



Department
of Health &
Social Care

Tobacco and Vapes Bill

Delegated Powers Memorandum

Published Wednesday 20 March 2024

TOBACCO AND VAPES BILL

Memorandum from the Department of Health and Social Care to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Tobacco and Vapes Bill (“the Bill”). The Bill will be introduced in the House of Commons on 20 March 2024. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. The Tobacco and Vapes Bill will introduce measures to stop people from ever starting smoking and becoming addicted to tobacco products, as well as introducing measures to reduce youth vaping.

3. The core measures in the Bill will:

- a. make it an offence to sell tobacco products to anyone born on or after 1 January 2009;
- b. bring in measures to reduce the appeal and availability of vapes to children;
- c. strengthen enforcement activity to support implementation of the above measures.

4. To close regulatory loopholes and protect against future harms of nicotine addiction, the Bill makes provision to extend the scope of certain measures to other nicotine products, such as nicotine pouches. The Bill will also re-enact several existing tobacco control measures and amends the definition of tobacco across existing legislation to ensure consistent application of the law, to improve readability and subsequent enforcement.

5. The Bill makes provisions across the UK, building on the existing legislative frameworks that apply across the UK.

C. DELEGATED POWERS

6. The Bill includes the following 32 measures which contain new or amended delegated powers. These are:

a. Part 1: Sale and distribution: England and Wales

i. **Clause 5: Age of sale notice at point of sale: England:** In relation to the age of sale of tobacco products, retailers in England need to display a notice that says, “It is illegal to sell tobacco products to anyone born on or after 1 January 2009”. This power will allow the Secretary of State to introduce regulations that set requirements for the size or appearance of the sign. This power replaces

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an existing power on the statute book and modifies the power to enable regulations to specify requirements for the overall appearance of the sign such as colour.

- ii.Clause 6: Age of sale notice at point of sale: Wales:** In relation to the age of sale of tobacco products, retailers in Wales need to display a notice that says, “It is illegal to sell tobacco products to anyone born on or after 1 January 2009” and “Mae’n anghyfreithlon gwerthu cynhyrchion tybaco i unrhyw un a anwyd ar neu ar ôl 1 Ionawr 2009”. This power will allow Welsh Ministers to introduce regulations that set requirements for the size or appearance of the sign.
- iii.Clause 10: Power to extend vaping provisions to nicotine products:** This power will allow the appropriate national authority in England and Wales to extend the vaping provisions in clauses 7 (Sale of vaping products to under 18s), 8 (Purchase of vaping products for under 18s) and 9 (Free distribution of vaping products to under 18s) to other nicotine products.
- iv.Clause 11: Displays of vaping and nicotine products:** This power will allow the Secretary of State and Welsh Ministers to impose prohibitions, requirements, and limitations on retailers in relation to the display of vaping and nicotine products and their prices, as well as empty retail packaging. This power can also be used to create offences in relation to a failure to comply with the regulations.
- v.Clause 15: Power to extend restricted premises orders:** This power will allow the Secretary of State and Welsh Ministers to extend the list of offences that may result in a retailer receiving a restricted premises order.
- vi.Clause 26: Power to change amount of fixed penalties:** This power will allow the Secretary of State and Welsh Ministers to change the fine amount for Fixed Penalty Notices that the Bill currently sets at £100 and the percentage discount for an early payment.
- vii.Clause 29: Power to make consequential provision:** This power will enable the Secretary of State to make regulations which amend, repeal or revoke primary and secondary legislation where such provisions are consequential on Part 1 of the Bill.

b. Part 2: Sale and distribution: Scotland

- viii.Clause 37: Age of sale for tobacco products etc:** Scottish legislation requires tobacco and nicotine vapour product businesses to operate an age verification policy, which is a policy that requires steps to be taken to verify the age of a customer who appears to be younger than 25. This Bill updates the age verification requirements for tobacco or herbal smoking businesses in light of the changes to the age of sale and separates them from the nicotine vapour product business requirements. In doing so, the Bill amends the existing power that allows Scottish Ministers to amend the age associated with the age verification policy so that it will only apply to the age verification policy for the sale of nicotine vapour products.
- ix.Clause 42: Power to make provision about warning statements:** In relation to the age of sale of tobacco products, retailers in Scotland need to display a notice that says, “It is illegal to sell tobacco products to anyone born on or after 1 January 2009”. This power will allow Scottish Ministers to introduce regulations that set requirements for the size or appearance of the sign. This power re-enacts an existing power for the Scottish Ministers to set requirements about size, with modifications enabling provision to be made about the overall appearance of the sign. This is the same power as for England, Wales and Northern Ireland.

- x.Clause 43: Power to regulate nicotine products:** This power will allow Scottish Ministers to extend their existing provisions for nicotine vapour products (vapes) to other nicotine products. This is similar in effect to clause 10 (Power to extend vaping provisions to other nicotine products) relating to England and Wales.
- xi.Clause 44: Free distribution of nicotine products:** This power will amend the existing regulation making power that allows Scottish Ministers to regulate the free distribution of nicotine vapour products, to also enable the regulation of the free distribution of other nicotine products.
- xii.Clause 45: Displays of vaping and nicotine products:** This power will allow Scottish Ministers to make regulations to impose prohibitions, requirements, and limitations on retailers on the displays of nicotine vapour products and other nicotine products and their prices, as well as empty retail packaging. This is similar to the power conferred on the Secretary of State and Welsh Ministers in clause 11 (Displays of vaping and nicotine products).
- xiii.Clause 47: Power to make consequential provision:** This power will enable Scottish Ministers to make regulations which amend, repeal or revoke primary and secondary legislation where such provisions are consequential on Part 2 of this Bill.

c. Part 3: Sale and distribution: Northern Ireland

- xiv.Clause 49: Power to restrict tobacco offences to sale by retail:** This power will allow the Department of Health in Northern Ireland to introduce regulations that amend the definition of “sale” to mean sale by retail in relation to the age of sale of tobacco products.
- xv.Clause 50: Power to make provision about warning statements:** In relation to the age of sale of tobacco products, retailers in Northern Ireland need to display a notice that says, “It is illegal to sell tobacco products to anyone born on or after 1 January 2009”. This power will allow the Department of Health in Northern Ireland to introduce regulations that set requirements for the size or appearance of the sign. This power re-enacts the existing power on the statute book and modifies the power to enable regulations to specify requirements for the overall appearance of the sign. This is the same power as for England, Wales and Scotland.
- xvi.Clause 51: Power to regulate non-nicotine vapes etc:** This power will allow the Department of Health in Northern Ireland to amend existing age of sale legislation pertaining to nicotine vaping products to include non-nicotine vaping products. This power will enable alignment with the age of sale restrictions in England, Wales and Scotland.
- xvii.Clause 52: Power to restrict nicotine products offence to sale by retail:** This amends the existing power for the Department of Health in Northern Ireland to make age of sale legislation pertaining to nicotine products so that it will include non-nicotine vaping products.
- xviii.Clause 53: Free distribution of vapes and nicotine products:** This power will allow the Department of Health in Northern Ireland to introduce restrictions on the free distribution of vaping and nicotine products to under 18-year-olds.
- xix.Clause 54: Power to regulate displays of vaping and nicotine products:** This power will allow the Department of Health in Northern Ireland to make regulations around the displays of vaping and nicotine products and their prices, as well as empty retail packaging. This is the same power conferred on the Secretary of State and Welsh Ministers in clause 11 and Scottish Ministers in clause 45.

xx.Clause 56: Power to extend restricted premises orders: This power will allow the Department of Health in Northern Ireland to extend the list of offences that may result in a retailer receiving a restricted premises order. This power is similar to the power conferred on the Secretary of State and Welsh Ministers in clauses 5 and 6.

xxi.Clause 57: Power to make consequential provision: This power will enable the Department of Northern Ireland to make regulations which amend, repeal or revoke primary and secondary legislation where such provisions are consequential on Part 3 of this Bill.

d. Part 4: Product requirements

7. Some of the powers in this part have been included in the Bill to re-enact existing tobacco and vaping product legislation.

xxii.Clause 58: Tobacco retail packaging: This power will allow the Secretary of State to introduce regulations that impose prohibitions, requirements or limitations on the production, importation and supply of the packaging of tobacco products for consumption in the UK or for retail in the retail travel sector or supplied for business. This power re-enacts with modifications an existing power on the statute book and will enable the creation of offences for failure to comply with regulations.

xxiii.Clause 59: Flavour of tobacco products: This power will allow the Secretary of State to make provisions about the flavour of tobacco products and impose prohibitions, requirements or limitations relating to the production or importation of tobacco for consumption in the UK or for retail by the travel retail sector and the supply of tobacco products for business. This power re-enacts with modifications an existing power on the statute book and will enable the creation of offences for failure to comply with regulations.

xxiv.Clause 60: Other tobacco product requirements: This power will allow the Secretary of State to introduce regulations around the markings, size, shape and appearance of tobacco products. This power re-enacts with modifications an existing power on the statute book and will enable the creation of offences for failure to comply with regulations.

xxv.Clause 61: Retail packaging of vaping products and nicotine products: This power will allow the Secretary of State to make regulations about the retail packaging of vaping products and nicotine products. Such regulations may impose prohibitions, requirements or limitations relating to the production or importation of vaping products and nicotine products in the course of business for supply for consumption in the UK or for retail by the travel retail sector and the supply of vaping products and nicotine products in the course of business. This power will enable the creation of offences for failure to comply with regulations.

xxvi.Clause 62: Contents and flavour of vaping products and nicotine products: This power will allow the Secretary of State to introduce regulations about the substances that may be included in vaping products or nicotine products (or the amount of any given substance that may be included) and the flavour of vaping products and nicotine products. Such regulations may impose prohibitions, requirements or limitations relating to the production or importation of vaping products and nicotine products in the course of business for supply for consumption in the UK or for retail by the travel retail sector and the supply of vaping products and nicotine products in the course of business. This power will enable the creation of offences for failure to comply with regulations.

xxvii.Clause 63: Other product requirements of vaping and nicotine products: This power will allow the Secretary of State to introduce regulations about other product requirements, such as the appearance and manufacture of vaping products and nicotine products. Such regulations may impose prohibitions, requirements or limitations relating to the production or importation of vaping products and nicotine products in the course of business for supply for consumption in the UK or for retail by the travel retail sector and the supply of vaping products and nicotine products in the course of business. This power will enable the creation of offences for failure to comply with regulations.

e. Part 5: Notification requirements etc for vaping and nicotine products

xxviii.Clause 71: Extension of notification requirements etc: This power will allow the Secretary of State to extend the provisions on notification, submission of information, and vigilance requirements to non-nicotine vaping products and other nicotine products. This will allow non- nicotine vaping products and other nicotine consumer products to be introduced to the notification framework with set information requirements. Under current requirements, a producer is required to notify a product and pay a fee before placing nicotine vaping products on the UK market. The Medicines and Healthcare products Regulatory Agency (MHRA) publishes all notifications for Great Britain on an ECIG portal, and for Northern Ireland on the EU-CEG. Regulations 31 sets out information that must be provided in relation to that notification, such as nicotine content and ingredients. Clause 70 would allow for some or all of these requirements to be placed on non-nicotine vaping products and other nicotine products. Regulations may provide for fees for notification to be paid in respect of these products.

xxix.Clause 72: Power to amend information to be notified: This power will allow the Secretary of State to amend the information that must be notified or submitted under the duty to notify vaping products. This power will allow for new data requirements or remove certain data requirements as part of notification reporting. For example, an amendment may require that an image of the product or its packaging be submitted.

xxx.Clause 73: Exceptions to publication: This power will allow the Secretary of State to create exceptions to the duty to publish information regarding a notification. Such regulations may provide for a notification to be removed in certain circumstances, such as when the required notification fee has not been paid. The power also includes a duty to notify a person before, or after, ceasing to publish information.

f. Part 6: General

xxxi.Clause 79: Commencement: This clause contains a power to enable Welsh Ministers to bring clause 27 and Schedule 1 into force through a statutory instrument.

xxxii.Clause 80: Transitional provision: This clause contains a standard power for Ministers to make transitional or saving provision in connection with the bringing into force of provisions of the Bill.

8. There are six further provisions in clauses 64, 65, 66 and 67 in Part 4, clause 74 in Part 5 and clause 76 in Part 6 of the Bill, which have not been listed as separate powers in this Memorandum as they are not standalone powers but rather supplement other delegated powers. A summary of the effect of these

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delegated powers has been included in the sections in this Memorandum for Parts 4 and 6 of the Bill.

Part 1: Sale and distribution: England and Wales

Tobacco etc

Clause 5(4): Age of sale notice at point of sale: England

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative

Context and Purpose

9. Currently section 4 of the [Children and Young Persons \(Protection from Tobacco\) Act 1991](#) (the 1991 Act) requires tobacco retailers in England to display a notice in a prominent position at the point of sale stating that “It is illegal to sell tobacco products to anyone under the age of 18”. Regulations made under section 4(3) of the 1991 Act set the minimum dimensions of notices and the size of the text of the statement on the notice for England.
10. Clause 5 in the Bill will make it an offence for tobacco retailers to fail to display an age of sale notice at any premises at which they sell tobacco products. The notice is required to say, “It is illegal to sell tobacco products to anyone born on or after 1 January 2009”.
11. Subsection (4) of this clause introduces a power that will enable the Secretary of State to impose requirements for the size and appearance of the statement that is displayed on the notice and the size and appearance of any other aspect of the notice, such as colour.

Justification for taking the power

12. Placing detailed requirements regarding the size and appearance of these notices on the face of the legislation would not be an appropriate level of detail for primary legislation. It would also not provide the flexibility to amend these requirements based on how effective the measures initially adopted prove to be.
13. The power is narrow in scope relating only to setting requirements for the size and appearance of the notice and statement on it.

Justification for the procedure

14. Regulations made under this power will be subject to the negative procedure. The requirement for retailers to update their notice to align with the new age of sale restrictions is on the face of the Bill. The negative procedure affords an appropriate level of parliamentary scrutiny for regulations specifying the details of the size and appearance of the sign. Use of the affirmative procedure would be an inappropriate use of parliamentary time relative to the potential impact

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on business of provision made by these regulations. This is also consistent with the procedure for the equivalent power in section 4(3) of the 1991 Act.

Clause 6(4): Age of sale notice at point of sale: Wales

Power conferred on: Welsh Ministers

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative

Context and Purpose

15. Currently the [Children and Young Persons \(Protection from Tobacco\) Act 1991](#) (the 1991 Act) requires tobacco retailers in Wales to display a notice in a prominent position at the point of sale stating that “It is illegal to sell tobacco products to anyone under the age of 18”. Regulations made under section 4(3) of the 1991 Act set the minimum dimensions of notices and the size of the text of the statement on the notice for Wales.

16. Clause 6 in the Bill will make it an offence for tobacco retailers to fail to display an age of sale notice at any premises at which they sell tobacco products. The notice must say “It is illegal to sell tobacco products to anyone born on or after 1 January 2009” and “Mae’n anghyfreithlon gwerthu cynhyrchion tybaco i unrhyw un a anwyd ar neu ar ôl 1 Ionawr 2009”.

17. Subsection (4) of this clause introduces a power that will enable Welsh Ministers to impose requirements for the size and appearance of the statement that is displayed on the notice and any other aspect of the notice.

Justification for taking the power

18. Placing detailed requirements regarding the size and appearance of these notices on the face of the legislation would not be an appropriate level of detail for primary legislation. It would also not provide the flexibility to amend these requirements based on how effective the measures initially adopted prove to be.

19. The power is narrow in scope relating only to setting requirements for the size and appearance of the notice and statement on it.

Justification for the procedure

20. Regulations made under this power will be subject to the negative procedure. The requirement for retailers to update their notice to align with the new age of sale restrictions is on the face of the Bill. The negative procedure affords an appropriate level of parliamentary scrutiny for regulations specifying the details of the size and appearance of the sign. Use of the affirmative procedure would be an inappropriate use of parliamentary time relative to the potential impact on business of provision made by these regulations. This is also consistent with the procedure for the equivalent power in section 4(3) of the 1991 Act.

Vaping and nicotine products

Clause 10: Power to extend vaping provisions to nicotine products

Power conferred on: Secretary of State and Welsh Ministers

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

21. Clauses 7 (Sale of vaping products to under 18s), 8 (Purchase of vaping products on behalf of under 18s) and 9 (Free distribution of vaping products to under 18s) introduce provisions to regulate the sale of vaping products to under 18s, the purchase of vaping products on behalf of someone under 18 and the free distribution of vaping products to under 18s.

22. However, there are other nicotine products in the UK market, such as nicotine pouches, which are an emerging and growing market. More new nicotine products may enter the market in the coming years. Like non-nicotine vaping products, they are not regulated under the Tobacco and Related Products Regulations 2016 but are regulated under The General Product Safety Regulations 2005.

23. In October 2023 the government launched a [consultation](#) on its plans to tackle youth vaping. The consultation asked about the regulation of other nicotine products. In response to the question ‘Do you think the UK Government and devolved administrations should regulate other consumer nicotine products such as nicotine pouches under a similar regulatory framework as nicotine vapes?’, 52.9% of respondents said, ‘yes’ and thought that other consumer nicotine products, such as nicotine pouches, should be regulated under a similar regulatory framework as nicotine vapes, 29.4% said ‘no’ and 17.7% ‘did not know’.

24. The Bill provides a power for the Secretary of State and the Welsh Ministers to by regulations amend clauses 7, 8 and 9 to apply the same restrictions that are in place for the sale of vaping products to under 18s, the purchase of vaping products on behalf of someone under 18 and the free distribution of vaping products to under 18s, to other nicotine products.

Justification for taking the power

25. This power future proofs against new nicotine products (other than vaping products) which have just entered the market or may enter the market in the coming years. New products are in development all the time and this power will enable the government to regulate new products in the same way that vaping products are regulated. Evidence suggests that nicotine consumption in adolescence can carry additional risks as the brain is more sensitive to the effects of nicotine.

26. Nicotine pouches first appeared on the UK market in 2019 and there is limited independent evidence on the impact of nicotine pouches on health, although their ability to deliver high doses of nicotine to the users suggests that they

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have the potential to initiate addiction in those who have not previously used nicotine products. The market for nicotine pouches is increasing among young people and younger men in particular.

27. We also understand that there are other nicotine products (in addition to pouches), for example nicotine tea, under development by companies which are likely to come to market soon, expanding the choice of nicotine products available to consumers.

28. For nicotine pouches the evidence base is still forming. However, based on the available evidence and the precedent of the impact of nicotine vaping products, especially on children and young people, it is highly likely that restrictions will be required in relation to other nicotine products and this power enables the government to legislate in this area in future, provided that there is evidence to support this.

29. A delegated power is therefore appropriate as it will enable the Secretary of State and Welsh Ministers to assess the impact of these other nicotine products over the coming years and amend the relevant provisions in this Bill to include other nicotine products in a proportionate manner relative to their societal impact. Any such amendment by way of regulation would be subject to a further detailed consultation. This allows for detailed consideration of new evidence on the specifics of the measures, for instance which products are in and out of scope and which of the offences should apply.

Justification for the procedure

30. Regulations under this power are subject to the affirmative procedure. The affirmative procedure is appropriate for two reasons. Firstly, the regulations can enable new products to be subject to the same restrictions as for vaping products, affecting consumer behaviour and businesses. Secondly, this is a Henry VIII power, as it allows for primary legislation to be amended by subordinate legislation and, in line with Delegated Powers and Regulatory Reform Committee (DPRRC) guidance, the affirmative procedure is considered appropriate so that any change to primary legislation can be debated and approved in both Houses of Parliament and Welsh Parliament (Senedd Cymru).

Clause 11: Displays of vaping and nicotine products

Power conferred on: Secretary of State and Welsh Ministers

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

31. The October 2023 [consultation](#) considered the government's plans to tackle youth vaping. The consultation asked questions about policies which have the potential to reduce the appeal, availability, and affordability of vaping to children, while ensuring that vaping products remain available as a useful smoking cessation tool for adult smokers, given the lesser harms posed to smokers from vaping. This included regulating point of sale displays of vaping and nicotine products.

32. Unlike tobacco products, vaping products are currently allowed to be displayed at the point of sale. Because of this, children can see and easily pick up vaping products in retail outlets due to them being displayed within aisles, close to sweets and confectionary products and on accessible shelves. The aim is to reduce the visual accessibility of vaping products for children as the often-colourful nature of vaping displays can be appealing for children and young people. Limiting this exposure is a necessary step to reducing experimental use among children and young people and to reduce youth vaping.
33. In response to the question, “Which option do you think would be the most effective way to restrict vapes to children and young people? Option 1: vapes must be kept behind the counter and cannot be on display, like tobacco products or Option 2: vapes must be kept behind the counter but can be on display”, 67.4% and 59.8% of respondents in England and Wales respectively selected Option 1 and 32.6% and 40.2% of respondents in England and Wales respectively selected Option 2.
34. This clause introduces a regulation-making power that will enable the Secretary of State and Welsh Ministers to impose prohibitions, requirements or limitations on retailers regarding the display of vaping products and other nicotine products and their prices, as well as empty retail packaging. This could include the location of the products in a retailer, for instance there could be limitations on displays in windows and whether they should be behind the counter.
35. The power will allow for the introduction of offences for breaches of the display regulations.

Justification for taking the power

36. This power provides for a type of detailed regulation that would not be appropriate for inclusion in primary legislation and is conventionally set out in secondary legislation. For example, regulations on the display of tobacco products ([The Tobacco Advertising and Promotion \(Display\) \(England\) Regulations 2010](#)) provide detailed specifications for how information on the type of tobacco products contained in storage units can be indicated.
37. A regulation-making power is also required as it provides flexibility for Ministers to monitor and adjust regulations following implementation. It will be necessary to gather evidence post implementation to ensure that regulations are effectively discouraging youth vaping, whilst ensuring that vaping products remain accessible for adults who are trying to stop smoking. Achieving this balance may require changes to the regulations to ensure this balance is effectively reached.
38. Consultation will take place with stakeholders, including retailers and their representatives regarding these regulations.

Justification for the procedure

39. Regulations made under this power will be subject to the affirmative procedure. We consider the affirmative procedure to be the correct level of scrutiny for this power as regulations restricting the display of vaping and nicotine products will affect the public's purchasing behaviours and will require retailers to implement

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changes, with failure to do so potentially constituting a criminal offence (the maximum penalty for this is set out the face of the Bill in line with DPRRC guidance). The affirmative procedure will enable a debate and vote in both Houses and the Welsh Parliament (Senedd Cymru) so the impacts of the regulations can be subject to appropriate parliamentary scrutiny.

Restricted premises orders

Clause 15: Power to extend restricted premises orders

Power conferred on: Secretary of State and Welsh Ministers

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

40. Clause 12 (Restricted premises orders) provides that, where a person is a repeat offender of the offences specified, a restricted premises order can be made by the Magistrates' court in respect of the premises in relation to which the offence was committed. This will prohibit the sale of a specified list of products for a finite amount of time and breaching the restricted premises order is an offence.

41. Section 51 (restricted premises orders: tobacco or nicotine offence) of the [Public Health \(Wales\) Act 2017](#) (the 2017 Act) inserts provision into section 12D of the Children and Young Persons Act 1933 to provide the Welsh Ministers with the power to amend the primary legislation around restricted premises orders. This power enables the Welsh Ministers to extend the list of offences that can lead to a restricted premises order in relation to premises in Wales.

42. Clause 15 re-enacts with modifications the power in section 51 of the 2017 Act and allows the Secretary of State and Welsh Ministers to introduce new offences that may result in a restricted premises order.

Justification for taking the power

43. This power re-enacts with modifications an existing power in Welsh legislation and is included to ensure legislative coherence and consistency between the existing and new regime.

44. The power is being extended to the Secretary of State to enable alignment between the enforcement regimes in England and Wales. The power will also help to ensure that any offences that are added to the restricted premises order are considered in the context of the new age of sale restrictions and enforcement regime set out in this Bill.

45. This is a narrow power, and it requires Welsh Ministers and the Secretary of State to consult stakeholders before they are introduced, thereby, helping to ensure that any changes will be effective and not disproportionate.

Justification for the procedure

46.Regulations under this power are subject to the affirmative procedure. The affirmative procedure is appropriate for two reasons. Firstly, new offences result in a restricted premises order in the future which could impact businesses and enforcement authorities, therefore, it is appropriate that a greater level of scrutiny is applied. Secondly, this is a Henry VIII power, as it allows for primary legislation to be amended by subordinate legislation and, in line with DPRRC guidance, the affirmative procedure is considered appropriate so that any change to primary legislation can be debated and approved in both Houses of Parliament and Welsh Parliament (Senedd Cymru).

Fixed penalties

Clause 26: Power to change amount of fixed penalties

Power conferred on: Secretary of State and Welsh Ministers

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

47.The Bill will introduce Fixed Penalty Notices (FPNs) (clause 24) for the offences in clauses 1 (Sale of tobacco), 2 (Purchase of tobacco on behalf of others), 7 (Sale of vaping products to under 18s), 8 (Purchasing of vaping products on behalf of under 18s), and 9 (Free distribution of vaping products to under 18s) in the Bill. This is to ensure there is an effective enforcement regime for these offences in this Bill. Introducing FPNs will allow enforcement authorities to issue on-the-spot fines for breaches of this legislation.

48.This power will allow the Secretary of State and Welsh Ministers to change the penalty amount of the FPN, which is £100 as stated on the face of the Bill, and to change the percentage discount for early payment.

Justification for taking the power

49.Including this power will give flexibility to ensure the Secretary of State and Welsh Ministers can change the amount of the fine and the discounted amount in line with varying economic and social circumstances, such as changes in inflation. This will also allow the government to assess the impact of the existing fine level and adjust accordingly in order to effectively deter breaches of the provisions within the Bill.

Justification for the procedure

50.Regulations made under this power will be subject to the affirmative procedure. The affirmative procedure is appropriate for two reasons. Firstly, the power enables the amendment of a penalty for the commission of a criminal offence, which will have an impact on industry and public behaviour and therefore will be of interest to parliamentarians. Secondly, this is a Henry VIII power that allows for primary legislation to be amended by subordinate legislation and, in

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line with DPRRC guidance, the affirmative procedure is considered appropriate so that any change to primary legislation can be debated and approved in both Houses of Parliament and Welsh Parliament (Senedd Cymru).

Consequential, transitional and transitory provision

Clause 29: Power to make consequential provision

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Negative procedure, unless the power is exercised to modify primary legislation, in which case the affirmative procedure applies.

Context and Purpose

51. Clause 29 confers a power on the Secretary of State to make provision consequential on Part 1 of the Bill. Regulations that make consequential provision may amend, repeal or revoke any legislation passed before, or later in the same session of Parliament as this Bill.

52. This power may be needed to make amendments to legislation if required in consequence of Part 1 of the Bill to give it effect. Regulations can be made under this power two months after this Bill is passed, similar to the power in clause 47 and 57 in relation to Parts 2 and 3 of the Bill respectively.

Justification for taking the power

53. This power may only be exercised to make provision that is consequential on Part 1 of the Bill. This power is required to enable consequential amendments to secondary legislation, of which the government is aware, and it is standard practice to make such amendments through secondary legislation. The power also provides for consequential amendments to primary legislation, because although every effort has been made to identify and make provision in the Bill for such amendments, the Bill does bring together a whole range of legislation made over the course of the last century and therefore there is the small possibility that further consequential amendments may be required to give effect to the Bill. The government considers that it would therefore be prudent for the Bill to contain a power to deal with any such cases in secondary legislation.

Justification for the procedure

54. Any regulations made under this power are subject to the negative procedure, or the affirmative procedure where they are used to amend primary legislation. Insofar as this power is used to amend primary legislation, it is a Henry VIII power. Any regulations amending statutory instruments will be subject to the negative procedure as the changes are unlikely to be substantive and will only be ensuring the effectiveness of the provisions. In line with DPRRC guidance, the affirmative procedure is considered appropriate for Henry VIII powers so that any change to primary legislation can be debated and approved in both Houses of Parliament.

Part 2: Sale and distribution: Scotland

Tobacco etc

Clause 37: Age of sale for tobacco products etc:

Power conferred on: Scottish Ministers

Power exercised by: Regulations made by Scottish statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

55. The [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) (the 2010 Act) introduced legislation on the age of sale of tobacco products and cigarette papers in Scotland. This Bill amends the 2010 Act to change the age of sale restriction from ‘under 18’ to ‘anyone born on or after 1 January 2009’ to stop future generations from taking up smoking.
56. This Bill also updates the ‘age verification policy’ provisions in the 2010 Act to ensure this is consistently and appropriately applied in line with the new age of sale restrictions for tobacco products, herbal smoking products and cigarette papers. The 2010 Act requires tobacco and nicotine vapour businesses to operate an “age verification policy” in relation to customers who appear under 25. This is a policy that requires steps to be taken by someone in a relevant retail setting to verify the age of a customer purchasing tobacco products, cigarette papers or nicotine vapour products.
57. The Bill makes amendments to reflect the new age of sale restrictions. If the retailer thinks a customer buying tobacco products, herbal smoking products or cigarette papers was born on or after the 1 January 2009 they are required to establish their age. Until the end of 2033 this requirement applies whenever the retailer thinks the customer is under 25.
58. If the retailer thinks a customer buying a nicotine vapour product is under the age of 25, they are required to operate a policy of taking steps to establish their age. This is a re-statement of the existing provision in the 2010 Act for nicotine vapour product businesses.
59. Subsection (3)(b) of the clause updates a reference in the 2010 Act in consequence of these changes. In doing so, it retains an existing power for the Scottish Ministers to make regulations to amend the age in respect of nicotine vapour products that are specified in the age verification policy.
60. This power is narrower than the current regime as the power to amend the specified age for the age verification policy for tobacco products is no longer required. This is because a long-term policy of checking an age above the age of sale (born on or after 1 January 2009) is not considered to be workable in practice when the age is no longer fixed.

Justification for taking the power

61. The existing regulatory approach, whereby the Scottish Ministers can change the specified age for the age verification policy for nicotine vapour products by regulations is being retained. When the power currently in the 2010 Act was inserted by the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, it was acknowledged that circumstances may change in the future. As such the Scottish Parliament considered the power to amend age to be justified, an equivalent power to change the specified age for the age verification policy for tobacco products is no longer considered necessary, as a consequence of the new age of sale restrictions. Therefore, this power is narrower than the existing power.
62. Under the new age of sale requirements for tobacco products, the age at which people can legally purchase tobacco products will get older. Given nicotine vapour products should only be used as a quit-aid, Scottish ministers may decide they need to alter the age of sale for nicotine vapour products in the future to reflect the fact that the legal age of tobacco smokers will be higher in the future.

Justification for the procedure

63. Regulations made under this power will be subject to the affirmative procedure. This is the same as the existing procedure and is provided for in section 40 of the 2010 Act. This is a Henry VIII power that allows for primary legislation to be amended by subordinate legislation and the affirmative procedure is considered appropriate so that any change to the age verification policy for nicotine vapour products can be debated and approved by the Scottish Parliament.

Clause 42: Power to make provision about warning statements

Power conferred on: Scottish Ministers

Power exercised by: Regulations made by Scottish statutory instrument

Parliamentary Procedure: Negative

Context and Purpose

64. Section 8 of the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) (the 2010 Act) requires tobacco businesses in Scotland to display a notice that reads “It is illegal to sell tobacco products to anyone under the age of 18”. The legislation introduced powers for Scottish Ministers to prescribe the dimensions of the notice and the size of the statement displayed on the notice.
65. Clause 37 (Age of sale for tobacco products etc) in the Bill changes what the notice is required to say to, “It is illegal to sell tobacco products to anyone born on or after 1 January 2009”.
66. This clause re-enacts with modifications the power in the 2010 Act and the new power will enable Scottish Ministers to make provision as to the size or appearance of the statement that is displayed on the notice and any other aspect of the notice.

Justification for taking the power

67. This is similar to the powers outlined in clauses 5, 6 and 42 for England, Wales and Northern Ireland respectively. The power sought is similar to the existing regulatory approach and precedent as set out in the 2010 Act whereby the Scottish Ministers can set the size and dimensions for the notice. This power has been changed slightly to allow for the size, appearance of the statement and any other aspect of the notice to be set by regulations.
68. Placing the requirements for these notices on the face of the legislation would be an inappropriate level of detail for primary legislation and it would not provide the flexibility to enable Scottish Ministers to amend the notice requirements after the Bill becomes law based on how effective the measures initially adopted prove to be.
69. The power is narrow in scope, as its purpose is simply to allow Scottish Ministers to adjust the requirements if the sign is not having the appropriate impact or, conversely, is overly burdensome.

Justification for the procedure

70. Regulations made under this power will be subject to the negative procedure. This is consistent with the existing power in the 2010 Act. The requirement for retailers to update their notice to align with the new age of sale restrictions is on the face of the Bill. That being the case, the negative procedure affords an appropriate level of parliamentary scrutiny for regulations specifying the details of the size and appearance of the notice. Use of the affirmative procedure would be an inappropriate use of parliamentary time relative to the impact of such regulations.

Vaping and nicotine products

Clause 43: Power to regulate nicotine products

Power conferred on: Scottish Ministers

Power exercised by: Regulations made by Scottish statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

71. Sections 4A, 4B, 4C, 4D and 6A of the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) (the 2010 Act) make provisions for age of sale, age verification, sale by persons under 18s and proxy purchasing of nicotine vapour products.
72. However, there are other nicotine products in the UK market, such as nicotine pouches, and this an emerging and growing market. These products are not within scope of the existing provisions in the 2010 Act.
73. In the October 2023 [consultation](#), the government asked, “Do you think the UK Government and devolved administrations should regulate other consumer

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nicotine products such as nicotine pouches under a similar regulatory framework as nicotine vapes?” In Scotland, 55.6% of respondents agreed, 26.4% disagreed and 18.0% did not know.

74. Clause 43 makes provision for a power that will allow the Scottish Ministers to extend the relevant provisions of the 2010 Act relating to nicotine vapour products to other nicotine products, thereby, helping to close any loopholes in the legislation should any new nicotine products come to market. This aligns with a similar approach in clause 10 for England and Wales and facilitates a joined-up approach across the UK for age restricted nicotine consumer products.

Justification for taking the power

75. The justification for this power is the same as for the power within clause 10 (Power to extend vaping provisions to nicotine products) which enables a similar set of outcomes but for England and Wales.

76. This power will allow existing restrictions and requirements to be applied to nicotine products which are not currently in scope of those restrictions and future proofs against new nicotine products which have just entered the market or may enter the market in the coming years. New products are coming onto the market all the time and this power will enable the Scottish Ministers to regulate new nicotine products in the same way that nicotine vapour products are regulated, provided that there is evidence to support this.

77. Nicotine pouches first appeared on the UK market in 2019. There is limited independent advice on nicotine pouches, although their ability to deliver high doses of nicotine to the users suggests that they have the potential to initiate addiction in those who have not previously used nicotine products. The market for nicotine pouches is increasing among young people and younger men in particular.

78. We also understand that there are other nicotine products (in addition to pouches), for example nicotine tea, under development by companies which are likely to come to market soon, expanding the choice of nicotine products available to consumers.

79. For nicotine pouches the evidence base is still forming. However, based on the available evidence and the precedent of the impact of nicotine vaping products, especially on children and young people, it is highly likely that restrictions will be required in relation to nicotine products not currently caught or yet on the market. This power enables Scottish Ministers to intervene promptly in future, should this become necessary.

80. A delegated power is therefore appropriate as it will enable Scottish Ministers to assess the impact of these other nicotine products over the coming years and amend the relevant provisions in this Bill to include other nicotine products in a proportionate manner relative to their societal impact. Any such amendment by way of regulation would be taken forward following further consultation. This will ensure that there is detailed consideration of new evidence on the specifics of the measures, including the opportunity to understand views on which products should be covered and which of the offences should apply.

Justification for the procedure

81.Regulations made under this power are subject to the affirmative procedure. The affirmative procedure is appropriate for two reasons. Firstly, the regulations can enable new products to be subject to the same restrictions as for nicotine vapour products, affecting consumer and public behaviour and businesses. Secondly, this is a Henry VIII power that allows for primary legislation to be amended by subordinate legislation and the affirmative procedure is considered appropriate so that any change to primary legislation can be debated and approved in the Scottish Parliament.

Clause 44: Free distribution of nicotine products

Power conferred on: Scottish Ministers

Power exercised by: Regulations made by Scottish statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

82.Section 18 of the [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016](#) (the 2016 Act) provided regulation making powers for Scottish Ministers to prohibit or restrict the free distribution of a nicotine vapour products and to create offences for breaches of these regulations.

83.The October [consultation](#) asked, “Do you think the UK Government and devolved administrations should regulate other consumer nicotine products such as nicotine pouches under a similar regulatory framework as nicotine vapes?” and 55.6% of respondents in Scotland said yes.

84.This clause extends the power in section 18 of the 2016 Act to include other nicotine products. As a result, the regulation making power will be extended to prohibit the free distribution and nominal pricing of nicotine vapour product and other nicotine products.

85.Clause 10 (Power to extend vaping provisions to nicotine products) in the Bill introduces a regulation making power for the Secretary of State and Welsh Ministers to extend age of sale restrictions for vaping products to nicotine products including clause 9 which prohibits the free distribution of vaping products to under 18s. This clause ensures that the existing Scottish powers can make regulations applying to the same products as regulations made for England and Wales.

Justification for taking the power

86.This power future proofs against new nicotine products (other than nicotine vapour products) which have just entered or may enter the market in the coming years. New products are in development all the time and this power will enable Scottish Ministers to regulate new nicotine products in the same way that they can regulate the free distribution of nicotine vapour products, provided that there is evidence to support this.

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87. Nicotine pouches first appeared on the UK market in 2019 and there is limited independent evidence on the impact of nicotine pouches on health, although their ability to deliver high doses of nicotine to the users suggests that they have the potential to initiate addiction in those who have not previously used nicotine products. The market for nicotine pouches is increasing among young people and younger men in particular.
88. We also understand that there are other nicotine products (in addition to pouches), for example nicotine tea, under development by companies which are likely to come to market soon, expanding the choice of nicotine products available to consumers.
89. For nicotine pouches the evidence base is still forming. However, based on the available evidence and the precedent of the impact of nicotine vaping products, especially on children and young people, it is highly likely that restrictions will be required in relation to nicotine products not caught. This extension of the existing power enables the Scottish Ministers to intervene promptly in future, should this be necessary.
90. Extending the regulation making power to restrict the free distribution and nominal pricing of nicotine vapour products and nicotine products provides a flexibility for Scottish Ministers to specify which products are included in future regulations to align with changes to the market.

Justification for the procedure

91. Regulations made under this power are subject to the affirmative resolution procedure as the regulation-making power in section 18 of the 2016 Act is subject to the affirmative procedure. This was considered the appropriate procedure to apply to the power by the Scottish Parliament at the time of passage of the Bill for that Act. Similarly, to the power in the 2016 Act, the exercise of this power is likely to attract a high level of public interest and regulations made under the power will be able to apply to a wide range of nicotine products, including those not yet on the market, affecting consumer and public behaviour and businesses.

Clause 45: Displays of vaping and nicotine products

Power conferred on: Scottish Ministers

Power exercised by: Regulations made by Scottish statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

92. The October 2023 [consultation](#) considered the government's plans to tackle youth vaping. The consultation asked questions about policies which have the potential to reduce the appeal, availability, and affordability of vaping to children, while ensuring that vaping products remain available as a useful smoking cessation tool for adult smokers, given the lesser harms posed to smokers from vaping. This included regulating point of sale displays of vaping and nicotine products.

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93. Unlike for tobacco products, there are no restrictions on displays of nicotine vapour products in retail where these products are sold. Because of this, children can see and easily pick up vaping products in retail outlets due to them being displayed within aisles, close to sweets and confectionary products and on accessible shelves. The aim is to reduce the visual accessibility of vaping products for children as the often-colourful nature of vaping displays can be appealing for children and young people. Limiting this exposure is a necessary step to reducing experimental use among children and young people and to reduce youth vaping.
94. In response to the question, “Which option do you think would be the most effective way to restrict vapes to children and young people? Option 1: vapes must be kept behind the counter and cannot be on display, like tobacco products or Option 2: vapes must be kept behind the counter but can be on display”. In Scotland, 71.5% of respondents opted for option 1 and 28.5% of respondents opted for option 2.
95. This clause will insert a new section 3A into the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) (the 2010 Act) which contains a regulation-making power that will enable Scottish Ministers to impose prohibitions, requirements, or limitations on retailers regarding the display of nicotine vapour products or nicotine products that are not nicotine vapour products and the display of their prices, as well as empty retail packaging. This could include the location of the products in a retailer, for instance there could be limitations on displays in windows and whether they should be behind the counter.

Justification for taking the power

96. The justification for this power is the same as for the power within clause 11 which enables similar regulations to be made for England and Wales.
97. This power allows for detailed regulations to be made. It would not be appropriate for such detail to be included in primary legislation. A similar approach was taken in Scotland for the display of tobacco products. Regulations set out the detail of the where, and in what circumstances, tobacco products can be displayed in the [Sale of Tobacco \(Display of Tobacco Products and Prices etc.\) \(Scotland\) Regulations 2013](#) which were made under powers in primary legislation.
98. A power provides flexibility for Ministers to monitor and amend regulations following implementation. It will be necessary to gather evidence post implementation to ensure that regulations are effectively discouraging youth vaping, whilst ensuring that nicotine vapour products remain accessible for adults who are trying to stop smoking. Achieving this balance may mean that changes to the regulations are required to ensure this balance is effectively reached.
99. Consultation will take place with stakeholders, including retailers and their representatives regarding these regulations.

Justification for the procedure

100. Regulations made under this power will be subject to the affirmative procedure. We consider the affirmative procedure to be the correct level of scrutiny for this

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power as regulations restricting the display of vaping and nicotine products will affect the public's purchasing behaviours and will require retailers to implement changes. The affirmative procedure will enable a debate about the merits of any regulations and a vote in the Scottish Parliament so the impacts of the regulations can be subject to the appropriate parliamentary scrutiny.

Miscellaneous and consequential provision

Clause 47: Power to make consequential provision

Power conferred on: Scottish Ministers

Power exercised by: Regulations made by Scottish statutory instrument

Parliamentary Procedure: Negative procedure, unless the power is exercised to modify primary legislation then affirmative procedure.

Context and Purpose

101.Clause 47 confers a power on Scottish Ministers to make provision consequential on Part 2 of the Bill. Regulations that make consequential provision may amend, repeal or revoke any legislation passed before, or later in the same session of Parliament as this Bill.

102.This power may be needed to make amendments to legislation if required in consequence of Part 2 of the Bill to give it effect. Regulations can be made under this power two months after this Bill is passed, similar to the power in clause 29 and 57 for Parts 1 and 3 respectively.

Justification for taking the power

103.This power may only be exercised to make provision that is consequential on Part 2 of the Bill. This power is required to enable consequential amendments to secondary legislation, of which the government is aware, and it is standard practice to make such amendments through secondary legislation. The power also provides for consequential amendments to primary legislation, because although every effort has been made to identify and make provision in the Bill for such amendments, the Bill does bring together a whole range of legislation made over the course of the last century and therefore there is the small possibility that further consequential amendments may be required to give effect to the Bill. The government considers that it would therefore be prudent for the Bill to contain a power for Scottish Ministers to deal with these in secondary legislation.

Justification for the procedure

104.Any regulations made under this power are subject to the negative procedure, or the affirmative procedure where they are used to amend primary legislation. Insofar as this power is used to amend primary legislation, it is a Henry VIII power. Any regulations amending statutory instruments will be subject to the negative procedure as the changes are unlikely to be substantive and will only be ensuring the effectiveness of the provisions. In line with DPRRC guidance,

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the affirmative procedure is considered appropriate so that any change to primary legislation can be debated in Scottish Parliament.

Part 3: Sale and distribution: Northern Ireland

Tobacco etc

Clause 49: Power to restrict tobacco offences to sale by retail

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations made by statutory rule

Northern Ireland Assembly Procedure: Affirmative

Context and Purpose

105. The [Health and Personal Social Services \(Northern Ireland\) Order 1978](#) (the 1978 Order) made it an offence to sell tobacco to under 18s as well as making it an offence to purchase tobacco on behalf of someone who is under 18.

106. Clause 49 inserts text into article 7 (Interpretation) of the 1978 Order. This introduces a power for the Department to amend paragraph (1) of article 7 to define “sale” in Part 2 to mean sale by retail. This would allow for the definition to align with the definition of sale that is used in the rest of this Bill for England and Wales.

Justification for taking the power

107. Including the powers in this clause in the Bill enables the recently restored Northern Ireland Executive to align their regime with the rest of the UK, which is set out on the face of the Bill. As these powers have been conferred on the Executive it remains their decision whether to use these powers.

108. This power provides the Executive and the Department with the flexibility to consider the implementation of the new age of sale restrictions for tobacco products and cigarette papers and change the definition of sale if that becomes necessary to improve the implementation of the new restrictions.

109. The power in this Bill will be scrutinised by Members of Parliament representing constituencies in Northern Ireland and Peers from, and with an interest in, Northern Ireland. The changes which it enables are themselves narrow, and in line with the restrictions set out on the face of the Bill for England and Wales.

Justification for the procedure

110. Regulations made under this power will be subject to the affirmative procedure. These regulations will have an impact on retail businesses in Northern Ireland that sell tobacco products and cigarette papers. The Northern Ireland Assembly should therefore have the opportunity to scrutinise the regulations through debate and a vote.

Clause 50: Power to make provision about warning statements

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations made by statutory rule

Northern Ireland Assembly Procedure: Affirmative

Context and Purpose

111. Article 5 of the [Children and Young Persons \(Protection from Tobacco\) \(Northern Ireland\) Order 1991](#) (the 1991 Order) required tobacco retailers to display a notice that reads “It is illegal to sell tobacco products to anyone under the age of 18”. The legislation introduced powers for the Department to prescribe the dimensions of the notice and the size of the statement displayed on the notice.

112. Clause 48 (Age of sale for tobacco products etc) in the Bill amends the requirements for what the notice is to say to, “It is illegal to sell tobacco products to anyone born on or after 1 January 2009”.

113. This clause is similar to the approach of the 1991 Order and replaces the power with one that will enable the Department to impose requirements for the size and appearance of the statement that is displayed on the notice and any other aspect of the notice, such as its colour.

Justification for taking the power

114. This power is similar to the powers outlined in clauses 5, 6 and 42 for England, Wales and Scotland respectively. The power sought is similar to the existing regulatory approach and precedent as set out in the 1991 Order whereby the Department can set the size of the statement and dimensions for the notice. This power has been changed slightly to allow for the size and appearance of the statement and any other aspect of the notice to be set by regulations, for instance the colour of the notice.

115. Placing these specific requirements on the face of the legislation would not be an appropriate level of detail for primary legislation and it would not allow the Department to amend the notice requirements after implementation based on how effective the measures initially adopted prove to be.

116. The power is narrow in scope, as its purpose is simply to allow the Department of Health in Northern Ireland to adjust the requirements if the sign is not having the appropriate impact or, conversely, is overly burdensome.

Justification for the procedure

117. Regulations made under this power will be subject to the negative procedure. This is consistent with the equivalent power in the 1991 Order and affords an appropriate level of parliamentary scrutiny for regulations specifying the details of the size and appearance of the notice.

Vaping and nicotine products

Clause 51: Power to regulate non-nicotine vapes etc

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations made by statutory rules

Northern Ireland Assembly Procedure: Affirmative

Context and Purpose

118. Section 1 of the [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016](#) (the 2016 Act) provides the Department of Health in Northern Ireland with a power to make regulations prohibiting the sale of nicotine products to persons under the age of 18. Non-nicotine vaping products are not included in this regulation making power and are instead regulated by the [General Products Safety Regulations 2005](#) (GPSR). The GPSR requires providers to ensure only safe products are placed on the market, together with any necessary warnings that are required for the safe use of the product.

119. The October 2023 [consultation](#) asked, “Do you think the UK Government and devolved administrations should regulate non-nicotine vapes under a similar regulatory framework as nicotine vapes?”. In Northern Ireland, 73.6% of the respondents agreed, 19.1% disagreed and 7.3% did not know. This shows support in Northern Ireland for taking this power.

120. There is evidence that shows that children use non-nicotine and nicotine vaping products, and neither are good for the health of non-smokers.

121. Clause 51 in the Bill amends section 1 of the 2016 Act to extend the power to include non-nicotine vaping products. This amendment to the 2016 Act enables regulations to be made under section 1 of the 2016 Act that make it an offence to sell a non-nicotine vaping product to someone under the age of 18.

Justification for taking the power

122. The Bill includes provisions for England and Wales to introduce age of sale restrictions for non-nicotine vaping products.

123. Including the powers in this clause enables the recently restored Northern Ireland Executive to align their regime with Great Britain. As these powers have been conferred on the Executive it remains their decision whether to use these powers.

124. The absence of this power may lead to significant disparities in health outcomes across the UK as restrictions will be in place for non-nicotine vaping products in England, Wales and Scotland. This is significant because without appropriate regulation of non-nicotine vaping products, in line with nicotine vaping products, there is the potential for legislative loopholes that would allow non-nicotine vaping products to be promoted to appeal to children, as nicotine vaping products are now.

Justification for the procedure

125.Regulations made under this power will be subject to the affirmative procedure. These regulations will have a significant impact on the health and behaviours of the public and businesses in Northern Ireland. The power also introduces a criminal conviction. The Northern Ireland Assembly should therefore have the opportunity to scrutinise the regulations through debate.

Clause 52: Power to restrict nicotine products offence to sale by retail

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations made by statutory rule

Northern Ireland Assembly Procedure: Affirmative

Context and Purpose

126.Section 1 of the [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016](#) (the 2016 Act) introduced powers for regulations to be made that make it an offence to sell nicotine products to under 18s.

127.Clause 52 inserts text into section 1 (prohibition of sale of nicotine products to persons under 18) of the 2016 Act. This introduces a power for the Department to define “sale” in section 1 of the 2016 Act to mean sale by retail. This will allow for the alignment with the definition of “sale” that is used in the rest of this Bill for England and Wales.

Justification for taking the power

128.Including the powers in this clause enables the recently restored Northern Ireland Executive to align their regime with England and Wales, which is set out on the face of the Bill. As these powers have been conferred on the Executive it remains their decision whether to use these powers.

129.This power provides the Executive and the Department with the flexibility to consider the implementation of the age of sale restrictions for nicotine products alongside any new regulations that are introduced and change the current scope of sale restrictions if needed to improve implementation.

Justification for the procedure

130.Regulations under this power are subject to the affirmative procedure. The affirmative procedure is appropriate for two reasons. Firstly, the regulations can enable new products to be subject to the same restrictions as for vaping products, affecting consumer behaviour and businesses. Secondly, this is a Henry VIII power; it allows for primary legislation to be amended by subordinate legislation and the affirmative procedure is considered appropriate so that any change to primary legislation can be debated and approved by the Northern Ireland Assembly.

Clause 53: Free distribution of vapes and nicotine products

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations made by statutory rule

Northern Ireland Assembly Procedure: Affirmative

Context and Purpose

131. This power will amend the [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016](#) by inserting a new section 2A to provide a power for the Department of Health in Northern Ireland to make it an offence for businesses to give away a nicotine product or non-nicotine vaping product to someone under the age of 18 or permitting this to happen. This will allow for alignment with the offence in clause 9 (Free distribution of vaping products to under 18s) for England and Wales.

132. Similarly, to England and Wales, under current legislation there are no restrictions on the free distribution of nicotine or non-nicotine vaping products to children under 18 in Northern Ireland. A common theme in response to the government's [consultation](#) in October 2023 was the need to close the loophole in our laws which allow businesses to give away free samples of vaping products to children.

Justification for taking the power

133. The Bill includes offences for the free distribution of nicotine and non-nicotine vaping products in England and Wales. The powers in this clause in the Bill enables the recently restored Northern Ireland Executive to align their regime more closely with England and Wales. As these powers have been conferred on the Executive it remains their decision whether to use them.

134. The current legislative framework in Northern Ireland does not restrict the free distribution of nicotine and non-nicotine vaping products by businesses to children. This can result in children and young people taking up vaping. If the ban on the free distribution is not introduced in Northern Ireland, it could lead to health disparities across the UK.

135. A power is more appropriate than putting these provisions on the face of the legislation as the existing Northern Ireland legislative framework contains different definitions of key products compared to those used in the Bill. By giving Northern Ireland a power, this enables them to fundamentally implement the same policy but retain the definitions as set out in their current legislation, respecting that this is a devolved area.

Justification for the procedure

136. Regulations made under this power will be subject to the affirmative procedure. These regulations will have a significant impact on the health and behaviours of the public and businesses in Northern Ireland. The Northern Ireland Assembly should therefore have the opportunity to scrutinise the regulations through debate.

Clause 54: Power to regulate displays of vaping and nicotine products

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations made by statutory rules

Northern Ireland Assembly: Affirmative

Context and Purpose

137. Unlike tobacco products, vaping products are currently allowed to be displayed at the point of sale in Northern Ireland. Because of this, children can see and easily pick up vaping products due to them being displayed within aisles, close to sweets and confectionary products and on accessible shelves. The aim is to reduce the visual accessibility of vaping products for children as the often-colourful nature of vaping displays can be appealing for children and young people. Limiting this exposure is a necessary step to reducing experimental use among children and young people and to reduce youth vaping.

138. The October 2023 [consultation](#) asked respondents what they thought the most effective way was to restrict the availability of vapes to children and young people. Option 1 stated that vapes must be kept behind the counter and cannot be on display, like tobacco products and option 2 stated that vapes must be kept behind the counter but can be on display. In Northern Ireland 85.3% of the respondents chose option 1.

139. Clause 54 provides the Department of Health in Northern Ireland with the power to impose prohibitions, requirements or limitations on retailers in relation to the display of nicotine and non-nicotine vaping products, nicotine products and their prices, as well as empty retail packaging. This could include the location of the products in a retailer, for instance there could be requirements for products to be kept behind the counter.

140. This aligns with the power included in clause 11 (Displays of vaping and nicotine products) for England and Wales and clause 45 (Displays of vaping and nicotine products) for Scotland thereby enabling the alignment of provision across the UK.

Justification for taking the power

141. The justification for this power is the same as for the power within clause 11 which enables a similar set of outcomes but for England and Wales and clause 45 for Scotland.

142. This power provides for a type of detailed regulation that would not be appropriate for inclusion in primary legislation and is conventionally set out in secondary legislation. For example, regulations on the display of tobacco products ([The Tobacco Advertising and Promotion \(Display\) Regulations \(Northern Ireland\) 2012](#)) provide detailed specifications for how tobacco products can be displayed.

143. This power provides flexibility for the Department of Health in Northern Ireland to monitor and amend regulations following implementation. It will be necessary

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to gather evidence after the implementation of any regulations to ensure the measures effectively discourage youth vaping, whilst ensuring that nicotine vaping products remain accessible for adults who are trying to stop smoking. Achieving this balance may require changes to the regulations to be made.

144. Consultation will take place with stakeholders, including retailers and their representatives regarding these regulations.

Justification for the procedure

145. Regulations made under this power will be subject to the affirmative procedure. We consider the affirmative procedure to be the correct level of scrutiny for this power as regulations restricting the display of vaping and nicotine products will affect the public's purchasing behaviours and will require retailers to implement changes, with failure to do so potentially constituting a criminal offence. The affirmative procedure will enable a debate and vote by the Northern Ireland Assembly so the impacts of the regulations can be subject to appropriate parliamentary scrutiny.

Clause 56: Power to extend restricted premises orders

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations made by statutory rules

Northern Ireland Assembly: Affirmative

Context and Purpose

146. Section 5 of the [Tobacco Retailers Act \(Northern Ireland\) 2014](#) introduced restricted premises orders for breaches of a tobacco offence. Restricted premises orders prohibit the sale of a specified list of products for a finite amount of time and breaching the restricted premises order is an offence.

147. This power is similar to the power conferred on the Secretary of State and Welsh Ministers in clause 15 (Power to extend restricted premises orders) and allows the Department of Health in Northern Ireland to amend the scope of a restricted premises order by introducing new offences that may result in a restricted premises order. An offence may only be added by such regulations if it relates to tobacco, cigarette papers, nicotine products or non-nicotine vaping products.

Justification for taking the power

148. The introduction of this power will facilitate alignment between England, Wales and Northern Ireland.

149. If the power is taken it will help to ensure that any offences that are added to the restricted premises order are considered in the context of the new age of sale restrictions and enforcement regime in this Bill.

150. This is a narrow power, and it requires the Department of Health in Northern Ireland to consult stakeholders who might be interested in the regulations

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before they are introduced, thereby, helping to ensure that any changes are likely to be effective and not disproportionate.

Justification for the procedure

151. The affirmative procedure offers the appropriate level of scrutiny for this power as it is a Henry VIII power that allows for primary legislation to be amended by secondary legislation and the affirmative procedure is considered appropriate so that any change to primary legislation can be debated and approved by the Northern Ireland Assembly.

Consequential provision

Clause 57: Power to make consequential provision

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations made by statutory rule

Northern Ireland Assembly: Negative procedure, unless the power is exercised to modify primary legislation then affirmative procedure

Context and Purpose

152. Clause 57 confers a power on the Department of Health in Northern Ireland to make provision consequential on Part 3 of the Bill. Regulations that make consequential provision may amend, repeal or revoke any legislation passed before, or later in the same session of Parliament as this Bill.

153. This power may be needed to make amendments to legislation if required in consequence of Part 3 of the Bill to give it effect, similar to the power in clause 29 and clause 47 in relation to Parts 1 and 2 respectively.

Justification for taking the power

154. This power may only be exercised to make provision that is consequential on Part 3 of the Bill. This power is required to enable consequential amendments to secondary legislation, of which the government is aware, and it is standard practice to make such amendments through secondary legislation. The power also provides for consequential amendments to primary legislation, because although every effort has been made to identify and make provision in the Bill for such amendments, the Bill does bring together a whole range of legislation made over the course of the last century and therefore there is the small possibility that further consequential amendments may be required to give effect to the Bill. The government considers that it would therefore be prudent for the Bill to contain a power to deal with these in secondary legislation.

Justification for the procedure

155. Any regulations made under this power are subject to the negative procedure, or the affirmative procedure where they are used to amend primary legislation. Insofar as this power is used to amend primary legislation, it is a Henry VIII power. Any regulations amending statutory instruments will be subject to the negative procedure as the changes are unlikely to be substantive and will only

be ensuring the effectiveness of the provisions. The affirmative procedure is considered appropriate so that any change to primary legislation can be debated and approved in the Northern Ireland Assembly.

Part 4: Product requirements

156. Clauses 64 (Power to include provision about enforcement), 65 (Power to make provision binding the Crown), 66 (Power to amend other legislation) and 67 (Consent to regulations made under this Part) in the Bill are not separate powers, but rather these clauses set out more information about what can be done under the each of the regulation making powers in Part 4.
157. Clause 64 allows for provisions in regulations made under Part 4 (Product Requirements) to confer enforcement functions on the relevant enforcement authority (local weights and measures authority in England, Wales and Scotland and a district council in Northern Ireland) and for the relevant national authority to decide, in relation to certain types of cases or a particular case, that any requirements imposed on an enforcement authority can be instead carried out by the relevant national authority instead of the enforcement authority.
158. Clause 65 allows any regulations made under Part 4 of the Bill to bind the Crown and the power requires that any provision binding the Crown does not make the Crown criminally liable as a result of the provision.
159. Clause 66 allows the Secretary of State to amend, repeal, revoke or otherwise modify any legislation (whenever passed or made) in consequence of provision made by regulations under Part 4 of the Bill. This is a Henry VIII power and there is an equivalent power at section 94(11) of the [Children and Families Act 2014](#) (the 2014 Act) which is being repealed in consequence of Part 4 of the Bill. The power in the 2014 Act is wider in scope than the power in the Bill as it provides for provision to be made in connection with, rather than in consequence of, regulations made under section 94. The government does not consider it would be justifiable to take such a wide power now and therefore the power in the Bill is limited to making amendments to legislation that are consequential on regulations made under Part 4.
160. Clause 67 requires the Secretary of State to obtain consent from Welsh Ministers, Scottish Ministers or the Executive Office in Northern Ireland if the regulations contain provisions which would be within the legislative competence of the Senedd Cymru, the Scottish Parliament or the Northern Ireland Assembly respectively.
161. These clauses apply to clauses 58 (Tobacco retail packaging), 59 (Flavour of tobacco products), 60 (Other tobacco product requirements), 61 (Retail packaging of vaping products and nicotine products), 62 (Contents and flavour of vaping products and nicotine products) and 63 (Other product requirements of vaping and nicotine products).

Clause 58: Tobacco retail packaging (re-enacts with modifications existing power)

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

162. Currently, section 94 (6) of the [Children and Families Act 2014](#) (the 2014 Act) gives the Secretary of State the power to make regulations which make provision about the retail packaging of tobacco products. Section 94(7) provides that such regulations may impose prohibitions, requirements or limitations relating to the production or supply of tobacco product packing for the promotion of health or welfare of persons under the age of 18. Such regulations may include provisions as to:

- a. the markings on packaging (including the use of branding, trademarks or logos);
- b. the appearance of packaging;
- c. the materials used for packaging;
- d. the texture of packaging;
- e. the size of packaging;
- f. the shape of packaging;
- g. the means by which packaging is opened;
- h. any other features of packaging which could be used to distinguish between different brands of tobacco products;
- i. the number of individual tobacco products contained in an individual packet;
- j. the quantity of a tobacco product contained in an individual packet.

163. Section 94(9) of the 2014 Act also provides the Secretary of State with the powers to create offences for breaches of regulations made under the section.

164. This Bill repeals and re-enacts with modifications an existing power in section 94 of the 2014 Act so that the Secretary of State can introduce regulations about the retail packaging of tobacco products, including a delegated power to make non-compliance with the regulations an offence. The drafting of this Bill differs, however, from the 2014 Act as it removes the references to the requirements for policies to reduce the risk of harm to children. Unlike this Bill, the power in section 94 was originally included in legislation that was focused on improving the health and wellbeing of children under 18. This Bill intends to improve the health and wellbeing of the entire population, therefore the reference to children has been removed in this Bill.

165. This Bill also specifies that regulations can impose prohibitions, requirements or limitations that relate to the production, importation or supply of tobacco products in the course of business with a view to the product being supplied for consumption in the UK, for retail by the travel retail sector. This specification was not included in the 2014 Act.

Justification for taking the power

166. This re-enacts with modifications an existing power set out in the 2014 Act whereby the Secretary of State could introduce regulations and offences surrounding the requirements of tobacco retail packaging.
167. This power provides for a type of detailed regulation that would not be appropriate for primary legislation and is conventionally set out in secondary legislation. For example, the [Standardised Packaging of Tobacco Products Regulations 2015](#), made under the powers in section 94 of the 2014 Act, demonstrate the type of provision which can be made under the power.
168. Including this power will provide flexibility that will enable changes to be made to the regulations based on the evidence following implementation. Over time the tobacco product market will change, in part due to the age of sale measures in this legislation. Therefore, having the ability to adapt the regulations to respond to these changes to ensure the measures fit the purpose of the Bill over a longer period of time is necessary.

Justification for the procedure

169. Regulations made under this power will be subject to the affirmative procedure. Section 94(6) of the 2014 Act was subject to the affirmative procedure and this power is re-enacting subsection (6) of section 94 of the 2014 Act. The regulations have the potential to be broad in scope and will have an impact on the design, development and production of tobacco packaging for manufacturers. The power can also prescribe a criminal offence. The affirmative procedure will enable a debate and vote in both Houses of Parliament so the impacts of the regulations can be subject to appropriate parliamentary scrutiny.

Clause 59: Flavour of tobacco products (re-enacts with modifications existing power)

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

170. The [EU Tobacco Products Directive \(TPD\) 2014](#) banned the use of flavourings in cigarettes and roll-your-own tobacco. This was transposed into UK law in the [Tobacco and Related Products Regulations 2016](#) where it became an offence to produce or supply flavoured cigarettes or hand rolled tobacco in the UK. Section 94 (8)(e) of the [Children and Families Act 2014](#) (the 2014 Act) also introduced powers for the Secretary of State to make regulations imposing prohibitions, requirements and limitations in relation to tobacco flavours which included a power to make non-compliance with the regulations an offence.
171. Flavoured tobacco has been shown to encourage smoking and increase uptake as the flavoured tobacco reduces the harshness experienced by new smokers and can facilitate long term use and dependence. As the new age of

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sale legislation will not inhibit the sale of tobacco to anyone who is born before 1 January 2009, this measure will help to reduce the attraction to smoking in these age groups and therefore reduce the number of people who start smoking.

172. This power will allow the Secretary of State to introduce regulations about the flavour of tobacco products.

173. The power will allow the Secretary of State to make regulations to impose prohibitions, requirements or limitations in relation to the production or importation of tobacco products in the course of business with a view to the product being supplied for consumption in the UK or for retail by the travel sector or the supply of tobacco products in the course of business.

174. The regulations may include provision about how the flavour of the product is determined and the regulations may create offences in relation to the failure to comply with the regulations.

Justification for taking the power

175. This re-enacts with modifications an existing power set out in the 2014 Act whereby the Secretary of State could introduce regulations and offences surrounding the flavour of tobacco products.

176. This power provides for a type of detailed regulation that would not be appropriate for primary legislation and is conventionally set out in secondary legislation.

177. There is the potential for new flavours of tobacco product to come to market following the passage of the Bill. Therefore, this provision is more suitable as a power, rather than being on the face of the Bill, as it provides a degree of flexibility to respond to market changes and to ensure the measures fit the purpose of the Bill over a longer period of time.

Justification for the procedure

178. Regulations made under this power will be subject to the affirmative procedure. Regulations made under section 94 (8)(e) of the 2014 Act were subject to the affirmative procedure. This power re-enacts with modifications an existing power and it is appropriate to utilise the same procedure. The power can also prescribe a criminal offence. The affirmative procedure will enable a debate and vote in both Houses of Parliament so the impacts of the regulations can be subject to appropriate parliamentary scrutiny.

Clause 60: Other tobacco product requirements (re-enacts with modifications existing power)

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

179. Section 94(8) of the [Children and Families Act 2014](#) (the 2014 Act) provides a power for the Secretary of State to make regulations about tobacco products for the promotion of health or welfare of persons under the age of 18. This allows the Secretary of State to impose prohibitions, requirements or limitations relating to:

- a. the markings on tobacco products (including the use of branding, trademarks or logos);
- b. the appearance of such products;
- c. the size of such products;
- d. the shape of such products;
- e. the flavour of such products;
- f. any other features of tobacco products which could be used to distinguish between different brands of tobacco product.

180. Section 94(8) of the 2014 Act also provides the Secretary of State with the powers to introduce offences for breaches of the regulations surrounding tobacco products.

181. The Bill repeals and re-enacts with some modification the power in Section 94(8) of the 2014 Act. The power enables the Secretary of State to make regulations on the following:

- a. (a) the markings on tobacco products (including the use of branding, trademarks or logos);
- b. (b) the appearance of such products;
- c. (c) the size of such products;
- d. (d) the shape of such products;
- e. (e) any other features of tobacco products which could be used to distinguish between different brands of tobacco product.

182. The power also allows the creation of offences for breaches of the regulations, similar to the 2014 Act.

183. The specific regulatory making power around the flavour of tobacco products has been separated from this power as clause 59 (Flavour of tobacco products) provides a power to regulate the flavour of tobacco products. This does not change the effect of the existing regulations in the [Standardised Packaging of Tobacco Products Regulations 2015](#) which will remain in force.

184. The drafting of this Bill differs from the 2014 Act as it removes the references to the requirements for policies to reduce the harm to children. The power in section 94 of the 2014 Act was originally included in legislation that was focused

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on improving the health and wellbeing of children under 18. This Bill does not have the same focus and the reference to children has not been replicated in this Bill. Therefore, this power goes further than the original power in so far as it is not limited to making provision for the purposes of health or welfare of persons under the age of 18.

185. This Bill also specifies that these restrictions relate to the production or importation of a tobacco product in the course of business with a view to the product being supplied for consumption in the UK or for retail by the travel retail as well as the supply of tobacco products for the course of business. This specification was not included in the 2014 Act.

Justification for taking the power

186. This re-enacts with modifications an existing power set out in the 2014 Act whereby the Secretary of State could introduce restrictions around tobacco products themselves.

187. This power provides for a type of detailed regulation that would not be appropriate for primary legislation and is conventionally set out in secondary legislation. For example, the Standardised Packaging of Tobacco Products Regulations 2015, made under the powers in section 94 of the 2014 Act, demonstrate the type of provision which can be made under the power.

188. There is the potential for new tobacco products to come to market following the passage of the Bill. Therefore, this provision is more suitable as a power, rather than being on the face of the Bill, as it enables a degree of flexibility to respond to market changes and ensures the regulations remain effective.

Justification for the procedure

189. Regulations made under this power will be subject to the affirmative procedure. The power at section 94(8) of the 2014 Act was subject to the affirmative procedure and broadly this power re-enacts the power at section 94(8) of the 2014 Act. The regulations have the potential to be broad in scope and may have an impact on the design, development and production of tobacco products for manufacturers. The power can also prescribe a criminal offence. The affirmative procedure will enable a debate and vote in both Houses of Parliament so the impacts of the regulations can be subject to appropriate parliamentary scrutiny.

Vaping and nicotine product requirements

Clause 61: Retail packaging of vaping products and nicotine products

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

190. The [Tobacco and Related Products Regulations 2016](#) outline requirements relating to the labelling and presentation of e-cigarettes and refill containers. They set out what can be written on a unit or container pack of the e-cigarette or refill container. Such products may not, for example, suggest that a particular e-cigarette or refill container is less harmful than others, has revitalising, energising, healing, rejuvenating, natural or organic properties, and/or has other health or lifestyle benefits.

191. Unlike restrictions on tobacco retail packaging as set out in the [Standardised Packaging of Tobacco Products Regulations 2015](#), the retail packaging for vaping products and nicotine products can come in different colours, styles, and shapes. Manufacturers can include brand names and different types of images and formatting on the retail packaging. While mod or tank devices are often wrapped in more neutral packaging, vape liquids are regularly sold and marketed in retail packaging with brightly coloured designs. Tanks or mods are a type of rechargeable vape that is designed to be used multiple times and can generally be modified, such as being able to change the tank or the battery.

192. The presentation of vaping product and nicotine product retail packaging can vary significantly, which can influence a child's intention to try different vaping products. Research on standardised retail packaging with reduced brand imagery shows that it can decrease the appeal of vaping products among young people. The research showed that it specifically decreased the appeal among young people who have not smoked or vaped previously, without reducing its appeal among adult smokers.

193. The government's [consultation](#) included questions about policies which have the potential to reduce the appeal, availability, and affordability of vaping to children, while ensuring that vaping products remain available as a useful smoking cessation tool for adult smokers given the lesser harms posed to smokers from vaping.

194. A common theme across the response around the current retail packaging of vaping products was that these products' retail packaging appeals to children and that action needs to be taken to reduce this attractiveness.

195. The power in this Bill will enable the Secretary of State to make regulations about the retail packaging of vaping products and nicotine products. The elements in scope include markings, information, appearance, materials, texture, size and shape of retail packaging as well as how retail packaging is opened and other factors that distinguish between different brands of vaping products and nicotine products.

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196. This power enables the Secretary of State to impose prohibitions, requirements or limitations in relation to the production, importation or supply of vaping products and nicotine products in the course of business, and in respect of the production or importation of such products, with a view to them being supplied for consumption in the UK or for retail by the travel retail sector.

197. The power also enables offences to be introduced for breaches of the regulations.

Justification for taking the power

198. Taking a power to make regulations will provide time for further consultation to take place and an impact assessment to be prepared. The policies in relation to retail packaging of vaping products and nicotine products being implemented by secondary legislation under this power involve technical detail that will require engagement with business. It would not be appropriate or possible to include this level of detail in primary legislation at this stage.

199. Introducing a power to make secondary legislation will also provide flexibility to enable any policy changes to be made in light of subsequent experience and evidence (such as new products being placed on the market in due course) after regulations have been made.

Justification for the procedure

200. Regulations made under this power will be subject to the affirmative procedure. These regulations will have an impact on the design, development, and production of retail packaging of vaping products and nicotine products for manufacturers. The affirmative procedure will enable a debate and vote in both Houses of Parliament, so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny to ensure that the right balance has been struck between industry and public health. Parliamentary scrutiny is especially appropriate where regulations create criminal offences as is the case for this power. This also aligns with the procedure stipulated by clause 58 (Retail packaging of tobacco products).

Clause 62: Contents and flavour of vaping products and nicotine products

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

201. Vape liquids (e-liquids) are typically composed of nicotine, propylene glycol and/or glycerine, and flavourings. Under the Tobacco and Related Products Regulations 2016 (TRPR) certain ingredients in e-cigarettes and refill containers are restricted, including colourings, caffeine, and taurine. Nicotine strength is also regulated under TRPR, but the amounts of all other permitted ingredients are not restricted. There are also no restrictions on the combinations of flavours or flavour types.

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202. There is a vast and diverse variety of flavours of vaping products on the UK market. Flavours are an important factor in motivating young people to start vaping and makes them more attractive to existing users.

203. The government's [consultation](#) in October 2023 asked questions about policies that have the potential to reduce the appeal, availability, and affordability of vaping to children, while ensuring that vaping remains available as a useful smoking cessation tool for adult smokers given the lesser harms posed to smokers from vaping. This included restricting vaping product flavours.

204. In response to the question "Do you agree or disagree that the UK Government and devolved administrations should restrict vape flavours?", 47.0% of all respondents agreed with restricting vape flavours, 51.0% disagreed and 2.0% said they did not know. However, many of the respondents who disagreed recognised that vape flavours might be appealing to children. The evidence is clear that children are attracted to fruit and sweet flavours, therefore the current wide range of vape flavours is contributing to the increase in youth vaping. We intend to analyse this evidence and consult further with a view to restricting flavours using the powers conferred by the Bill.

205. The power in this Bill will enable the Secretary of State to introduce regulations that make provision about the substances that may be included in vaping products or nicotine products or the amount of any given substance that may be included as well as the flavour of such products.

206. This power enables the Secretary of State to impose prohibitions, requirements or limitations in relation to the production, importation or supply of vaping products and nicotine products in the course of business, and in respect of the production or importation of such products, with a view to them being supplied for consumption in the UK or for retail by the travel retail sector.

207. The regulations may include provision about how the flavour of a product is to be determined and the power provides for the creation of criminal offences for failing to comply with such regulations.

Justification for taking the power

208. Taking a power to make regulations will provide time for further consultation to take place and an impact assessment to be prepared. The policies in relation to the content and flavouring of vaping products and nicotine products being implemented by secondary legislation under this power involve technical detail that will require engagement with business. It would not be appropriate or possible to include this level of detail in primary legislation at this stage.

209. Introducing a power to make secondary legislation will also provide flexibility to enable any policy changes to be made in light of subsequent experience and evidence (such as new flavours and substances being used and placed on the market in due course) after regulations have been made.

Justification for the procedure

210. Regulations made under this power will be subject to the affirmative procedure. These regulations will have an impact on the content and flavours of vaping

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products and nicotine products for manufacturers. The affirmative procedure will enable a debate and vote in both Houses, so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny to ensure that the right balance has been struck between industry and public health. Parliamentary scrutiny is especially appropriate where regulations create criminal offences as is the case for this power.

Clause 63: Other product requirements of vaping and nicotine products

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

211. Section 94(8) of the [Children and Families Act 2014](#) (the 2014 Act) provides a power for the Secretary of State to make regulations imposing prohibitions, requirements or limitations on various aspects of tobacco product requirements such as markings, appearance, size and shape.

212. Clause 63 is intended to align with the power in section 94(8) of the 2014 Act and provide equivalent provision in respect of vaping products and nicotine products.

213. This power will allow the Secretary of State to introduce regulations to make provision about the following.

- a. the markings on vaping products or nicotine products (including the use of branding, trademarks or logos);
- b. the information provided on vaping products or nicotine products;
- c. the appearance of vaping products or nicotine products;
- d. the size of vaping products or nicotine products;
- e. the shape of vaping products or nicotine products;
- f. any other features of vaping products or nicotine products which can be used to distinguish between different brands of the product.

214. The Secretary of State may make regulations under this power in respect of such other product requirements intended to help the government to satisfy their commitment to reduce the appeal and attractiveness of vaping and nicotine products to children and young people. This could include the shape of a vaping device or other nicotine product, so its appearance does not appeal to children.

215. This power provides for the Secretary of State to impose prohibitions, requirements or limitations in relation to the production, importation or supply of vaping products and nicotine products in the course of business, and in respect of the production or importation of such products, with a view to them being supplied for consumption in the UK or for retail by the travel retail sector.

216. The power enables the Secretary of State to create offences for failing to comply with the regulations.

Justification for taking the power

217. Taking a power to make regulations will provide time for further consultation to take place and an impact assessment to be prepared. The policies in relation to the product requirements for vaping products and nicotine products being implemented by secondary legislation under this power involve technical detail that will require engagement with business. It would not be appropriate or possible to include this level of detail in primary legislation at this stage.

218. Introducing a power to make secondary legislation will also provide flexibility to enable any policy changes to be made considering subsequent experience and evidence after regulations have been made.

Justification for the procedure

219. Regulations made under this power will be subject to the affirmative procedure. These regulations will have an impact on the design, development and production of vaping products and nicotine products for manufacturers. The affirmative procedure will enable a debate and vote in both Houses, so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny to ensure that the right balance has been struck between industry and public health. Parliamentary scrutiny is especially appropriate where regulations create criminal offences as is the case for this power.

Part 5: Notification requirements etc for vaping and nicotine products

220. The three powers in Part 5 of the Bill are UK wide powers. Consent would be required from the Executive Office in Northern Ireland if the regulations made under any of these powers contain provision which would be within the legislative competence of the Northern Ireland Assembly, as set out in clause 74 (Consent to regulations under Part 5) of the Bill.

Clause 71: Extension of notification requirements etc

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

221. Nicotine vapes (i.e. e-cigarettes) and refill containers are required to be notified and reported to the Secretary of State under provisions in the [Tobacco and Related Products Regulations 2016](#) (TRPR) if they are to be supplied on the UK market. The Medicines and Healthcare products Regulatory Agency (MHRA) publishes all notifications for Great Britain on an ECIG portal, and for Northern Ireland on the EU-CEG. TRPR stipulates a duty to notify information about such products, including but not limited to information on tank size, nicotine content and ingredients. There is currently no duty under this regime to notify non-nicotine vaping products or other nicotine products.

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222. This clause provides the Secretary of State with a power to make regulations to make provision to extend regulations 31, 33-35, 39 and 40 of TRPR to cover non-nicotine vaping products and some or all nicotine products in order that these products come within scope of these existing provisions. The effect of such regulations would be to impose and vigilance requirements under TRPR on all vaping products and some or all nicotine products.

223. The [Electronic Cigarettes etc. \(Fees\) Regulations 2016](#) impose fees in connection with the notification requirements under TRPR. Accordingly, this clause provides a power to make provision in regulations to amend these regulations consequentially.

224. The purpose of regulations made under this power is to ensure a fair and level regulatory playing field for vaping products and nicotine products such that all those specified in regulations must comply with the notification requirements in TRPR and associated fee regulations. This ensures that the Secretary of State is informed of the range and types of vaping product and nicotine product for sale on the UK market and enables the Medicines and Healthcare products Regulatory Agency (MHRA) to recoup the costs of administration of the regime.

Justification for taking the power

225. Taking a power to make regulations will allow for further consultation to take place and an impact assessment to be prepared. Preparing regulations to non-nicotine vaping products and nicotine products within scope of the notification, reporting and vigilance requirements under TRPR will involve technical detail that will require further engagement with business. It would not be appropriate to include this level of detail in primary legislation at this stage.

226. Introducing a power to make secondary legislation will also provide flexibility to enable any policy changes to be made considering subsequent experience and evidence after regulations have been made.

Justification for the procedure

227. Regulations made under this power will be subject to the affirmative procedure. These regulations will have an impact on manufacturers of vaping and nicotine products who will be required to comply with new regulatory requirements and pay a fee. The affirmative procedure will enable a debate and vote in both Houses of Parliament, so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny to ensure that the right balance has been struck between industry and public health.

Clause 72: Power to amend information to be notified

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

228. Nicotine vapes are required to be notified to the competent authority to be sold on the UK market. Under the [Tobacco and Related Products Regulations 2016](#) (TRPR) certain requirements for notification must be met. This includes a duty to notify information about the product, including but not limited to information on tank size, nicotine content and ingredients.

229. This power will allow the Secretary of State to amend regulation 31 of the TRPRs for the purpose of modifying the information that must be notified or submitted for the notification of a vaping or nicotine product.

230. The purpose of regulations made under this power is to ensure that the Secretary of State can amend the information a producer must submit, which may vary between different types of products, for instance between nicotine pouches and nicotine vaping products. In addition, an amendment may be made these regulations to require that an image of the product or its packaging be submitted.

Justification for taking the power

231. Taking a power to make regulations will provide time for further consultation to take place and an impact assessment to be prepared. The policies in relation to the notification requirements for vaping products and nicotine products being implemented by secondary legislation under this power involve technical detail that will require engagement with business. It would not be appropriate to include this level of detail in primary legislation at this stage.

232. Introducing a power to make secondary legislation will also provide flexibility to enable any policy changes to be made considering subsequent experience and evidence after regulations have been made.

Justification for the procedure

233. Regulations made under this power will be subject to the affirmative procedure. These regulations will have an impact on the notification and supply of vaping and nicotine products for manufacturers. The affirmative procedure will enable a debate and vote in both Houses of Parliament, so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny to ensure that the right balance has been struck between industry and public health. Parliamentary scrutiny is especially appropriate where regulations create criminal offences as is the case for this power.

Clause 73: Exceptions to publication

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

234. This power will allow the Secretary of State to create exceptions to the duty to publish information under regulation 34 of the [Tobacco and Related Products Regulations 2016](#).

235. The regulations which may be made under this power are intended to help the government satisfy their commitment to ensure vaping products and nicotine products are correctly notified to the Secretary of State, and notifications that don't meet regulations can cease to be published. It will require the Secretary of State to notify a person before, or after, ceasing to publish information.

236. This power provides for the Secretary of State to create certain exceptions in which to publish a notification if not correctly notified as required to by regulations. For example, regulations made under this power may provide for a notification to be removed when the required notification fee has not been paid.

Justification for taking the power

237. Taking a power to make regulations will provide time for further consultation to take place and an impact assessment to be prepared. The policies in relation to the notification requirements for vaping products and nicotine products being implemented by secondary legislation under this power involve technical detail that will require engagement with business. It would not be appropriate to include this level of detail in primary legislation at this stage.

238. Introducing a power to make secondary legislation will also provide flexibility to enable any policy changes to be made considering subsequent experience and evidence after regulations have been made.

Justification for the procedure

239. Regulations made under this power will be subject to the affirmative procedure. These regulations will have an impact on the notification and supply of vaping and nicotine products for manufacturers. The affirmative procedure will enable a debate and vote in both Houses of Parliament, so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny to ensure that the right balance has been struck between industry and public health. Parliamentary scrutiny is especially appropriate where regulations create criminal offences as is the case for this power.

Part 6: General

240. Clause 76 (Regulations: general) in the Bill is not a separate power but rather sets out more information about what can be done under the each of the regulation making powers in the Bill. The power in clause 76 allows any regulations that are made under powers in this Bill, except for clauses 79 or 80, to make consequential, supplementary, incidental, transitional or saving provision, provision for different purposes and different provision for different parts of the United Kingdom.

Clause 79(5): Commencement

Power conferred on: Welsh Ministers

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: None

Context and Purpose

241. This clause contains a power for Welsh Ministers to bring clause 27 (Handing over tobacco etc to underage people in Wales) and Schedule 1 of the Bill into force by statutory instrument and different days may be appointed for different purposes.

Justification for taking the power

242. The Bill generally provides for fixed commencement but clause 27 and Schedule 1 amend provisions of the [Public Health \(Wales\) Act 2017](#) which have not yet been brought into force and are subject to commencement on such day as the Welsh Ministers may appoint by order made by statutory instrument. Therefore, for consistency with the existing structure it is appropriate to use this same approach to commence the amendments made by the Bill.

Justification for the procedure

243. As usual with commencement powers regulations made under this clause are not subject to any Parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them; commencement by statutory instrument enables the provisions to be brought into force at a convenient time and in an orderly manner.

Clause 80: Transitional provision

Power conferred on: Secretary of State, Scottish Ministers, Welsh Ministers, Department of Health in Northern Ireland

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: None

Context and Purpose

244.This clause contains a standard power for Ministers to make transitional or saving provision in connection with the bringing into force of provisions of the Bill.

245.The Welsh Ministers may by regulations make transitional or saving provision in connection with the coming into force of clause 27 or Schedule 1.

246.The Scottish Ministers may by regulations make transitional or saving provision in connection with coming into force of any provision of Part 2.

247.The Department of Health in Northern Ireland may by regulations make transitional or saving provision in connection with the coming into force of any provision of Part 3.

248.The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Bill not mentioned in (the above outlined) subsections (1), (2) or (3) of this clause.

Justification for taking the power

249.It may be necessary to make transitional or saving provision in connection with the commencement of the Bill in order to ensure the effective implementation of the operative provisions.

Justification for the procedure

250.As is usual with a power to make transitional or saving provision in connection with the coming into force of the provisions of a Bill, regulations made under this clause are not subject to any Parliamentary procedure. Parliament has approved the principle of the provisions and transitional or saving provision in connection with when the provisions come into force enables the provisions to be brought into force at a convenient time and in an orderly manner.