 2024

¹²⁹ IBVTA, [IBVTA statement on the Tobacco & Vapes Bill](#), 5 November 2024

¹³⁰ Talking Retail, [Tobacco and Vapes Bill returned with licensing scheme amendment](#), 5 November 2024

¹³¹ See clause 62 of the previous bill as introduced, section 12.2 of the Commons Library briefing paper, [Tobacco and Vapes Bill 2023-24](#)

7.5

Clause 93: Substances released into the human body and emissions

Clause 93 enables the Secretary of State to make regulations about the nature and number of substances that may be released into a person's body, or the emissions that may be released by:

- c) tobacco products
- d) tobacco related devices
- e) herbal smoking products
- f) cigarette papers
- g) vaping products
- h) nicotine products

The regulations would be able to impose prohibitions, requirements or limitations in relation to the production, importation or supply of these products in the course of business.

The regulations would also allow the government to decide how the products are determined.

Regulations made under this section would be subject to the [affirmative procedure](#).

Legislative background

Section 13 of the [Tobacco and Related Products Regulations 2016](#) sets the maximum permitted emission levels for cigarettes that are produced, supplied or manufactured for export within the UK. Section 36 sets out product requirements for e-cigarettes and refill containers, including maximum nicotine quantities.

7.6

Clause 94: Non-compliant images

Clause 94 enables the government to create regulations which would prohibit a person from publishing images of relevant products or their packaging, where it is possible to tell that the requirements under clauses 90 and 91 have not been complied with. Relevant products include tobacco products, tobacco-related devices, herbal smoking products, cigarette papers, vaping products and nicotine products.

The explanatory notes explain that this means, for example, that an online retailer would not be able to display images that show non-compliant products.

Regulations made under this section would be subject to the [affirmative procedure](#).

7.7

Clause 95: Registration of products

Clause 95 enables the government to make regulations, establishing a register of tobacco products, tobacco-related devices, herbal smoking products, cigarette papers, vaping products and nicotine products.

The regulations might impose prohibitions or limitations on the supply of an unregistered product in the course of business.

The regulations might specify who can keep the register, who is eligible to register a product, publication of the register and fees to maintain it.

The regulations might also stipulate when a product's registration expires, renews, may be cancelled or suspended.

The regulations could also determine what information must be provided to register a product, such as the reasons for an ingredient's inclusion in the product, information about actual or suspected risks to human health or safety and information about the substances or emissions that are released by the product.

Regulations made under this section would be subject to the [affirmative procedure](#).

Legislative background

The [Tobacco and Related Products Regulations 2016](#) require producers to notify the government when they place, or intend to place, nicotine-containing vapes and refill containers (regulation 31) and tobacco products (regulation 22) on the UK market.

Producers must make their submissions to:

- the DHSC, for products to be sold in England, Wales and Scotland. The Medicines and Healthcare products Regulatory Agency (MHRA) is responsible for publishing these notifications.¹³²
- the EU Common Entry Gate for producers placing their products on the Northern Ireland market.

¹³² DHSC, Tobacco and Vapes Bill, [Delegated powers memorandum](#) (PDF), 5 November 2024

Further details are available in:

- sections 3.7 and 3.2 of the Commons Library briefing [The regulation of e-cigarettes](#)
- Guidance from the Medicines and Healthcare products Regulatory Agency (MHRA), [E-cigarettes: regulations for consumer products](#)

The notification requirement does not currently apply to nicotine-containing vapes and refill containers.

It also does not apply to nicotine-containing products that are licensed as medicines (the MHRA has published [guidance for these products](#)).¹³³

7.8 Clause 96: Information

Clause 96 enables the government to make regulations requiring producers and importers of a tobacco product, tobacco-related device, herbal smoking products, cigarette papers, vaping product or nicotine product, to provide information related to the product or producer.

The regulations could require the provision of information that could be requested for product registration (as set out in clause 95), or sales data and market research relating to the product.

Regulations made under this section would be subject to the [affirmative procedure](#).

7.9 Clause 97: Studies

Clause 97 enables the government to make regulations requiring producers of relevant products to carry out a study in relation to the product or an ingredient in it, and to submit a report on the results of the study to a person specified in the regulations.

A ‘relevant product’ for this purpose is a tobacco product, tobacco-related device, herbal smoking product, cigarette papers, a vaping product or a nicotine product.

The regulations could make provision about the length and methodology of a study and its report, the questions the study must address and the content and structure of a report.

¹³³ MHRA, [Guidance for licensing electronic cigarettes and other inhaled nicotine-containing products as medicines](#), last updated 3 November 2022

Regulations made under this section would be subject to the [affirmative procedure](#).

Legislative background

Section 20A of the [Tobacco and Related Products Regulations 2016](#) requires cigarette or hand rolling tobacco producers which contain a specified additive (as set out in schedule 2 of the regulations) to carry out a study about the additive. It also requires them to submit a report to the Secretary of State (and the European Commission where the product is a NI tobacco product).

Section 20B sets out what the study must consider, including whether the additive contributes to the toxicity or addictiveness of the product, results in a characterising flavour or facilitates inhalation or nicotine uptake.

7.10

Clause 98: Responsible person

Clause 98 enables the government to require the producer of a tobacco product, tobacco-related device, herbal smoking product, cigarette papers, vaping product or nicotine product to nominate a person, who will be responsible for the information that has to be provided in relation to clauses 95 (on product registration), 96 (on information) and 97 (on studies).

The explanatory notes to the bill note that 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”.¹³⁴

The regulations could stipulate eligibility criteria about the person to be nominated as the responsible person, such as requiring them to have a connection to the UK.¹³⁵

7.11

Clause 99: Testing

Clause 99 enables the government to make regulations which would require a person to test a product to determine if it complied with requirements imposed in regulations made under part 5 of the bill (on product and information requirements).

The DHSC notes that currently, Trading Standards tests products which appear to be non-compliant, and reports that it was “frequently finding

¹³⁴ Tobacco and Vapes Bill, [Explanatory Notes](#), 5 November 2024

¹³⁵ Tobacco and Vapes Bill, [Explanatory Notes](#), 5 November 2024

nicotine vaping products which are not compliant with the requirements under [Tobacco and Related Products Regulations 2016]”.

The DHSC said regulation-making powers under clause 99 would enable it to establish testing regimes that are more rigorous and effective.¹³⁶ It said the type and frequency of testing would be set as appropriate, considering the potential safety risks with different products.

Regulations made under this section would be subject to the [affirmative procedure](#).

Legislative background

Regulation 14 of [The Tobacco and Related Products Regulations 2016](#) requires that tar, nicotine and carbon monoxide emissions from cigarettes are measured and verified, on an annual basis, by an independent and approved laboratory.¹³⁷ Producers are liable to pay an annual fee, under the [Tobacco Products and Herbal Products for Smoking \(Fees\) Regulations 2017](#).

7.12

Clause 100: Product safety

Clause 100 enables the government to make regulations requiring producers and importers of relevant products to put processes in place to collect information about the product’s effect on human health and safety.

The regulations could also impose a prohibition or limitation on the supply of a product by a producer or importer, or require a product recall.

‘Relevant products’ in this section means tobacco products, tobacco-related devices, herbal smoking products, cigarette papers, vaping products or nicotine products.

Regulations made under this section would be subject to the [affirmative procedure](#).

Legislative background

Regulation 39 of the [Tobacco and Related Products Regulations 2016](#) sets out current requirements for producers of nicotine-containing vapes to establish and maintain a system about all the suspected adverse effects of human health of a product. Clause 100 would allow similar requirements to be applied to producers and importers of other products.

¹³⁶ DHSC, Tobacco and Vapes Bill, [Delegated powers memorandum](#) (PDF), 5 November 2024

¹³⁷ DHSC, Tobacco and Vapes Bill, [Delegated powers memorandum](#) (PDF), 5 November 2024

Clause 100 would allow the government to require the recall of a product, or to stop its supply.

7.13 Clause 101: Matters dealt with by the 2016 regulations

Clause 101 enables the Secretary of State to make provision in regulations that is similar to any provision in the [Tobacco and Related Products Regulations 2016](#).

The explanatory notes say this will ensure that any gap in powers taken under in part 5 can be covered, relative to provisions in the 2016 regulations.¹³⁸

Clause 101 also enables the 2016 regulations to be amended so that any of its provisions could be extended to tobacco products, tobacco-related devices, herbal smoking products, cigarette papers, vaping products or nicotine products to which the 2016 regulations do not apply.

7.14 Clause 102: Treatment of 2016 regulations

Clause 102 allows for regulations to revoke parts of the [Tobacco and Related Products Regulations 2016](#) without replacing them. The explanatory notes provide further context:

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 1978](#) (Implied power to amend).¹³⁹

7.15 Clause 103: Offences

Clause 103 provides for the creation of offences relating to a failure to comply with any regulations made under part 5. It also sets out the maximum penalties that could be imposed.

¹³⁸ Tobacco and Vapes Bill, [Explanatory Notes](#), 5 November 2024

¹³⁹ Tobacco and Vapes Bill, [Explanatory Notes](#), 5 November 2024

7.16 Clause 104: Enforcement

Clause 104 provides for provisions about enforcement to be included in regulations made under part 5.

The regulations could provide for enforcement authorities to be given enforcement functions. The relevant enforcement authorities would be a [local weights and measures authority](#) in England, Scotland and Wales and a district council in Northern Ireland.

The regulations could make the same provisions that are made in clause 35 (power of ministers to take over proceedings) and clause 36 (power of ministers to take over proceedings).¹⁴⁰

This would enable the relevant national authority (the Secretary of State, Welsh Ministers, Scottish Ministers or the Department of Health in Northern Ireland) to take over enforcement from a relevant enforcement authority. This would be possible for legal proceedings relating to any offence committed under the regulations.¹⁴¹

7.17 Clause 105: Sub-delegation

Clause 105 allows the Secretary of State, or another appointed person, to make provision on matters dealt with by the regulations through a determination or other informal document.

The explanatory notes provide an example by referring to clause 99 (testing), where regulations may provide for tests to be carried out on products. The detailed technical specifications for tests could be set out in guidance instead of legislation.¹⁴²

7.18 Clause 106: Power to make provision binding the Crown

Clause 106 provides that part 5 of the bill, and any regulations made under it, bind the Crown.

¹⁴⁰ Tobacco and Vapes Bill, [Explanatory Notes](#), 5 November 2024

¹⁴¹ Tobacco and Vapes Bill, [Explanatory Notes](#), 5 November 2024

¹⁴² Tobacco and Vapes Bill, [Explanatory Notes](#), 5 November 2024

Part 5 and regulations made under it would apply to all bodies and persons acting on behalf of the Crown, such as government departments, prisons run by His Majesty's Prison Service and the armed forces.

Clause 106 stipulates that the Crown may not be criminally liable for offences under part 5. Persons working on behalf of the Crown (such as civil servants or prison employees) may be prosecuted for an offence and held criminally liable.

7.19 **Clause 107: Power to amend legislation**

Clause 107 provides that, where consequential provisions are made by regulations under part 5, they may amend, repeal or revoke any legislation (wherever passed or made).

7.20 **Clause 108: Consequential repeal**

Clause 108 repeals section 94 (on the retail packaging of tobacco) of the [Children and Families Act 2014](#) (the '2014 act').

Section 94 of the 2014 act enables the Secretary of State to make regulations that set out provisions about the retail packaging of tobacco products. These are provided for in the bill.

[The Standardised Packaging of Tobacco Products Regulations 2015](#) were made using powers in section 94 of the 2014 act. They make provision for the standardised packaging of tobacco products and will remain in force.

7.21 **Clause 109: Enforcement of the 2016 regulations**

Under clause 109, non-compliance with requirements set out in the [Tobacco and Related Products Regulations 2016](#) (TRPR 2016) would be brought within the scope of the enforcement regime established in part 3 of the [Digital Markets, Competition and Consumers Act 2024](#) (the '2024 act'). Part 3 of the 2024 act makes provision for the enforcement of consumer law.

Clause 109 would be implemented by adding TRPR 2016 to the list of secondary legislation in schedule 15 of the 2024 act.

7.22 Clause 110: Consultation

Clause 110 places a duty on the Secretary of State to consult before making regulations under part 5 of the bill.

7.23 Clause 111: Consent to regulations under part 5

Regulations made under part 5 of the bill could cover matters that are within the legislative competence of the devolved administrations.

Clause 111 requires the Secretary of State to obtain consent from Welsh Ministers, Scottish Ministers and the Executive Office of Northern Ireland if provisions of the regulations fall within their legislative competence.

7.24 Clause 112: Interpretation of part 5

Clause 112 sets out definitions for terminology used in part of the bill.

7.25 Clause 113: Meaning of “nicotine product”

Clause 113 defines “nicotine product” in relation to part 5 of the bill.

8 Part 6: Advertising and sponsorship

There is already a total UK-wide ban on the advertising and sponsorship of tobacco products under the [Tobacco Advertising and Promotion Act 2002](#) (TAPA 2002) The bill would repeal TAPA 2002 and replace it with part 6.

Part 6 would introduce a UK-wide ban on the advertising and sponsorship of tobacco products, herbal smoking products, cigarette papers, vaping and nicotine products. Part 6 is entirely new. It was not included in the previous bill. In outline, it contains separate provisions for:

- advertising (clauses 114 to 119)
- brandsharing (clause 123)
- sponsorship (clause 124)

In addition, there are separate provisions covering:

- audiovisual services and radio broadcasting (clauses 126 and 127)
- liability of others for part 6 offences (clause 128)
- enforcement (clauses 129 to 131)
- miscellaneous areas including alignment of definitions; power to extend part 6 and the [Communications Act 2003](#) to other products; and Crown application of the bill

The detail is set out below.

8.1 Advertising (clauses 114 to 119)

The advertising provisions in part 6 of the bill:

- cover the publishing, designing, printing and distributing of an advert or causing the publication, designing, printing or distribution, of an advert including online (clauses 114 to 119)
- make available a statutory defence for a person charged with an offence under clauses 114 to 119 (clause 120)
- exclude specialist tobacconists (a term strictly defined in the bill) from liability for offences under clauses 114 to 118 in relation to an

advertisement whose purpose or effect is to promote a tobacco product (clause 121)

- exclude advertisements that are ‘permitted’ displays (clause 122)

Clauses 114 to 119 are standardised to the extent that they all cover tobacco products, herbal smoking products, cigarette papers, vaping products and nicotine products (the “relevant products”). In addition, a person who commits an advertising offence under any of clauses 114 to 119 would be liable:

- on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both,
- on summary conviction, (i) in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both; (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both; (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both

Further detail is outlined below.

8.2 Clause 114: Publishing advertisements

Clause 114(1) would make it an offence for a person, acting in the course of a business, to publish an advertisement in the UK whose sole purpose or effect is to promote a “relevant product”, and the person knows or has reason to suspect that (i) what they are publishing is or contains the advertisement, and (ii) that the advertisement has that purpose or will have that effect.

This prohibition would apply to advertisements in print media. For instance, publishing an advert for a vaping product in a magazine or newspaper.

8.3 Clause 115: Designing advertisements

Clause 115(1), would make it an offence for a person, acting in the course of a business, to design an advertisement whose purpose or effect is to promote a “relevant product”, and the person knows or has reason to suspect (i) that the advertisement has that purpose or will have that effect, and (ii) that the advertisement will be published in the UK.

For example, this prohibition would catch a person at a design agency who is designing an advertisement for a vaping product.

8.4 Clause 116: Printing advertisements

Clause 116(1) would make it an offence for a person, acting in the course of a business, to print an advertisement whose purpose or effect is to promote a “relevant product”, and the person knows or has reason to suspect (i) that what they are printing is or contains the advertisement, (ii) that the advertisement has that purpose or will have that effect, and (iii) that the advertisement will be published in the UK.

The clause would catch, for example, the printing of advertising leaflets advertising vapes.

8.5 Clause 117: Distributing advertisements

Clause 117(1) would make it an offence for a person, acting in the course of a business, to distribute an advertisement in the UK whose purpose or effect is to promote a “relevant product” and the person knows or has reason to suspect (i) that what they are distributing is or contains the advertisement, and (ii) that the advertisement has that purpose or will have that effect.

For example, a company that hands out leaflets in the street which contain vape advertisements would be caught by this clause.

8.6 Clause 118: Causing publication, designing, printing or distribution

Clause 118 would create two new offences.

Subsection (1) would make it an offence for a person, acting in the course of a business, to cause the publication or distribution in the UK of an advertisement whose purpose or effect is to promote a “relevant product” and the person knows or has reason to suspect (i) that they are causing the publication or distribution of the advertisement, and (ii) that the advertisement has that purpose or will have that effect, and (ii) that the advertisement will be published or distributed in the United Kingdom.

Subsection (2) would make it an offence for a person, acting in the course of a business, to cause the designing or printing of an advertisement whose purpose or effect is to promote a “relevant product”, and the person knows or has reason to suspect (i) that they are causing the designing or printing of the advertisement, (ii) that the advertisement has that purpose or will have that effect, and (iii) that the advertisement will be published in the UK.

Taken together, subsections (1) and (2) would make it an offence for a business to cause the publication, designing, printing or distribution of an advertisement for a relevant product knowing this would be published or distributed in the UK. For example, it would be an offence for someone to commission an advertising agency to create a nicotine product advert on their behalf.

8.7

Clause 119: Internet services

Significantly, clause 119 would also create two new offences.

First, under subsection (1), a person who carries on any business in the UK would commit an offence if:

- the person, acting in the course of business, provides an internet service by means of which an advertisement is published or distributed in the UK,
- the advertisement's purpose or effect is to promote a tobacco product, a herbal smoking product, cigarette papers, a vaping product, or a nicotine product
- the person knows or has reason to suspect: (i) that the advertisement will be published or distributed in the United Kingdom by means of the service that they provide, and (ii) that the advertisement has that purpose or will have that effect.

Secondly, under subsection (2), a person who carries on any business in the UK would commit an offence if:

- (a) the person, acting in the course of business, provides an internet service by means of which an advertisement is published or distributed in the UK,
- (b) the advertisement's purpose or effect is to promote a "relevant product",
- (c) the person becomes aware of the circumstances set out in paragraphs (a) and (b), and
- (d) the person fails to take all reasonable steps to prevent the advertisement from being further viewed by or distributed to the public in the UK.

For the purposes of clause 119, an "internet service" would mean a service that is made available by means of the internet. A service is "made available by means of the internet" even where it is made available by means of a combination of the internet and an electronic communications service. An "electronic communications service" would have the same meaning as in [section 32\(2\) of the Communications Act 2003](#).

In effect, clause 119 would make it an offence to provide an internet service in the course of a business by which means an advertisement to promote a

‘relevant product’ is published or distributed in the UK. For example, a marketing company would commit an offence if any of the bulk emails it routinely sends contains an advertisement for any of the relevant products.

8.8 Clause 120: Advertising: defences

Under clause 120(1) of the bill, where a person is charged with an advertising offence under any of clause 114 to 119, it would be a defence for the person to show that:

- (a) it is, or is contained in, a communication that is made in the course of business which is part of a relevant trade, and it is made for the purpose of that trade and directed solely at relevant persons involved in that trade,
- (b) it is, or is contained in, a reply to a particular request by an individual for information about a tobacco product, a herbal smoking product, cigarette papers, a vaping product or a nicotine product, or
- (c) it is contained in a publication, other than in an in-flight magazine,
 - (i) which is printed outside the UK, and
 - (ii) whose principal market is not the UK (or any part of the UK).

In short, it would be a defence to show that the advert was in a publication printed outside the UK and whose market was not the UK, or that an individual specifically requested information about a relevant product. However, it would only be a defence to show that the advert was part of a trade communication if it was directed at those involved at a senior level or with decision-making powers.

8.9 Clause 121: Specialist tobacconists

Specialist tobacconist shops would be excluded from the advertising offences in clauses 114 to 118.

Specifically, under clause 121(1), a person would not commit an offence under any of clauses 114 to 118 in relation to an advertisement whose purpose or effect is to promote a tobacco product, if the advertisement:

- is in a specialist tobacconist
- is not visible from outside the specialist tobacconist
- is not for cigarettes or hand-rolling tobacco

- complies with the requirements (if any) specified by the appropriate national authority in regulations as to the inclusion of health warnings and information

Regulations made under subsection (1) would be subject to the negative resolution procedure.

For the purposes of clause 121, a “specialist tobacconist shop” would mean a shop selling tobacco products by retail (whether or not it sells other things), and over half of whose sales on the premises derive from the sale of cigars, snuff, pipe tobacco and smoking accessories. To determine whether a shop is a specialist tobacconist, subsection 4 stipulates that sales must be measured by sale price, calculated using the last 12 months of a shop’s accounts or the period the shop has been open for if less than 12 months.

To all intents and purposes, clause 21 is based on the existing definition of “specialist tobacconists” contained in [section 6\(2\) of TAPA 2002](#).

8.10

Clause 122: Exclusion for advertisements that are displays

Clause 122 provides that no offence is committed under part 6 if a product or other material displayed is subject to “the law relating to displays”.

The purpose of this provision is to avoid a permitted display 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.

For the purpose of this clause, “the law relating to displays” means:

- display regulations that could be made under the bill for England and Wales (clauses 13 and 14 respectively)
- a display that falls within section 1(1) of the [Tobacco and Primary Services \(Scotland\) Act 2010](#) or display regulations that could be made under section 3A of the act
- display regulations that could be made under Article 4K of the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#)¹⁴³

Background policy

Background policy on the part 6 advertising prohibitions outlined above is set out below after consideration of clause 135.

¹⁴³ SI 1978/1907 (N.I. 26)

8.11

Clause 123: Brandsharing

Brandsharing is a form of indirect advertising. It is the practice where one business's products or services carry the insignia, logos, colours or other identifiable markings of an unrelated product as a way of promoting or marketing goods or services. For example, a popular fizzy drink company using their distinct branding and logo on a vape would be brandsharing if the intent is to promote vapes.

Clause 123(1) of the bill would give the Secretary of State the power to make regulations to prohibit or restrict brandsharing in relation to tobacco products, herbal smoking products, cigarette papers, vaping products, or nicotine products. The regulations would be subject to the affirmative resolution procedure.

Regulations made under subsection (1) would create offences in relation to a failure to comply with the regulations. The regulations must provide for any offence to be triable either way and punishable:

- on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both
- on summary conviction, (i) in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court, or a fine, or both; (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both; (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both

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

8.12

Sponsorship

Advertising and sponsorship are different. Advertising involves direct promotional messaging to a chosen audience to induce them to purchase a particular good or service or to cultivate brand loyalty. By contrast, sponsorship is a form of indirect advertising. It involves making a payment to affiliate a brand with an activity or event. For the sponsor, the aim is to increase brand awareness through integration and promotion at the sponsored event. Often, sponsorship agreements allow unique branding (for example, customised packages).

8.13 Clause 124: Sponsorship: tobacco products

Clause 124(1) would make it an offence for a person to be involved with a sponsorship agreement where the purpose is to promote a tobacco product in the course of business.

Under subsection (2), a person who commits an offence is liable:

- on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both
- on summary conviction: (i) in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court, or a fine, or both; (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both; (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both

8.14 Clause 125: Sponsorship: vaping and nicotine and other products

Clause 125 would make 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, or nicotine product in the course of business. For example, this clause would prohibit sports teams or stadiums from being sponsored by a vaping company.

Specifically, under clause 125(1), a person would commit an offence if:

(a) the person is party to an agreement entered into on or after the day on which clause 125 comes into force

(b) under the agreement, a party to it, acting in the course of business, makes a contribution towards something

(c) the purpose or effect of anything done on or after the specified date as a result of the agreement is to promote in the UK a herbal smoking product, cigarette papers, a vaping product, or a nicotine product

(d) the person knew or had reason to suspect, (i) that the contribution referred to in paragraph (b) was made in the course of business, and (ii) that the action referred to in paragraph (c) had that purpose or would have that effect

For the purposes of clause 125(1), a “specified date” would mean a date specified by the Secretary of State in regulations.

In short, it would be an offence for a party, acting in a course of a business, to enter into a sponsorship agreement with the purpose or effect of promoting a relevant product. However, sponsorship agreements entered into before clause 125 comes into force could continue, until regulations specify a date where any further actions under an existing agreement would be an offence.

Under subsection (2), a person who commits an offence would be liable:

- on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both
- on summary conviction: (i) in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court, or a fine, or both; (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both
- in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both

Policy background

All sponsorship activity is currently prohibited for tobacco products under TAPA 2002. Anyone convicted of an offence under this provision may be subject to imprisonment (for a term not exceeding two years) or a fine, or both.

For nicotine vapes, [Ofcom regulations](#) prohibit sponsorship of news and current affairs programmes, and any sponsorship of programming which promotes nicotine vapes. The [Communications Act 2003](#) also prohibits sponsorship of on-demand programme services or a programme on these services that promotes nicotine vapes. However, sponsorship that promotes nicotine vapes is permitted for other settings such as sports events and teams, music festivals and cultural events. For example, until recently, a football team had a shirt sponsorship deal with a vape company, and the St Helens Rugby club has named its venue the “Totally Wicked Stadium” (after the vaping retailer).

On 3 February 2022, [the Scottish Government published a consultation on tightening rules on advertising and vaping products](#).¹⁴⁴ On 27 September 2022, the Scottish Government published an independent analysis of responses to the consultation.¹⁴⁵ The report found 44.9% of respondents supported the proposal to make vape sponsorship agreements illegal, with 48.7% not in support. For those who supported the proposal (primarily health organisations and some individuals), the protection of children was a common theme:

¹⁴⁴ Scottish Government, [Vaping products - tightening rules on advertising and promotion: consultation 2022](#), 3 February 2022

¹⁴⁵ Scottish Government, [Vaping Products - tightening rules on advertising and promoting: consultation analysis](#), 27 September 2022

[...] a ban in sponsorship is necessary to protect children and non-smokers from being exposed to vape product advertising. These respondents express concern that vape products sponsoring sports teams, music events or nightclubs could glamourise vaping and encourage uptake amongst young people and non-smokers.

There are many examples of music events and sports being sponsored by vaping brands; for example, nzoVape have sponsored music festivals across the UK, such as PierJam on Blackpool North Pier. Whilst some of these events are 18+, not all are, younger people have opportunities to view e-cigarette brands promoted via social media and viral influencing.”¹⁴⁶

A common theme among those respondents who did not support the proposal (primarily individuals but also the vaping sector and tobacco industry) was that sponsorship encourages the take up of vaping amongst adult smokers:

A smokefree society needs all the help it can get the promotion of said products can only be a good thing in reaching as many smokers as possible.¹⁴⁷

As outlined in the bill’s impact assessment, there has been growing concern about the existence of sponsorship agreements which promote vaping and nicotine products:

Sponsorship agreements are a form of indirect advertising and there has recently been growing concern about the existence of agreements which promote vaping and nicotine products. These agreements normalise the products and may make them seem cool, having a potentially negative influence on the usage of the products among children and non-smokers.

[...] Government intervention is necessary to restrict advertising and sponsorship to children and young people to prevent the use of harmful products. Tobacco product advertising and sponsorship is already banned, and these were successful in reducing tobacco consumption.¹⁴⁸

Acknowledging that vaping can be an effective tool for smoking cessation, the government is concerned that sponsorship will encourage younger members of [an event] audience to take up vaping. It said:

Whilst we do not think vape sponsorship is hugely prevalent; it could still contribute to an environment of social acceptance. Evidence is limited on the causal links between vape companies sponsoring events and youth uptake of vaping; however concerns have been raised.¹⁴⁹

¹⁴⁶ Scottish Government, [Vaping Products – tightening rules on advertising and promoting: consultation analysis](#), 27 September 2022

¹⁴⁷ As above

¹⁴⁸ Department of Health and Social Care, [Tobacco and Vapes Bill: Impact Assessment](#) (PDF), 5 November 2024

¹⁴⁹ As above

8.15 Clause 126: Audiovisual services and radio broadcasting

Clause 126 outlines that part 6 of the bill would 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 2003](#). This is because advertising and sponsorship is already prohibited on these services under regulations by the [Office of Communications](#) (Ofcom) as set out in the 2003 act.

8.16 Clause 127: Extension of provisions about audiovisual and radio broadcasting

Clause 127 of the bill would introduce schedule 16. This schedule contains:

- amendments to extend certain provisions of the [Communications Act 2003](#) to all vaping products and to herbal smoking products, cigarette papers and nicotine products
- other amendments to the 2003 act made in consequence of part 6 of the bill

In effect, schedule 16, would ensure that the current ban of advertising vapes on television, radio, and on demand programme services implemented by the [Communications Act 2003](#) is extended so that herbal smoking products, cigarette papers and nicotine products are also captured. Importantly, the advertising ban would continue to be governed by the 2003 act rather than through the bill itself.

8.17 Clause 128: Liability of others for offences committed by bodies

Clause 128(1) would make a “relevant person” potentially liable for an offence under part 6 of the bill committed by a “body”. For the purposes of this clause, a “body” would mean a body corporate, a partnership, or an unincorporated association. A “relevant person” might be anyone who has management responsibilities for the organisation, such as a director or manager of a company or a partner in a firm.

In effect, both the relevant person and the body could be held responsible for the advertising offence. However, for proceedings to be taken against the

relevant person, it would be necessary to show that the offence was committed with their consent, connivance, or neglect.

8.18 Clause 129: Enforcement authorities

Clause 129 would impose a “duty” on relevant enforcement authorities to enforce the provisions in part 6 of the bill and regulations made under powers in part 6.

For the purposes of clause 129, an “enforcement authority” would mean a local weights and measures authority (Trading Standards) in England, Wales and Scotland, and a district council in Northern Ireland.

8.19 Clause 130: Power of ministers etc to take over enforcement functions

Clause 130(1) would provide a power for the appropriate national authority to carry out the enforcement of a particular case (or a particular type of case) instead of the relevant local enforcement authority. As defined in subsection (2), an “appropriate national authority” would be the Secretary of State, Welsh ministers, Scottish Ministers and the Department of Health in Northern Ireland.

In effect, a national enforcement authority would undertake the investigation and enforcement in place of the relevant local enforcement authority as prescribed in clause 129. It is imagined that the need might arise in circumstances where Trading Standards is unable or unwilling to act in a certain case.

8.20 Clause 131: Power of ministers etc to take over proceedings

Clause 131 would empower the Secretary of State, Welsh Ministers, and the Department of Health in Northern Ireland to take over legal proceedings relating to any offence that has been committed under part 6 of the bill or regulations made under it. Again, it is imagined that a national authority might be required to ‘step in’ and undertake legal proceedings in circumstances where a local enforcement authority is unable or unwilling to pursue a case.

The explanatory notes explain that it would not be appropriate to grant this power to Scottish Ministers. This is because 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.

8.21 Alignment of definition of “tobacco product” in old legislation

Clause 132 would amend the definition of ‘tobacco products’ in [section 1 of TAPA 2002](#) so it aligns with the following definition used in the bill:

“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.

8.22 Clause 133: Power to extend part 6 and the Communications Act 2003 to other products

Clause 133(1) would give the Secretary of State powers to amend, by regulations, part 6 of the bill or the [Communications Act 2003](#) for the purpose of extending any provision that applies in relation to a tobacco product to: (i) a device which enables a tobacco product to be consumed (for example, a heated tobacco device or pipe) or (ii) an item which is intended to form part of such a device.

However, under subsection (2), before making regulations under this clause, the Secretary of State would be required to consult any appropriate persons. In addition, subsection (3) stipulates that the Secretary of State must obtain prior consent from Welsh Ministers, Scottish Ministers and the Executive Office of Northern Ireland if provisions of the regulations fall within the legislative competence of the devolved legislatures.

According to the explanatory notes, the reason for giving the Secretary of State this clause 133 power is to ensure that devices used to consume tobacco are subjected to the same advertising prohibitions as tobacco products.

8.23 Clause 134: Crown application

Under clause 134(1), part 6 of the bill and regulations made under it would bind the Crown. In other words, all advertising and sponsorship restrictions would apply to bodies and persons acting as servants of the Crown (for example, government departments, prisons and the armed forces).

Subsection (2) stipulates that nothing in part 6 or regulations made under it would make the Crown criminally liable. However, the High Court in England and Wales or Northern Ireland, or the Court of Session in Scotland, could

declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (2).

Importantly, subsection 5 makes it clear that the exemption in subsection (2) would not affect the criminal liability of persons in the service of the Crown (for example, civil servants).

8.24 **Clause 135: Interpretation of part 6**

Clause 135 would provide the definitions for part 6.

8.25 **Policy background on part 6 advertising provisions**

Current legal position

There is already a UK-wide ban on the advertising of tobacco products. TAPA 2002 prohibits the advertising of tobacco products to the public with an exemption for specialist tobacconists.

The [Tobacco and Related Products Regulations 2016](#) (TRPR 2016) implemented in the UK the [Tobacco Products Directive \(2014/40/EU\)](#) (PDF).¹⁵⁰,¹⁵¹ The TRPRs prohibit the advertising of nicotine-containing vapes and liquids in certain media, including:

- on television and on-demand television (implemented through the [Broadcast Advertising \(BCAP\) Code](#) and the [Broadcasting Code](#))
- on the radio (implemented by the BCAP Code and the Broadcasting Code)
- through television and on-demand television product placement (implemented by the [Communications Act 2003](#) as amended by the TRPRs)
- through sponsorship of television and radio programmes intended to promote e-cigarettes or an event

¹⁵⁰ SI 2016 No.507

¹⁵¹ The [Tobacco and Related Products Regulations 2016](#) (TRPRs) were subsequently amended by the Tobacco Products and Nicotine Inhaling Products (Amendment)(EU Exit) Regulations 2020 (SI 2020 No.1316) to ensure that tobacco control continued effectively in Great Britain and Northern Ireland after the UK's departure from the EU (SI 2020 No.1316). The TRPRs is assimilated EU law.

- through information society services (this includes, for example, internet advertising and commercial email)
- in certain printed publications, such as newspapers, magazines, periodicals and similar publications (except trade publications)

The advertising of unlicensed:

- outdoor advertising, including digital outdoor advertising
- posters on public transport (not leaving the UK)
- cinema
- direct hard copy mail
- leaflets
- private, bespoke correspondence between a marketer and a consumer
- media which are targeted exclusively to the trade.¹⁵⁰

Advertisements for any unlicensed, nicotine-containing e-cigarettes in any of the above media must still comply with all relevant rules in the Advertising Codes (see below) about content and placement.

In addition, advertising is permitted for:

- non-nicotine disposable vapes¹⁵²
- non-disposable vapes designed to only take cartridges with non-nicotine containing fluid
- non-nicotine e-liquids

For these non-nicotine vaping products, advertising can lawfully appear in any medium but must not directly or indirectly promote nicotine-containing products.

Advertising is currently permitted in all advertising mediums for nicotine products, herbal smoking products and cigarette papers.

The Scottish Government, under the [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016](#), has powers to go further in regulating the advertising and sponsorship of nicotine vapes.

¹⁵² The government has announced a ban on the sale and supply of single use vapes in England will come into force on 1 June 2025, see [Government crackdown on single use vapes](#), Department for Environment, Food & Rural Affairs and Department of Health & Social Care press notice, 24 October 2024

In addition to the legislation outlined above, rules on the advertising, marketing and promotion of vaping products are set out in the UK Advertising Codes, both the [Non-broadcast Advertising and Direct & Promotional Marketing \(CAP\) Code](#) and the [Broadcast Advertising \(BCAP\) Code](#). The Advertising Standards Authority (ASA), an independent regulator, has responsibility for ensuring adverts across UK media comply with the codes. The ASA requires all permitted advertising for e-cigarettes and liquids to be socially responsible, not to be targeted at children and not to make unauthorised health or safety claims.

The ASA has published guidance on [Electronic cigarette advertising prohibitions \(non-broadcast and broadcast\)](#) (31 January 2017).

More information can be found in the Commons Library briefing [Advertising, Marketing and promotion of vaping products](#) (PDF).

Policy rationale

As set out in the [Labour Party's manifesto](#) and [Health mission](#), the government intends to ban vaping and nicotine products from being deliberately branded and advertised to children.¹⁵³,¹⁵⁴ This is a key part of its aim to stop the next generation from becoming addicted to nicotine. In the bill's impact assessment, the government explained its policy objectives:

The intended outcome is that by restricting advertising and sponsorship, vaping and nicotine products will be less visible, appealing and normalised for children and non-smokers, thus reducing their use and protecting children and non-smokers from the health harms that these products could cause. Therefore, a key indicator of success will be whether uptake of these products, and prevalence amongst young people, decreases.¹⁵⁵

The government suggested that partial bans had been ineffective in protecting children and young people:

Whilst partial bans are already in place, advertising of permitted channels has been seen to be increasingly noticed, especially by young people, and the overall noticing of vape advertising has increased.

Additionally, whilst advertising vapes online is not permitted under TRPR, it is difficult to enforce and in 2023 it is reported that the ASA issues enforcement notices to vape manufacturers and retailers requiring them to stop paid promotions on the social media platform TikTok.

Additionally, evidence for tobacco found that partial bans are not as effective as comprehensive bans, which were successful in reducing tobacco consumption, suggesting that a comprehensive ban could be more effective in reducing consumption of vapes.

¹⁵³ [Change - Labour Party Manifesto](#), 13 June 2024 (accessed 18 November 2024)

¹⁵⁴ [Build an NHS fit for the future](#), Labour Manifesto, 2024 (accessed 18 November 2024)

¹⁵⁵ Department of Health and Social Care, [Tobacco and Vapes Bill: Impact Assessment](#) (PDF), 5 November 2024

Additionally, the long-term harms from vaping and use of nicotine products are not well evidenced, and therefore consumption decisions are being made without health implications being known.¹⁵⁶

In its impact assessment, the government highlighted a [2021 report by Cancer Research UK \(CRUK\) on compliance with current e-cigarette advertising and marketing regulation in the UK](#) (PDF).¹⁵⁷ This report drew on evidence from adult and youth surveys and policy compliance studies. Its key findings included:

- good compliance with the TRPRs. Analysis of e-cigarette advertising expenditure in 2019 showed that 99.9% of spend reported occurred in media channels where e-cigarette advertising was permitted under the TRPR, suggesting good compliance with this aspect of the TRPRs. However, social media was not included in the expenditure analysis as no data were available.
- good compliance with the Advertising Codes. Detailed ‘content’ analysis demonstrated good compliance with CAP Code (non-broadcast code) rule 22 (rules on e-cigarettes) in all channels except for social media (Instagram). All Instagram adverts in the sample were considered in breach of CAP Code rule 22.12.
- that young people generally noticed e-cigarette marketing more than adults across all channels, particularly on billboards (31.4% of young people compared with 5.9% of adults reporting noticing).
- that noticing of e-cigarette marketing on websites/social media remained stable but high among young people between 2017 and 2019 (41.1% and 43.8% respectively). Importantly, content analysis of adverts found all Instagram posts in the sample – on both public and private Instagram accounts – to be in breach of the TRPRs and CAP Code rule 22.12.¹⁵⁸

As outlined in the impact assessment, the [post-implementation review of the TRPRs](#) (PDF) (25 March 2022) showed “mixed results on the public’s opinion on whether the partial restrictions on vape advertising had been ineffective” in discouraging young people and non-smokers from using vapes:

[...] 40% answered no, 32% yes, and 28% don’t know. Whilst some people showed support of advertising bans, 438 responses said restrictions on advertising discourages both young people and non-smokers from using vapes, 323 responses said restrictions should be relaxed, and 170 said

¹⁵⁶ Department of Health and Social Care, [Tobacco and Vapes Bill: Impact Assessment](#) (PDF), 5 November 2024

¹⁵⁷ [E-cigarette marketing in the UK](#) (PDF), Cancer Research UK, March 2021, (accessed 18 November 2024)

¹⁵⁸ As above

restrictions should be tightened. Public Sector bodies had the clearest majority arguing that restrictions on vape advertising should be more severe.¹⁵⁹

In introducing a ban on the advertising and sponsorship of vaping and nicotine products, the government said its aim was to reduce the appeal of these products to children and non-smokers:

Evidence shows young people's (11 to 17 year olds) noticing of vape promotion has increased in recent years across several settings, and therefore could suggest advertising may be being deliberately targeted to children and this is extremely worrying given the unknown long-term health impacts and the addictive nature of the nicotine contained in vapes.

[...] Therefore, introducing bans on advertising and sponsorship of vaping and nicotine products will help to achieve the aim of reducing the appeal of these products to children and non-smokers.¹⁶⁰

As outlined in the impact assessment, the government believes “intervention is necessary to restrict advertising and sponsorship to children and young people to prevent the use of harmful products”:

Restrictions on advertising and sponsorship are part of the Tobacco and Vapes Bill. Therefore, while advertising and sponsorship alone may not completely reduce the usage of vaping and nicotine products by children and non-smokers, the package of landmark policies will work together to protect children and non-smokers from the potential harms of vaping and the risk of nicotine addiction.¹⁶¹

If enacted, the restrictions in the bill would be enforced in the same way as tobacco advertising and sponsorship laws with the responsible enforcement authority being local authority Trading Standards offices in England, Scotland and Wales, and district councils in Northern Ireland.

¹⁵⁹ Department of Health & Social Care, [Post-implementation Review \(PIR\) of Tobacco Legislation](#), CP , 25 March 2022

¹⁶⁰ Department of Health and Social Care, [Tobacco and Vapes Bill: Impact Assessment](#) (PDF), 5 November 2024

¹⁶¹ As above

9

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

Part 7 would provide regulation-making powers to extend smoke-free restrictions to a wider range of places, including outdoor places.

These powers would be made available to the Secretary of State, Scottish Ministers and the Department of Health in Northern Ireland. Welsh Ministers already have equivalent powers under sections 13 and 15 of the [Public Health \(Wales\) Act 2017](#).

Part 7 would also enable each of the four UK governments to designate places as being ‘vape-free’, if they are already designated ‘smoke-free’. This would introduce vape-free legislation across the UK for the first time.

Similarly, each of the four UK governments would be granted regulation-making powers to designate places as being ‘heated tobacco-free, if they already designated ‘smoke-free’.

9.1

Clause 136: Addition of smoke-free places in England

Clause 136 amends existing legislation enabling the Secretary of State to make regulations designating additional places or vehicles in England to be smoke free. For places of work and premises open to the public, they only need to be smoke free during relevant periods.

Clause 136 removes a requirement, set out in existing legislation, which only allows for places to be designated smoke free if there is a “significant risk” that people present would be exposed to “significant quantities of smoke”. This effectively widens the scope of premises that can be designated smoke free. Clause 136 would also allow the government to make exceptions to smoke-free designations.

Clause 136 also introduces a requirement for the government to hold a consultation before making regulations under this section.

Clause 136 also enables the government to identify, via regulations, categories of people who would be able to designate certain areas of a vehicle not to be smoke free.¹⁶²

This clause would give effect to the government's intention to prohibit smoking outside schools, children's playgrounds and hospitals. The government has confirmed that it does not intend to extend this measure to outdoor hospitality settings or wider open spaces like beaches.¹⁶³

Legislative background

Smoke-free legislation in England is set out in the [Health Act 2006](#) ('the 2006 act').

References to 'smoke' and 'smoke-free' are to be considered in the context of definitions set out in section 1 of the 2006 act:

- (a) "smoking" refers to smoking tobacco or anything which contains tobacco, or smoking any other substance, and
- (b) smoking includes being in possession of lit tobacco or of anything lit which contains tobacco, or being in possession of any other lit substance in a form in which it could be smoked.

Section 2 of the 2006 act designates premises that are open to the public and premises used as a place of work as smoke-free.

Section 4 of the 2006 act enables the government to make regulations designating any place in England that is not designated as smoke-free under section 2 as smoke-free. Section 4(4) stipulates that only enclosed and partially enclosed areas within those premises can be smoke-free. Section 4(2) enables the government to make further regulations defining 'enclosed' and 'substantially enclosed'.

Section 5 of the 2006 act enables the government to make regulations providing for vehicles in England to be smoke-free, and section 5(2) allows regulations to be made about exemptions.

Policy background

The Health Secretary, Wes Streeting called for a "national debate" on banning smoking outside pubs.¹⁶⁴ He said the government was looking at a range of measures to help smokers to quit, and also to deal with harmful second-hand smoke and passive smoking.

¹⁶² DHSC, Tobacco and Vapes Bill, [Delegated powers memorandum](#) (PDF), 5 November 2024

¹⁶³ DHSC, [Tobacco and Vapes Bill: creating a smoke-free UK and tackling youth vaping factsheet](#), 13 November 2024

¹⁶⁴ The Independent, [Streeting calls for national debate about smoking outside pubs](#), 25 September 2024

The proposed ban was also set to apply in other outdoor hospitality spaces such as restaurant gardens.¹⁶⁵

This caused concerns about the effect on the hospitality industry. For example, Kate Nicholls, chief executive of UKHospitality, warned that such a ban would cause “serious economic harm to hospitality venues”.¹⁶⁶

The Health Secretary has since confirmed that the proposal would not be taken forward, noting that he did not want to cause further harm to the hospitality industry.¹⁶⁷ The bill itself does not exclude outdoor hospitality spaces from smoke-free restrictions. Regulations made under clause 136 would determine which spaces the restrictions are applied to.

Stakeholder response

The smokers’ campaign group, Forest, said a smoking ban outside hospitals was “cruel” because it could be a comfort to patients, visitors and staff “who want a quiet, stress-free moment”.¹⁶⁸

Matthew Taylor, chief executive of the NHS Confederation, welcomed the “consultation into extending the outdoor smoking ban into other outdoor areas”.¹⁶⁹ The government has not announced a consultation on this, but will be required to consult before introducing regulations under this section.

Stefan Bomhard, chief executive of tobacco manufacturer Imperial Brands, said he didn’t think the proposal would reduce the number of smokers.¹⁷⁰

9.2

Clause 137: Smoke-free premises: Recasting of power to exempt performers

Clause 137 would enable the Secretary of State to make regulations to allow performers to smoke during a performance where it is needed to preserve “artistic integrity”.

The exemption would apply to the performer, and no other person. Clause 137 would produce a consolidatory effect. It amends existing legislation which makes similar provisions.

¹⁶⁵ The Independent, [Planned ban on smoking in pub gardens ‘set to be ditched by No 10’ after hospitality rebellion](#), 24 October 2024

¹⁶⁶ The Independent, [Planned ban on smoking in pub gardens ‘set to be ditched by No 10’ after hospitality rebellion](#), 24 October 2024

¹⁶⁷ BBC News, [Pub garden smoking ban dropped from government plans](#), 5 November 2024

¹⁶⁸ BBC News, [Pub garden smoking ban dropped from government plans](#), 5 November 2024

¹⁶⁹ NHS Confederation, [NHS Confederation responds to introduction of Tobacco and Vapes Bill](#), 5 November 2024

¹⁷⁰ The Times, [‘Considerate smokers’ mean curbs won’t make difference, says tobacco boss](#), 19 November 2024

Clause 137 would have effect in England.

Legislative background

Section 3 of the [Health Act 2006](#) (the ‘2006 act’) provides an exemption so that performers are permitted to smoke “if the artistic integrity of the performance makes it appropriate for them to smoke”. Section 3 of the 2006 act applies in England and Wales.

Clause 137 would effectively provide 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).

9.3

Clause 138: No-smoking signs in England

Clause 138 would amend existing legislation concerning no-smoking signage. It requires the occupier or manager of smoke-free premises to make sure no-smoking signs are displayed in or near premises in line with requirements imposed by regulations made by the government.

The regulations may stipulate requirements about the content or appearance of a sign, or how and where signs are to be displayed.

Legislative background

Section 6 of the [Health Act 2006](#) sets out requirements around no-smoking signs. It places a duty upon the occupier or manager of smoke-free premises to make sure no-smoking signs are displayed in line with requirements set out in that section.

Offences related to failure to display a notice would remain unchanged by the bill.

9.4

Clause 139: Vape-free places in England

Clause 139 would amend existing smoke-free legislation to introduce vape-free restrictions for the first time. It would enable the Secretary of State to make regulations designating places or vehicles in England as being vape-free, but only where that place is already designated as being smoke-free.

It would insert new chapter 1A on vape-free places in England into the [Health Act 2006](#).

Clause 139 would also set out offences about vaping, or failing to prevent vaping, in a vape-free place or vehicle, and the display of relevant signs.

Smoke-free restrictions that are set out in the [Health Act 2006](#) do not apply to the Crown, and consequently 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.¹⁷¹ Government bodies have the ability to bring forward similar restrictions other than under the [Health Act 2006](#). Clause 139 similarly does not apply to the Crown in order to ensure a consistent approach.

9.5 Clause 140: Heated tobacco-free places in England

Clause 140 would amend existing smoke-free legislation to introduce heated tobacco-free place restrictions for the first time.

It would insert new chapter 1B on heated tobacco-free places in England into the [Health Act 2006](#).

It would enable the Secretary of State to make regulations prescribing a place or vehicles as being heated tobacco-free, but only where that place is already designated as being smoke-free.

Clause 140 would also set out offences about using or failing to prevent the use of a heated tobacco device in a heated tobacco-free place or vehicle, and the display of relevant signs.

Smoke-free restrictions that are set out in the [Health Act 2006](#) do not apply to the Crown, and consequently 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.¹⁷² Government bodies can bring forward similar restrictions other than under the [Health Act 2006](#). Clause 140 similarly does not apply to the Crown in order to ensure a consistent approach.

9.6 Clause 141: Amendments consequential on sections 136 to 140

Clause 141 introduces schedule 17 to the bill. Schedule 17 sets out amendments to existing legislation, resulting from the provisions set out in clauses 136 to 140.

¹⁷¹ [Explanatory Notes, Tobacco and Vapes Bill](#), 5 November 2024

¹⁷² [Explanatory Notes, Tobacco and Vapes Bill](#), 5 November 2024

9.7 Clause 142: No-smoking premises in Scotland

Clause 142 would amend existing legislation to expand the scope of places that Scottish Ministers can designate as smoke-free.

It would enable Scottish Ministers to make regulations, applying this designation to places that are not “wholly or substantially enclosed”. This would effectively widen the scope of places that can be designated as smoke-free.

The clause places Ministers under a duty to consult before making such regulations.

The clause allows exceptions to be included in the regulations, and enables Scottish Ministers to identify, in regulations, certain groups of people who would be able to make this designation.

Legislative background

Section 4 of the [Smoking, Health and Social Care \(Scotland\) Act 2005](#) (the ‘2005 act’) enables Scottish Ministers to designate no-smoking regulations by regulations. It only permits Ministers to apply this designation to premises that are “wholly or substantially enclosed”.

9.8 Clause 143: No-smoking signs in Scotland

Clause 143 would make it an offence for a manager or person in control of smoke-free premises not to display no-smoking signs in or near premises, in line with requirements imposed by regulations made by Scottish Ministers.

It would enable Scottish Ministers to make regulations, setting out requirements about the content or appearance of a sign, or how and where signs were to be displayed.

This clause would amend similar provisions set out in existing legislation.

Legislative background

Section 3 of the [Smoking, Health and Social Care \(Scotland\) Act 2005](#) (the ‘2005 act’) already provides for an offence relating to the non-display of no-smoking signs, and enables Scottish Ministers to make regulations about the particulars of no-smoking signs. Clause 143 provides a consolidatory effect by amending the 2005 act.

9.9

Clause 144: Vape-free premises in Scotland

Clause 144 would amend existing smoke-free legislation to introduce vape-free restrictions for the first time. It would allow Scottish Ministers to prescribe a place as being vape-free, but only if they are already smoke free.

¹⁷³

Clause 144 would also set out offences relating to vaping or permitting the use of vapes in vape-free premises, and requirements about relevant signs.

Clause 144 would amend part 1 of the [Smoking, Health and Social Care \(Scotland\) Act 2005](#) (the ‘2005 act’) and insert chapter 2 on vaping prohibition and control.

Smoke-free restrictions that are set out in the 2005 act apply to the Crown, and consequently apply to bodies and persons acting as servants of the Crown such as government departments and the armed forces.¹⁷⁴ Clause 144 similarly applies to the Crown in order to ensure a consistent approach.

9.10

Clause 145: Heated tobacco-free places in Scotland

Clause 145 would amend existing smoke-free legislation to introduce heated tobacco-free restrictions for the first time.

It would enable Scottish Ministers to prescribe a place as being heated tobacco-free, but only where that place is already smoke free.¹⁷⁵

Clause 145 would also set out offences about permitting the use of or using heated tobacco in heated-tobacco free places, and the display of relevant signs.

Clause 145 would insert new chapter 4H about the use of heated tobacco devices into the [Smoking, Health and Social Care \(Scotland\) Act 2005](#) (the ‘2005 act’).

¹⁷³ Smoke-free places would have the definition as that listed in section 4(2) of the [Smoking, Health and Social Care \(Scotland\) Act 2005](#).

¹⁷⁴ [Explanatory Notes, Tobacco and Vapes Bill](#), 5 November 2024

¹⁷⁵ Smoke-free places would have the definition as that listed in section 4(2) of the [Smoking, Health and Social Care \(Scotland\) Act 2005](#).

9.11 Clause 146: Amendments consequential on sections 142 to 145

Clause 146 introduces schedule 18 to the bill. Schedule 18 lists consequential amendments to existing legislation that result from provisions in clauses 142 to 146 of the bill.

9.12 Clause 147: Smoke-free places and vehicles in Wales: Duty to consult

Clause 147 would amend the [Public Health \(Wales\) Act 2017](#) so that Welsh Ministers have a duty to consult before making regulations under section 13 (additional smoke-free places) and section 15 (smoke-free vehicles).

9.13 Clause 148: Smoke-free vehicles in Wales

Clause 148 would amend the [Public Health \(Wales\) Act 2017](#) to enable Welsh Ministers to identify classes of person who may designate areas of a vehicle as not smoke free.

9.14 Clause 149: No-smoking signs in Wales

Clause 149 would amend requirements set out in the [Public Health \(Wales\) Act 2017](#) relating to no-smoking signs.

It would require a person who occupies or manages a no-smoking premises to ensure that no-smoking signs are displayed in or near the premises.

Welsh Ministers would be able to introduce regulations setting out the particulars of the sign, such as their design and where they are to be displayed.

9.15 Clause 150: Vape-free places in Wales

Clause 150 would amend existing smoke-free legislation to introduce vape-free restrictions for the first time. It would allow Welsh Ministers to prescribe a place or vehicles as being vape free, but only as far as they are already smoke free.

Clause 150 would also set out offences relating to vaping or permitting the use of vapes in vape-free premises and vehicles, and requirements about relevant signs.

It would insert chapter 1A on vaping into the [Public Health \(Wales\) Act 2017](#) (the ‘2017 act’).

Provisions set out in clause 150 are similar to equivalent clauses for England (clause 139), Scotland (clause 144) and Northern Ireland (clause 155).

The smoke-free places restrictions set out in the 2017 act do not apply to the Crown, and consequently do not apply to government departments, prisons run by His Majesty’s Prison Service, and the armed forces. Government bodies are able to bring forward similar restrictions. Clause 150 would similarly not apply to the Crown in order to ensure a consistent approach.

9.16

Clause 151: Heated-tobacco free places in Wales

Clause 151 would amend existing smoke-free legislation to introduce heated tobacco-free place restrictions for the first time.

It would insert new chapter 1B on heated tobacco devices into the [Public Health \(Wales\) Act 2017](#) (the ‘2017 act’).

It would enable Welsh Ministers to make regulations prescribing a place or vehicle as being heated tobacco free, but only where that place is already designated as being smoke free.

Clause 151 would also set out offences about using or failing to prevent the use of a heated tobacco device in a heated tobacco-free place or vehicle, and the display of relevant signs.

The smoke-free places restrictions set out in the 2017 act did not apply to the Crown, and consequently do not apply to government departments, prisons run by His Majesty’s Prison Service, and the armed forces. Government bodies are able to bring forward similar restrictions. Clause 151 similarly would not apply to the Crown in order to ensure a consistent approach.

9.17

Clause 152: Amendments consequential on sections 147 to 151

Clause 152 introduces schedule 19 to the bill. Schedule 19 sets out amendments to existing legislation, resulting from the provisions set out in clauses 147 to 151.

9.18 Clause 153: Additional smoke-free places in Northern Ireland

Clause 153 would amend article 5 of the [Smoking \(Northern Ireland\) Order 2006](#) (the ‘2006 Order’), which enables the Department of Health in Northern Ireland to designate additional places as being smoke free.

Under article 5, a place could only be designated as smoke free if, without the designation, people would “likely be exposed to smoke”. Clause 153 would remove this condition. It would effectively widens the scope of premises that can be designated smoke free.

9.19 Clause 154: No-smoking signs in Northern Ireland

Clause 154 would amend existing requirements around no-smoking signs, set out in the [Smoking \(Northern Ireland\) Order 2006](#).

The clause would require the occupier or manager of a no-smoking premises to ensure no-smoking signs are displayed in or near the premises.

The clause would allow for regulations to be made setting out the particulars of the notice.

9.20 Clause 155: Vape-free places in Northern Ireland

Clause 155 would amend existing smoke-free legislation to introduce vape-free restrictions for the first time.

It would insert new article 9 into the [Smoking \(Northern Ireland\) Order 2006](#) (the ‘2006 Order’).

It would enable the Department of Health in Northern Ireland to make regulations designating places or vehicles to be vape free, but only where they are already smoke free.

Clause 155 would set out offences about vaping, or failing to prevent vaping, in a vape-free place or vehicle, and the display of relevant signs.

Smoke-free restrictions that are set out in the 2006 order apply to the Crown, and consequently apply to bodies and persons acting as servants of the

Crown such as government departments and the armed forces.¹⁷⁶ Clause 155 would similarly apply to the Crown in order to ensure a consistent approach.

9.21 **Clause 156: Heated tobacco-free places in Northern Ireland**

Clause 156 would amend existing smoke-free legislation to introduce heated tobacco-free place restrictions for the first time.

It would insert new part 4 on using heated tobacco devices in Northern Ireland into the [Smoking \(Northern Ireland\) Order 2006](#) (the '2006 Order').

It would enable the Department of Health in Northern Ireland to make regulations designating places or vehicles in Northern Ireland to be heated tobacco free, but only where they are already smoke free.

Clause 156 would also set out offences about using or failing to prevent the use of a heated tobacco device in a heated tobacco-free place or vehicle, and the display of relevant signs.

Smoke-free restrictions that are set out in the 2006 order apply to the Crown, and consequently apply to bodies and persons acting as servants of the Crown such as government departments and the armed forces.¹⁷⁷ Clause 156 would similarly apply to the Crown in order to ensure a consistent approach.

9.22 **Clause 157: Amendments consequential on sections 153 to 156**

Clause 157 introduces schedule 20 to the bill. Schedule 20 sets out amendments to existing legislation resulting from the provisions set out in clauses 153 to 156.

9.23 **Clause 158: Power to prohibit vaping etc on ships**

Clause 158 would amend section 85 of the [Merchant Shipping Act 1995](#). Clause 158 would introduce powers to make vape-free and heated tobacco-free provision for ships and hovercraft.

¹⁷⁶ [Explanatory Notes, Tobacco and Vapes Bill](#), 5 November 2024

¹⁷⁷ [Explanatory Notes, Tobacco and Vapes Bill](#), 5 November 2024

10 Part 8: General

Part 8 makes provision for transitional and saving powers. Transitional powers aid the transition from previous legislative provisions to the new ones. Saving powers enable certain provisions to be retained. Together, they provide for a smooth transition as the bill's new regulations come into effect.

Part 8 also provides the four UK governments with powers to make consequential amendments to parts of the bill that have an effect within their legislative jurisdictions.

Part 8 also provides for other technical aspects of the bill, such as commencement dates for different sections in the bill.

10.1 Clause 159: Application to Parliament

Clause 159 provides that the bill, and regulations under it, would apply to the Parliamentary Estate.

10.2 Clause 160: Further consequential amendments

Clause 160 introduces schedule 21 to the bill. Schedule 21 sets out consequential amendments to existing legislation that result from the bill's provisions.

10.3 Clause 161: Power of the Secretary of State to make consequential provision

Clause 161 gives the Secretary of State a regulation-making power to make any provision that is consequential on this act. This is a [Henry VII power](#) as it permits regulations to amend, repeal or revoke primary legislation

10.4 Clause 162: Power of Scottish Ministers to make consequential provision

Clause 162 gives Scottish Ministers a regulation-making power to make provisions that are consequential on part 2 (sale and distribution: Scotland), clauses 142 to 146 and schedule 18 of the bill.¹⁷⁸

The regulations could amend, repeal or revoke primary and secondary legislation. This is a [Henry VII power](#).¹⁷⁹

10.5 Clause 163: Power of Welsh Ministers to make consequential provision

Clause 163 gives Welsh Ministers a regulation-making power to make provisions that are consequential on part 1 (sale and distribution), clauses 147 to 153 and schedule 19 of the bill.

The clause specifies that the power may only be used if the provision would be within the legislative competence of the Senedd Cymru if contained in an act of the Senedd.

The regulations could amend, repeal or revoke provision made by or under an act passed before this bill, in the same session of Parliament as this bill, or an act or measure of Senedd Cymru passed before this bill.¹⁸⁰ This is a [Henry VII power](#).¹⁸¹

10.6 Clause 164: Power of Northern Ireland department to make consequential provision

Clause 164 gives Northern Ireland departments a regulation-making power to make provision that is consequential on part 3 (sale and distribution: Northern Ireland), clauses 153 to 157 and schedule 20 of the bill.

The regulations could amend, repeal or revoke provision made by or under an act passed before or in the same session of Parliament as this bill, or

¹⁷⁸ Tobacco and Vapes Bill 2024-25, [Explanatory notes](#), 5th November 2024

¹⁷⁹ DHSC, Tobacco and Vapes Bill, [Delegated powers memorandum](#) (PDF), 5 November 2024

¹⁸⁰ A 'measure' is a type of primary legislation in Wales.

¹⁸¹ DHSC, Tobacco and Vapes Bill, [Delegated powers memorandum](#) (PDF), 5 November 2024

Northern Ireland passed or made before this bill.¹⁸² This is a [Henry VII power](#).¹⁸³

10.7 Clause 165: Regulations: General

This clause sets out that under the powers of the bill, subsequent regulations could include consequential, supplementary, incidental, transitional or saving provision for different purposes or different parts of the UK.¹⁸⁴

10.8 Clause 166: Regulations and orders: Procedure

Clause 166 sets out the procedure for making regulations under the bill.

Regulations made by the Secretary of State or Welsh Ministers under the bill would have to be made by [statutory instrument](#).

If Scottish Ministers made regulations under the bill that were subject to the affirmative resolution procedure, reference would have to be made to section 27 of the [Interpretation and Legislative Reform \(Scotland\) Act 2010](#), which makes provision about Scottish statutory instruments.

If the Department of Health in Northern Ireland used the power set out in clause 164 (power of Northern Ireland department to make consequential provision) to make regulations, it would be exercisable by statutory instrument for the purposes of the [Statutory Rules \(Northern Ireland\) Order 1979](#).

10.9 Clause 167: Extent

Clause 167 specifies the extent of the bill. Annex A to the explanatory notes contains a table setting out the territorial extent of each clause in the bill. A brief summary is provided in section 2.2 of this briefing.

Any amendment or repeal made by the bill would have the same extent as the original provision.

¹⁸² Tobacco and Vapes Bill 2024-25, [Explanatory notes](#), 5th November 2024

¹⁸³ DHSC, Tobacco and Vapes Bill, [Delegated powers memorandum](#) (PDF), 5 November 2024

¹⁸⁴ DHSC, Tobacco and Vapes Bill, [Delegated powers memorandum](#) (PDF), 5 November 2024

10.10 Clause 168: Commencement: Parts 1 to 4

Clause 168 sets out commencement dates for different sections of the bill. The ‘commencement’ section in the bill’s explanatory note provides a summary and explanation of these commencement dates.¹⁸⁵

10.11 Clause 170: Transitional provision

Clause 170 provides a standard power for transitional and saving provision related to bringing the bill’s provision into force.

Clause 170 outlines the parts of the bill where the four UK governments could make transitional and saving provision.

10.12 Clause 171: Short title

Clause 171 provides that the bill can be cited as the Tobacco and Vapes Act 2024, if it passes.

¹⁸⁵ Tobacco and Vapes Bill 2024-25, [Explanatory notes](#), 5th November 2024

11

New tobacco and vaping measures that are separate to the bill

11.1

Ban on the sale of single-use vapes

Separate to the bill, governments in the devolved administrations are taking measures to ban the sale of single-use vapes.

The Department for Environment, Food and Rural Affairs (Defra) laid the [Environmental Protection \(Single-use Vapes\) \(England\) Regulations 2024](#) on 23 October 2024.

The regulations seek to ban the sale of single-use vapes in England.

The regulations were approved by Parliament on 13 November 2024.¹⁸⁶ The regulations will take effect from 1 June 2025.

Further information is available in the Commons Library briefing [Debate on a Motion to approve the Draft Environmental Protection \(Single-Use Vapes\) \(England\) Regulations 2024](#).

Other parts of the UK are also introducing similar legislation. The Welsh Government confirmed that it would introduce the Environmental Protection (Single-use Vapes) (Wales) Regulations 2024 “to prohibit the supply (including for free) of single-use vapes in Wales”.¹⁸⁷

The Scottish Government has postponed the introduction of its ban from April 2025 to June 2025 so that its introduction will be in line with the rest of the UK.¹⁸⁸

Northern Ireland had also planned to ban the sale of disposable vapes by April 2025.¹⁸⁹

¹⁸⁶ HC Deb, 13 November 2024, [Environmental protection](#); HL Deb, 13 November 2024, [Environmental Protection \(Single-use Vapes\) \(England\) Regulations 2024](#)

¹⁸⁷ Welsh Government, [Written Statement: Single-use Vapes Regulations](#), published 22 October 2024

¹⁸⁸ BBC News, [Scotland disposable vape ban delayed to bring it in line with the UK](#), 24 October 2024

¹⁸⁹ BBC News, [Vaping: Northern Ireland to ban single use vapes in 2025](#), 2 May 2024

11.2

The government's proposals for a new duty on vaping products

Spring Budget 2024: Proposal for a new tax

In his Spring Budget statement on 6 March 2024 the then Chancellor Jeremy Hunt announced that the government had decided to introduce an excise duty on vaping products from October 2026. The Chancellor added that the government would “introduce a one-off increase in tobacco duty at the same time to maintain the financial incentive to choose vaping over smoking.”¹⁹⁰

There is a significant difference in price between vapes and tobacco products.¹⁹¹ In part, this is because vapes are only subject to VAT, while tobacco is also subject to excise duty.¹⁹²

As part of its [consultation on actions to tackle smoking and youth vaping](#) launched in October 2023, the Conservative government had argued that there was a “strong case” to take action on the affordability of vapes, and noted that it was “exploring options, including a new duty on vapes as other countries have done, while ensuring that there is a significant differential between duty on vapes and duty on tobacco products.”¹⁹³

Responses to the consultation were split on whether the price of vapes should be increased. The Conservative government noted that charging an extra tax on tobacco had proved to be an effective method way of discouraging young people from smoking, but also said there was a need “to balance a price increase that deters young people vaping with ensuring that vaping remains a more affordable option than smoking, to encourage adult smokers to quit.”¹⁹⁴

In the 2024 Spring Budget, the Conservative government proposed that the rates of the new duty would be:

- £1.00 per 10ml for nicotine free liquids
- £2.00 per 10ml on liquids that contain 0.1-10.9 mg nicotine per ml

¹⁹⁰ [HC Deb 6 March 2024 c848](#)

¹⁹¹ It is estimated that smoking is 3 times more expensive than vaping, and that the average smoker in England could save around £670 per year from switching to vaping (Department of Health & Social Care, [Creating a smokefree generation and tackling youth vaping: your views](#), updated 12 February 2024 (“Affordability”).

¹⁹² For more details see, HM Revenue & Customs (HMRC), [Tobacco Products Duty](#) and [Rates and allowances for Tobacco Products Duty](#), updated 30 October 2024

¹⁹³ Department of Health & Social Care, [Creating a smokefree generation and tackling youth vaping: your views](#), updated 12 February 2024 (“Affordability”). See also, [PQ1135Q](#), 31 January 2024.

¹⁹⁴ Department of Health & Social Care, [Creating a smokefree generation and tackling youth vaping consultation: government response](#), updated 12 February 2024 (“Affordability of vaping products”).

- £3.00 per 10ml on liquids that contain 11mg or more per ml¹⁹⁵

The aim of placing a higher tax burden on vaping products with higher nicotine products was to encourage “those who vape to reduce the amount of nicotine they consume even if they do not reduce the amount they vape.”¹⁹⁶ Legislation to this effect would be included in a future Finance Bill.¹⁹⁷ At the time, it was forecast that the new duty would raise £445 million by 2028/29.¹⁹⁸

Alongside the 2024 Spring Budget report, the Conservative government launched [a consultation on how the new duty would be designed and implemented](#).¹⁹⁹ HM Revenue & Customs (HMRC) also published research on the vaping market.²⁰⁰

Autumn Budget 2024: Confirmation of new tax from 1 October 2026

The Chancellor Rachel Reeves presented [the Labour government’s first Budget](#) on 30 October 2024. As part of the Budget, the government announced that it would introduce a flat-rate excise duty on all vaping liquid from 1 October 2026, set at £2.20 per 10ml vaping liquid. This would be accompanied by an equivalent one-off increase in tobacco duty of £2.20 per 100 cigarettes / 50g of tobacco in order to maintain the financial incentive to switch from tobacco to vaping.²⁰¹ In addition, tobacco duty rates would be increased by 2% in real terms from Budget day, and by this annual ‘escalator’ in future years.²⁰²

The government published the outcome of its consultation on vaping products duty alongside the Budget report.²⁰³

Most respondents to the consultation had opposed the proposal for a three-tiered structure on the basis that it could have unintended consequences. People looking to quit tobacco might not switch to vapes due to the incentive to choose vapes at a nicotine strength below their needs. In addition, people might increase their consumption of vaping liquid to satisfy their nicotine requirements, and this might increase their exposure to potentially harmful

¹⁹⁵ HM Treasury (HMT), Spring Budget 2024, HC 560 (PDF) March 2024 [para 5.31](#)

¹⁹⁶ HMT/HMRC, [Vaping products duty consultation](#) (PDF) March 2024 para 3.4

¹⁹⁷ HMRC, [Overview of Tax Legislation and Rates](#), March 2024 para 2.17. Generally all tax measures announced in the Budget and other fiscal events are legislated for this way. For more details see, Commons Library research briefing CBP-813 [The Budget and the annual Finance Bill](#).

¹⁹⁸ HMT, Spring Budget 2024: Policy Costings (PDF) March 2024 [p25](#). See also, Office for Budget Responsibility, Economic and Fiscal Outlook, CP 1027 (PDF) March 2024 [para 3.22-3.26](#)

¹⁹⁹ HMT/HMRC, [Vaping products duty consultation](#) (PDF) March 2024. The consultation closed on 29 May 2024.

²⁰⁰ HMRC, [Understanding the vaping market – HMRC research report 740](#), 6 March 2024

²⁰¹ Autumn Budget 2024, HC 295 (PDF) October 2024 [para 5.105](#)

²⁰² As above [para 5.104](#), see also, HMRC, [Changes to tobacco duty rates from 30 October 2024](#), 30 October 2024. The duty rate on hand rolling tobacco is to be increased by an additional 10%, to 12% above RPI inflation.

²⁰³ HMT/HMRC, [Vaping products duty consultation response](#), (PDF) October 2024

substances. There were also concerns that a three-tiered structure would be more complex for both businesses and HMRC to administer.²⁰⁴

In response, the government proposed a single flat rate for all vaping liquid set at £2.20 per 10ml. This duty rate would be set to raise a similar amount of revenue to the previous three-tier structure and would be in line with international comparisons.²⁰⁵

It was forecast that imposing a flat-rate duty would raise annual receipts by an additional £10m by 2028/29.²⁰⁶ By comparison, the proposed increases in tobacco duty were forecast to raise £160 million by 2028/29.²⁰⁷

Statutory provision to enable HMRC to prepare for the introduction of the new duty is included in the [Finance Bill 2024-25](#), which was introduced after the Budget (specifically clause 82). It is intended to include the main provisions for the new duty in a future Finance Bill.²⁰⁸

²⁰⁴ [As above](#) para 2.5

²⁰⁵ [As above](#) para 2.12. The document sets out rates for national vaping product taxes across other countries (see [Table 2.A](#)).

²⁰⁶ HMT, Autumn Budget 2024: Policy Costings (PDF) October 2024 [p47](#). See also, HMT, [Autumn Budget 2024: Table 5.2 Measures announced at Spring Budget 2024 or earlier that will take effect from October 2024 or later](#), October 2024 (item 5)

²⁰⁷ As above [p48](#)

²⁰⁸ HMRC, Overview of tax legislation and rates, October 2024 [para 1.33](#)

12

How bills go through Parliament

Bills can be introduced in either the House of Commons or the House of Lords. They can be amended but the entire text has to be agreed by both Houses before they can receive Royal Assent and become law. In both Houses, bills go through the same stages although there are slight differences in the practices of the two Houses.

12.1

Commons stages

A bill that is introduced in the House of Commons will go through the following stages.

- First reading sees the formal introduction of a bill, when a clerk reads out the name of the bill in the Commons chamber. The Tobacco and Vapes Bill 2024-25 had its first reading on 5 November 2024. There is no debate at this stage. Bills cannot be published before their introduction. Government bills are usually published immediately after introduction.
- Second reading debate is the first time MPs debate a bill. They discuss the purpose of the bill. Debates are usually scheduled to take a full day (five to six hours). The Tobacco and Vapes Bill 2024-25 will have its second reading on 26 November 2024. At the end of the debate, MPs decide whether it should pass to the next stage. Sometimes a ‘reasoned amendment’, which sets out the reasons to reject a bill, is tabled. If this is agreed to, or if the bill is simply voted down, the bill cannot make any further progress. No amendments are made to the bill itself at this stage.
- Committee stage is usually conducted by a small number of MPs (usually 17) in a public bill committee but sometimes bills can be considered in detail in the Commons Chamber by all MPs in a Committee of the whole House. The committee debates and decides whether amendments should be made to the bill and whether each clause and schedule should be included.
- Report stage takes place in the Commons Chamber and involves MPs considering the bill as agreed at committee stage. MPs can also propose further amendments which can be voted on.
- Amendments at committee and report stage can leave out words, substitute words and add words, including whole clauses and schedules. They can be proposed by backbench and frontbench MPs. The Speaker or the chair of the committee selects and groups amendments to debate.

- Third reading, usually on the same day as report stage, is the final chance for MPs to debate the contents of a bill before it goes to the House of Lords. It's usually a short debate and changes cannot be made at this stage in the Commons. At the end of the debate, the House decides whether to approve the bill and therefore pass it onto the House of Lords.

12.2 Lords stages

Bills introduced in the Lords go through the same process, completing all stages in the Lords before being sent to the Commons.

The House of Lords respects the Commons' primacy on financial matters and does not usually amend Finance Bills (those that implement the Budget) or money bills.

Members of the House of Lords debate the bill, going through the same stages as in the Commons. Key differences between the two Houses are that in the Lords, committee stage usually takes place on the floor of the House and a bill can be amended at third reading.

Most bills are considered by a committee of the whole House in the House of Lords. Some are referred to the Lords Grand Committee – which all members can attend. However, divisions (votes) are not permitted in the Grand Committee and any amendments made have to be agreed to without a division.

The Lords can also make amendments to a bill. Major points of difference should have been resolved before third reading but amendments to “tidy-up” a bill are permitted.

No party has a majority in the House of Lords and government defeats are not uncommon. For bills that have started in the House of Commons, the Lords is essentially asking MPs to think again about the subject of the amendment.

12.3 ‘Ping pong’

If the Lords amend a bill that was sent from the Commons, the amendments are returned to the Commons and MPs debate the amendments proposed by the Lords. This is potentially the start of “ping-pong”, a process whereby amendments and messages about the amendments are sent backwards and forwards between the two Houses until agreement is reached.

Once agreement has been reached, the Bill receives Royal Assent, becoming law when both Houses have been notified that Royal Assent has been granted.

12.4

Amendments

MPs can submit amendments, via the Public Bill Office (PBO), at three different stages of a bill: committee stage, report stage, and when a bill is returned from the Lords. Once the PBO accepts the amendment, it has been 'tabled'. If an MP wants to amend a bill during committee stage but is not a member of the committee, they will need a committee member to 'move' it for debate on their behalf.

In order to be debated, the amendment must be selected by the chair. Similar amendments may be grouped for debate to avoid repetition. For committee stage, selection and grouping is carried out by MPs from the panel of chairs chosen to chair the committee. If there is a Committee of the Whole House, the chair is the Chairman of Ways and Means (the principal Deputy Speaker). For report stage, it is the Speaker.

Amendments might not be selected for debate if they are, for example, outside the scope of a bill, vague, or tabled to the wrong part of a bill. The PBO can advise on whether an amendment is likely to be selected.

12.5

Further information on bill procedure

The [MPs' Guide to Procedure](#) has a [section on bills](#).

MPs who have questions about the procedure for bills or want advice on how to amend them should contact the [Public Bill Office](#).

The Library can provide information on the background and potential impact of a bill and of amendments but cannot help MPs with drafting amendments.

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