

TOBACCO AND VAPES BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Tobacco and Vapes Bill as introduced in the House of Commons on 20 March 2024 (Bill 189).

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

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Overview of the Bill

- 1 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.
- 2 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.
- 3 To close regulatory loopholes and protect against future harms of nicotine addiction, the Bill provides powers 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.
- 4 The Bill makes provision across the UK, building on the existing legislative frameworks that apply across the UK.

Policy background

Tobacco

- 1 The legal age of sale for tobacco products is an important factor in dictating when people start smoking. When the age of sale in the UK was raised from 16 to 18 in 2007, there was a 30% reduction in smoking rates in 16–17-year-olds¹. 83% of current UK smokers start before the age of 20². In the UK, 12.9% of the population smoke which equates to around 6.4 million people³. Tobacco is the single leading cause of preventable ill health, death and disability in this country⁴, leading to 80,000

¹ ASH. [Youth smoking - ASH](#)

² Public Health England. 2015. [Health matters: smoking and quitting in England - GOV.UK \(www.gov.uk\)](#)

³ ONS. 2023. [Adult smoking habits in the UK - Office for National Statistics \(ons.gov.uk\)](#)

⁴ OHID. Health Profile for England. 2021. [Health Profile for England 2021 \(phe.org.uk\)](#).

deaths in the UK each year⁵ and 1 in 4 of all UK cancer deaths⁶.

- 2 Smoking is a major cause of heart disease, stroke and heart failure and increases the risk of dementia in the elderly. It is a risk factor for poor maternal and infant outcomes⁷, it significantly increases the chance of stillbirth and can trigger asthma in children.
- 3 It is estimated that the total costs of smoking in England are over £17 billion⁸, including £14 billion per year cost to productivity and £3 billion cost to NHS and social care, whilst the tax raised in excise duty revenue is less than this at approximately £10.2 billion a year⁹.
- 4 In England and Wales, the [Children and Young Persons Act 1933](#) introduced age of sale legislation for tobacco products and cigarette papers and [The Children and Young Persons \(Sale of Tobacco etc\) Order 2007](#) amended this legislation to raise the legal age of sale from 16 to 18 years old in England and Wales. Currently, anyone who is under the age of 18 cannot be sold tobacco products in England and Wales. Existing legislation also prohibits proxy purchases, meaning it is illegal for adults to buy tobacco products on behalf of someone who is under 18.
- 5 Under the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) it is an offence in Scotland to sell tobacco products to someone under the age of 18 and an amendment to the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#) introduced restrictions on sales of tobacco and cigarette papers to anyone under 18 in Northern Ireland. The Scottish Act also introduced requirements around age verification.
- 6 In addition to the age of sale requirements, a number of legislative tobacco control measures have been enacted by Parliament to protect children and the public from the harms of tobacco, including second-hand smoke, and help smokers quit. The [Tobacco Advertising and Promotions Act 2002](#) (TAPA) introduced advertising and sponsorship restrictions and banned displays of tobacco products. The [Health Act 2006](#) made it an offence to smoke in public places that are enclosed or substantially enclosed in England and Wales as well as introducing regulation making powers to prohibit tobacco and tobacco prices being on display which were subsequently introduced. The [Children and Families Act 2014](#) made it an offence to purchase a tobacco product on behalf of a

⁵ Sum of the separate figures published for England, Scotland, Wales and Northern Ireland:

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

[Local Tobacco Control Profiles - Data - OHID \(phe.org.uk\)](#)

Scottish Public Health Observatory. [Smoking attributable deaths - ScotPHO](#)

Public Health Wales Observatory. [publichealthwales.shinyapps.io/smokinginwales/](#)

Department of Health, Social Services and Public Safety. [Ten year tobacco control strategy for Northern Ireland | Department of Health \(health-ni.gov.uk\)](#)

⁶ CRUK. [Tobacco statistics | Cancer Research UK](#)

⁷ [What are the health risks of smoking? - NHS \(www.nhs.uk\)](#)

⁸ ASH. 2023. [£14bn a year up in smoke – economic toll of smoking in England revealed - ASH](#)

⁹ Gov.uk. Tobacco Bulletin Tables. 2022 calendar year figure.

https://assets.publishing.service.gov.uk/media/65661b43312f400013e5d52a/Tobacco_Tab_Oct_23.ods

child under the age of 18, to smoke in a private vehicle with a child under the age of 18 and regulated retail packaging of tobacco products to plain packaging to reduce the appeal and attractiveness of tobacco products.

- 7 In Scotland, the smoking provisions of the [Smoking, Health and Social Care \(Scotland\) Act 2005 \(the 2005 Act\)](#) and the [Prohibition of Smoking in Certain Premises \(Scotland\) Regulations 2006](#) came into effect in 2006 to prohibit smoking in wholly enclosed or substantially enclosed public places, including public transport and most workplaces. Under this legislation, it is an offence to smoke in no-smoking premises or to knowingly permit smoking in no-smoking premises. The 2005 Act was amended by the [Health \(Tobacco, Nicotine etc. and Care\) Act 2016](#), and the [Prohibition of Smoking Outside Hospital Buildings \(Scotland\) Regulations 2022](#) were made using the new powers in the 2005 Act.
- 8 In June 2022, the independent [Khan review](#) into the government's smokefree 2030 ambition was published. This provided a series of recommendations, one of which was that the government should increase the age of sale of tobacco products from 18, year on year until no one can be sold tobacco products.
- 9 The government published a command paper on 4 October 2023 called '[Stopping the start: our new plan to create a smokefree generation](#)'. The paper set out proposals to prohibit the sale of tobacco products for anyone born on or after 1 January 2009 to protect future generations. It also announced a package of measures to support current smokers to quit, proposals to reduce youth vaping and new enforcement action.
- 10 On 12 October 2023, a UK-wide consultation was published on [Creating a smokefree generation and tackling youth vaping](#). The consultation was undertaken across all four parts of the UK and all devolved administrations contributed to its development and the response was published on 29 January 2024.
- 11 In the consultation, over 63% of respondents agreed with the policy of "creating a smokefree generation". There were also high levels of support to prohibit proxy purchases for anyone born on or after 1 January 2009, to include all tobacco products, herbal smoking products and cigarette papers within the scope of the policy and reflect the new age of sale in updated retail warning notices.
- 12 To prevent people from starting smoking in the first place, from 1 January 2027 the Bill will:
 - a. make it an offence to sell tobacco products, herbal smoking products and cigarette papers to anyone born on or after 1 January 2009 from 1 January 2027. This will phase out the sale of tobacco products for future generations.
 - b. make it an offence for a person aged 18 or over to buy, or attempt to buy, any such products for someone who was born on or after 1 January 2009.
 - c. amend age of sale notice requirements. Tobacco retailers will need to align their age of sale notices with the new age of sale restrictions to read "It is illegal to sell tobacco

products to anyone born on or after 1 January 2009”, to support enforcement and provide clear messaging.

Vaping and other nicotine products

- 13 Vapes (also known as electronic cigarettes, e-cigarettes, electronic nicotine delivery system (ENDS), or vaporisers) work by heating a solution of water, flavouring, propylene glycol (or vegetable glycerine) and, typically, nicotine to create a vapour that the user inhales. The act of using a vape is often referred to as ‘vaping’. Devices tend to consist of a mouthpiece, a battery-powered heating element, a cartridge or refillable tank containing the liquid solution and an atomiser that vaporises the solution when heated. A vaping product includes a vape as well as a vaping substance.
- 14 For many adult smokers, vapes can be an effective tool in supporting smoking cessation, especially when combined with expert support¹⁰. The latest evidence found that in the short and medium term, vaping poses a small fraction of the risks of smoking¹¹.
- 15 Vaping is never recommended for children and carries risk of future harm and addiction. The health advice is clear: young people and those who have never smoked should not vape or be encouraged to vape. However, the number of children using vapes has tripled in the past 3 years and 20.5% of children had tried vaping in March to April 2023, as reported by Action on Smoking and Health (ASH) for Great Britain and through the Young Persons’ Behaviour and Attitudes Survey in Northern Ireland.
- 16 The active ingredient in most vapes (apart from nicotine-free vapes) is nicotine which, when inhaled, is a highly addictive drug. Giving up nicotine can be very difficult because the body has to get used to functioning without it. [Nearly half of nicotine users want to quit but cannot](#). Evidence suggests that in adolescence, the brain is more sensitive to the effects of nicotine, so there could be additional risks for young people than for adults.
- 17 There are also some health risks associated with the other ingredients in vapes. For example, propylene glycol and glycerine (components of e-liquids) can produce toxic compounds if they are overheated. The long-term health harms of colours and flavours when inhaled are unknown, but they are certainly unlikely to be beneficial.
- 18 In England and Wales the [Nicotine and Inhaling Products \(Age of Sale and Proxy Purchasing\) Regulations 2015](#) and similarly in Northern Ireland the [Nicotine Inhaling Products \(Age of Sale and Proxy Purchasing\) Regulations \(Northern Ireland\) 2021](#) made it an offence to sell a nicotine vape to someone under the age of 18 and for someone to buy a vape on behalf of someone who is under the age of 18 – proxy purchasing. In Scotland the [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016](#) made selling a Nicotine Vapour Product to under 18s and proxy purchasing an offence.

¹⁰ Boyce et al. 2022. [Electronic cigarettes for smoking cessation - Hartmann-Boyce, J - 2022 | Cochrane Library](#)

¹¹ OHID. 2022. [Nicotine vaping in England: 2022 evidence update - GOV.UK \(www.gov.uk\)](#)

- 19 The [Tobacco and Related Products Regulations 2016](#) that came into force in May 2016 brought in product requirements for nicotine containing vaping products (described as electronic cigarettes in the regulations) including a requirement for health warnings on the packaging, limits on nicotine strength and restrictions on permitted ingredients in vape substances (a substance other than tobacco that is intended to be vaporised by a vape) across the UK.
- 20 The majority of vapes sold in the UK contain nicotine. However, the government are aware of children also using non-nicotine vapes too as in 2023 [ASH reported](#) that 9.5% of 11-17 year olds who currently vape said that they use non-nicotine vapes. Non-nicotine vapes are currently covered by the [General Products Safety Regulations 2005 \(GPSR\)](#). The GPSR requires providers to ensure only safe products are placed on the market, together with any necessary warnings for safe use of the product.
- 21 Other nicotine consumer products have emerged on the UK market, such as nicotine pouches. These are regulated under the GPSR in the same way as non-nicotine vaping products, and have been found to be used by younger people, and especially younger men.
- 22 In 2022, the independent [Khan review](#) recommended that the government ban cartoons or imagery on the packaging, review vape flavours and descriptions, and prohibit vape companies distributing free vape samples.
- 23 In April 2023, the UK Government launched the [Youth Vaping: call for evidence](#) to explore where the government could go further in protecting children from the risks from vaping. It explored a range of issues, including regulatory compliance, the marketing and promotion of vapes, the role of social media, and the environmental impact of vaping. The [call for evidence](#) found that the promotion, display, variety and packaging of vapes is enticing children and young people to start using these products. However, the findings reiterated that vapes can be an effective way to help adult smokers quit smoking.
- 24 On 12 October 2023, the UK Government published a [UK-wide consultation](#) on its plans to tackle youth vaping, whilst ensuring vapes remain available for adult smokers who are trying to quit. The consultation asked questions about vape flavours, displays and packaging and received support for the introduction of regulations to achieve this.
- 25 In order to reduce the appeal and availability of vapes to children and young people, the Bill will provide regulation making powers to restrict the flavours and flavour descriptions of vapes, the packaging and product presentation of vapes and the point of sale displays of vapes across the UK. The Bill will enable the regulation of non-nicotine vapes and other nicotine products under a similar regulatory framework as nicotine vapes across the UK.
- 26 The Bill will extend existing vaping restrictions around the age of sale and proxy purchasing to non-nicotine vapes in England and Wales and will provide regulation making powers to extend these restrictions to other nicotine products across the UK. The Bill will include regulation making powers for Northern Ireland to introduce similar restrictions.
- 27 The Bill will also introduce a ban on the free distribution of vapes to under 18-year-olds in England

and Wales and a regulation making power for Northern Ireland to introduce the ban. Powers already exist in Scotland to enable a ban on the free distribution of nicotine vapour products (nicotine and non-nicotine).

- 28 Finally, the Bill will introduce powers for non-nicotine vapes and nicotine products (i.e. nicotine pouches) to be notified under a similar notification system as nicotine vapes. This will mean producers and manufacturers must notify their product to the Secretary of State to supply their product on the UK market and pay a fee to do so. Producers will be required to submit certain information about their product, such as nicotine content, or toxicology data, that will be assessed by the administrator, which is currently the Medicines and Healthcare Product Regulatory Agency. The administrator will assess that the notification meets the requirements set by the regulations, and if legal and correct, will publish the notification and the product can be made available for sale.

Enforcement

- 29 Underage sale of tobacco, and more recently vapes, impact public health. In 2019 to 2020, of the councils who undertook test purchasing, 50% reported that cigarettes or tobacco products were sold to people who were underage in at least one premise. Similarly in 2022 to 2023, National Trading Standards identified that 27% of the 1,000 vape test purchases carried out with retailers resulted in an illegal sale.
- 30 Local enforcement authorities in England, on conviction in a magistrate's court, are able to impose a fine of up to £2,500 for an underage sale of a tobacco product or cigarette papers under the [Children and Young Persons Act 1933](#) and nicotine products under the [Children and Families Act 2014](#). Where a business or individual has persistently breached tobacco or nicotine product restrictions local enforcement authorities can apply to a court for a restricted premises order or restricted sale order, to prohibit the business or individual from selling these products for up to 12 months.
- 31 A fixed penalty notice (FPN) is a notice giving an individual the opportunity to avoid prosecution for an alleged criminal offence in exchange for a payment of a fine. Individuals can choose not to pay the FPN and instead challenge the prosecution in court. FPNs are a well-established approach to enforce a range of regulatory offences, for instance penalty notices for disorder (PND, a type of FPN) are already used as part of a suite of measures to enforce age of sale restrictions for alcohol.
- 32 The [Proxy Purchasing of Tobacco, Nicotine Products etc. \(Fixed Penalty Notice\) \(England\) Regulations 2015](#) permit enforcement officers to issue FPNs for breaches of legislation prohibiting proxy purchasing of tobacco products and vapes. The [Health Act 2006](#) introduced FPNs for breaches of the smoke-free premises legislation and the requirement to display no-smoking signs in smoke-free premises in England and Wales.

- 33 In Scotland and Northern Ireland there are existing FPN regimes for the age of sale and proxy purchasing offences relating to the sale of tobacco products, cigarette papers and vapes, and FPNs are regularly utilised to enforce age of sale legislation. In Scotland, over 500 FPNs for underage tobacco sales were issued from 2015/16 to 2022/23, and nearly 200 FPNs for underage vape sales were issued from 2017/18 to 2022/23. In Northern Ireland, 3 FPNs were issued for underage tobacco sales and 34 for underage vape sales and in the 6 months from 1 April to 30 September 2023. These FPN regimes will continue irrespective of the proposed measures in the Bill. The [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) and the [Tobacco Retailers Act \(Northern Ireland\) 2014](#) introduced these regimes in Scotland and Northern Ireland respectively.
- 34 Under the current regime in England and Wales, when enforcement authorities wish to issue a fine for selling tobacco products or vapes to someone who is under 18, they are required to prosecute the individual or business and the individual or business must be convicted in a magistrates' court. This can involve a time-consuming court procedure and be expensive. FPNs allow enforcement authorities to act without involving the courts.
- 35 On 12 October 2023, a UK-wide consultation was published on [Creating a smokefree generation and tackling youth vaping](#) and considered how to enforce the measures in the Bill. The consultation asked respondents if they think FPNs should be issued for breaches of age of sale restrictions for tobacco products and vapes and 88.3% of respondents said yes.
- 36 The intention of the enforcement measures in this Bill is to enable enforcement authorities in England and Wales to effectively enforce the tobacco and vape measures in this Bill. To achieve this, the Bill retains elements of the current enforcement approach, including criminal fines in addition to restricted premises orders and restricted sale orders for persistent offenders.
- 37 Moreover, the Bill will permit enforcement authorities across England and Wales to issue an FPN of £100 for breaches of the age of sale legislation for tobacco products and vapes as well as breaches of proxy purchase restrictions and the free distribution of vapes. The Bill will provide a single FPN regime across these offences to create a consistent approach for enforcement officers and businesses in England and Wales. In Scotland and Northern Ireland, the existing FPN regimes for the age of sale and proxy purchasing of tobacco and vapes will continue.
- 38 The measures in the Bill are complimented by the £30 million of additional funding per year announced in the 4 October [command paper](#), to support enforcement agencies to tackle illicit and underage sales of tobacco and vape products.

Legal background

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

Territorial extent and application

- 40 Clause 78 sets out the territorial extent of the Bill, that is the jurisdictions which the Bill forms part of the law. The extent of a Bill can be different from its application. Application is about where a Bill produces a practical effect.
- 41 Part 1 of the Bill extends to England and Wales, Part 2 extends to Scotland and Part 3 extends to Northern Ireland.
- 42 Part 4 and 5 of the Bill extends to the whole of the UK as this concerns product requirements and standards that will flow around the UK. There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly without the consent of the legislature concerned.
- 43 To the extent that the provisions of the Bill fall within the legislative competence of devolved legislatures, a Legislative Consent Motion will be sought.
- 44 The commentary on provisions of the Bill provides a paragraph explaining the extent and application of each Part of the Bill. See the table in Annex A for a summary of the position regarding territorial extent and application in the UK.

Commentary on provisions of the Bill

- 45 Annex B lists the clauses in the Bill and shows how each clause relates to the existing legislative framework.

Part 1: Sale and distribution: England and Wales

Tobacco etc

- 46 Annex C illustrates examples of the tobacco products that are in the government's view in scope of each clause in Part 1. This is not intended to be an exhaustive list of products.
- 47 Part 1 forms part of the law of England and Wales.

Clause 1: Sale of tobacco etc

- 48 Clause 1 introduces a new age of sale restriction for tobacco products, herbal smoking products and cigarette papers. This clause makes it an offence for retailers to sell, defined as sell by retail, tobacco products, herbal smoking products or cigarette papers to anyone who is born on or after 1 January 2009. This replaces the current age of sale restriction set out in the Children and Young Persons Act 1933 (the 1933 Act), which made it an offence to sell tobacco or cigarette papers to someone who is under the age of 16 in England and Wales, and as amended by the Children and Young Persons (Sale of Tobacco etc) Order 2007 to raise the legal age of sale of tobacco products and cigarette papers from 16 to 18 years old. Tobacco products, herbal smoking products and cigarette papers were in

- scope of the 1933 Act and are also in scope of the new age of sale restrictions in this Bill.
- 49 Clause 23 sets out the scope of the age of sale restrictions by setting out the definition of tobacco products. A tobacco product is a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked, chewed or consumed in any other way. The intention is to include any type of tobacco product that might be produced for consumer use, regardless of how that product is consumed. Products that are currently available on the UK market are considered to be either smoked, sniffed, sucked or chewed. The additional wording ‘consumed in any other way’ is intended to cover products that may be invented with novel forms of usage.
- 50 Cigarette papers include anything intended to be used to encase tobacco products or herbal smoking products to enable them to be smoked. These therefore include products such as cigarette tubes.
- 51 In the 1933 Act, herbal smoking products were defined as a type of tobacco product. This Bill provides an altered definition of tobacco products which does not include herbal smoking. Herbal smoking products are captured by this Act, but they are defined and listed separately in this legislation.
- 52 The intention is to capture any products that contain tobacco and are used as consumer products as well as other herbal products that are smoked, due to the harmful nature of smoking. While herbal smoking products do not contain nicotine or tobacco, they do contain cancer causing chemicals, tar and carbon monoxide, similar to a tobacco cigarette. Cigarette papers have also been included in the new age of sale restrictions as they are burnt with the tobacco.
- 53 The age of sale restriction does not apply to sales in the course of a business so would not prevent someone born after 1 January 2009 from being employed in a tobacco retail business or wholesaler. See the definition in clause 34 of ‘sell’ as sell by retail.
- 54 The age of sale restriction does not make it an offence for someone born on or after 1 January 2009 to possess or use tobacco products, herbal smoking products or cigarette papers.
- 55 The clause provides that it is a defence for someone who is charged with the offence to prove they took all reasonable steps to avoid committing the offence. An individual who is convicted with this offence could receive a fine of up to £2,500 (level 4 on the standard scale).

Clause 2: Purchase of tobacco etc on behalf of others

- 56 Clause 2 makes it an offence for any adult aged 18 or over to buy, or attempt to buy, tobacco products, cigarette papers or herbal smoking products on behalf of anyone who is born on or after 1 January 2009, commonly referred to as ‘proxy purchasing’. This is to ensure alignment with the new age of sale restriction in clause 1. This clause replaces the current offence under section 91 of the Children and Families Act 2014 for someone aged 18 or over to buy, or attempt to buy, tobacco products or cigarette papers on behalf of someone who is under 18 in England and Wales.
- 57 The clause specifies that the individual who is committing the offence should be aged 18 or over to avoid the criminalisation of children.
- 58 It is a defence if a person charged with this offence can prove they had no reason to suspect that the other person was born on or after 1 January 2009 or they can prove that they had no reason to believe that the other person intended to use the cigarette papers for smoking.
- 59 An individual who is convicted with this offence could receive a fine of up to £2,500 (level 4 on the standard scale).

Clause 3: Tobacco vending machines

- 60 Clause 3 re-enacts and consolidates (without changing the law) the existing positions in law that make it an offence to sell tobacco products from vending machines and to manage a premises where a tobacco vending machine (an automatic machine for the sale of tobacco products or herbal smoking products) is used for the sale of these products. This clause does not change the law as the Children and Young Persons (Protection from Tobacco) Act 1991 introduced a regulation making power to prohibit the sale of tobacco from an automatic machine in England and Wales.
- 61 A person who is convicted of an offence under this provision could receive a fine of up to £2,500 (level 4 on the standard scale).

Clause 4: Sale of unpackaged cigarettes

- 62 Clause 4 re-enacts (without changing the law) the existing prohibition against selling cigarettes when they are not in their original packaging. Tobacco retailers must sell cigarettes in the packaging that they are supplied to the retailer in and not doing so is an offence. This is already an offence under section 3 of the Children and Young Persons (Protection from Tobacco) Act 1991.
- 63 Anyone who is convicted of this offence could receive a fine up to £1,000 (level 3 on the standard scale).

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

- 64 Clause 5 replaces the requirement for retailers in England selling tobacco products to display notices stating the new age of sale requirements. Under section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991 it is a requirement for any retailer selling tobacco products to display a notice that says, "It is illegal to sell tobacco products to anyone under the age of 18". This clause only applies to England.
- 65 The clause requires a tobacco retailer (a person who carries on a business involving the sale of tobacco by retail) to display an age of sale notice in a prominent position that says, "It is illegal to sell tobacco products to anyone born on or after 1 January 2009". A premises means any place including a vehicle or moveable structure, for instance this would include stalls at car boot sales.
- 66 The penalty for failure to display a notice is a fine of up to £1,000 (level 3 on the standard scale).
- 67 Clause 5(4) provides a regulation making power for the Secretary of State to stipulate requirements for the size or appearance of the statement to be displayed on the notice or any other aspect of the notice, such as the colour of the notice. Requirements for the notice will be set in regulations before 1 January 2027. This is a re-enactment with modifications of the regulation making power under section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991. The Protection from Tobacco (Display of Warning Statements) Regulations 1992 (the 1992 regulations) were made using the powers in section 4.

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

- 68 Clause 6 makes the same provision for Wales as clause 5 for England. It replaces the requirement for retailers in Wales selling tobacco products to display notices stating the new age of sale requirements. Under section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991 it is a requirement for any retailer in Wales selling tobacco products to display a notice that says, "It is illegal to sell tobacco products to anyone under the age of 18".

- 69 The clause requires a tobacco retailer in Wales to display an age of sale notice in a prominent position that says, “It is illegal to sell tobacco products to anyone born on or after 1 January 2009” and “Mae’n anghyfreithlon gwerthu cynhyrchion tybaco i unrhyw un a anwyd ar neu ar ôl 1 Ionawr 2009”. The new sign must be displayed from 1 January 2027. The penalty for failure to display a notice is a fine of up to £1,000 (level 3 on the standard scale).
- 70 Clause 6(4) provides a regulation making power for Welsh Ministers to stipulate requirements for the size or appearance of the statement to be displayed on the notice or any other aspect of the notice, one example could be the colour of the notice. Requirements for the notice will be set in regulations before 1 January 2027. This is a re-enactment with modifications of the regulation making power under Section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991. The Protection from Tobacco (Display of Warning Statements) Regulations 1992 were made using the powers in section 4.

Vaping and nicotine products

- 71 Annex C illustrates examples of the vaping and nicotine products that in the government’s view are in scope of each clause in Part 1. This is not intended to be an exhaustive list of products.
- 72 Clause 33 (Interpretation) outlines definitions for Part 1. Definitions that relate to Part 1 include a “vape” which means a device which vaporises substances, other than tobacco, for the purpose of inhalation through a mouthpiece (whether or not it vaporises tobacco) and is not a medical device or a medicinal product and “vaporises” includes aerosolises. It also means an item which is intended to form part of a device including anything intended to be attached to it with a view to imparting flavour. A “vaping product” means a vape, or a vaping substance and a “vaping substance” means a substance, other than tobacco, that is intended to be vaporised by a vape.

Clause 7: Sale of vaping products to under 18s

- 73 Clause 7 restricts the age of sale of vaping products so they cannot be sold to children under the age of 18. This replaces the existing age of sale restriction for nicotine inhaling products (nicotine vapes) as set out in the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 which made it an offence to sell a nicotine vape to children under the age of 18. The powers in section 92 of the Children and Families 2014 Act are no longer required and so that section will be repealed six months after the Bill is passed.
- 74 This clause makes it an offence to sell a vaping product to a person who is under the age of 18. A vaping product is defined in clause 33 as a vape or vaping substance. The definitions include both nicotine and non-nicotine vaping products. Therefore, this is a change from the existing age of sale provision which currently only includes nicotine vapes and this change will come into force six months after the Bill is passed.
- 75 This clause provides that it is a defence for someone who is charged with an offence under this clause to prove they took all reasonable steps to avoid committing the offence. Anyone convicted with this offence could receive a fine of up to £2,500 (level 4 on the standard scale).

Clause 8: Purchase of vaping products on behalf of under 18s

- 76 Clause 8 prohibits the purchase of vaping products on behalf of someone who is under 18, also known as proxy purchasing. This clause replaces section 91 of the Children and Families Act 2014 (the 2014 Act). The 2014 Act made it an offence for someone over 18 to buy, or attempt to buy, a nicotine inhaling product (nicotine vape) on behalf of someone who is under the age of 18.
- 77 This clause makes it an offence for a person aged 18 or over to buy, or attempt to buy, a vaping product on behalf of someone who is under the age of 18. A vaping product is defined in clause 33 as a vape or vaping substance and includes both nicotine and non-nicotine vaping products. Therefore, this is a change from the existing provision in the 2014 Act which currently only includes nicotine vapes and this change will come into force six months after the Bill is passed. The clause provides that it is a defence for a person charged with an offence to prove that they had no reason to suspect that the other person was under the age of 18. Anyone convicted with this offence could receive a fine of up to £2,500 (level 4 on the standard scale).

Clause 9: Free distribution of vaping products to under 18s

- 78 Clause 9 makes it an offence to give away a vaping product to someone who is under the age of 18. There are currently no restrictions on businesses freely distributing nicotine and non-nicotine vaping products to children under the age of 18. The free distribution of tobacco is banned for all ages. However, this provision only restricts the free distribution of vaping products to children, not adults.
- 79 This clause makes it an offence for someone to give away a vaping product, or a coupon for a vaping product, to someone who is under the age of 18 or permits that to happen in a business setting, for instance as part of a promotional campaign. A “coupon for a vaping product” is anything that can be redeemed for a vaping product. This definition is adapted from the definition of a coupon in the Tobacco Advertising and Promotion Act 2002 (the 2002 Act). The new definition includes a reference to things in electronic form. However, the definition in the 2002 Act is expected to produce the same result. One example of a coupon in an electronic form is a QR code.
- 80 This clause provides that it is a defence for a person charged with an offence to prove that they had no reason to suspect that the other person was under the age of 18 and anyone convicted with this offence could receive a fine of up to £2,500 (level 4 on the standard scale).

Clause 10: Power to extend vaping provisions to other nicotine products

- 81 Clause 10 provides a regulation-making power for the Secretary of State and Welsh Ministers to extend the measures applying to vaping products in Part 1 of the Bill to include other nicotine products, including nicotine pouches. Clause 34 provides that a “nicotine product” could be any of the following.
- a. A device which is intended to enable nicotine to be delivered into the human body.
 - b. An item which is intended to form part of a device mentioned above.
 - c. Nicotine, or any substance containing nicotine, which is intended to be delivered into the human body.
 - d. An item containing anything within part (c).
- 82 The following are not “nicotine products” for the purpose of Part 1 of the Bill. This is because these products are either captured by the new age of sale restrictions for tobacco products, herbal smoking

products or cigarette papers or they are already captured by the restrictions on vaping products.

- a. A tobacco product.
- b. Herbal smoking products.
- c. Cigarette papers.
- d. Any device which is intended to be used for the consumption of tobacco products or herbal smoking products.
- e. A vaping product.

83 The measures that can be extended to include nicotine products are clause 7 (Sale of vaping products to under 18s), clause 8 (Purchase of vaping products on behalf of under 18s) and clause 9 (Free distribution of vaping products to under 18s). Under current legislation, there are no restrictions on the age of sale or free distribution of other nicotine products. Although section 92 of the Children and Families Act 2014 (the 2014 Act) provides regulation making powers to introduce age of sale restrictions on other nicotine products, the 2014 Act does not provide regulation making powers to prohibit them from being freely distributed.

Clause 11: Displays of vaping and nicotine products

84 Clause 11 provides the Secretary of State and Welsh Ministers with powers to regulate the display of vaping products and nicotine products and their prices, as well as the display of empty retail packaging, in retailers in England and Wales. Under current legislation, there are no restrictions on where vaping products and other nicotine products, as well as their prices, can be displayed in retail premises.

85 The power will enable the introduction of prohibitions, requirements, or limitations in relation to the display of vaping or nicotine products and their prices, as well as the display of empty retail packaging, in places that these products are sold. For example, the regulations might require products to be kept behind the counter. The power also facilitates the creation of offences for the failure to comply with the regulations and anyone convicted of this offence could be subject to imprisonment, a fine, or both.

Restricted premises orders

Clause 12: Restricted premises orders

86 Clause 12 provides that a persistent offender who breaches certain relevant (e.g. tobacco or vapes) restrictions can be punished by being prevented from selling certain products (e.g. tobacco or vaping products).

87 Relevant offences include those under clauses 1 (Sale of tobacco), 3 (Tobacco vending machines) and 7 (Sale of vaping products to under 18s) of this Bill, as well as the existing offences shown at subsection 8(b) up until the point they are repealed. This clause replaces, and is based on, section 12A of the Children and Young Persons Act 1933 as restricted premises orders were introduced for persistent breaches of the age of sale legislation for tobacco and nicotine products.

- 88 The clause provides that if a person convicted of a relevant offence is a persistent offender, the enforcement authority can apply to the magistrates' court for a restricted premises order. A "persistent offender" is someone who on at least two other occasions within a two-year period has committed a relevant offence in relation to the premises.
- 89 A restricted premises order means that the retail business at the location where the offences took place is prohibited from selling any tobacco products, herbal smoking products, cigarette papers, vaping products and any nicotine products. This may last for a period of up to 12 months and the length of the order is determined by the court. This means that no sales of any of these products may take place from that business premises, but it does not affect other businesses within the same group or chain.
- 90 A restricted premises order is a local land charge, which means it will bind a buyer of the premises.

Clause 13: Restricted premises orders: interested persons

- 91 Clause 13 sets out the criteria for which individuals ("interested persons") are allowed make representations to the court in order to try to prevent a restricted premises order being issued against a retailer.
- 92 The clause provides that an interested person is someone who occupies or has an interest in the premises where tobacco products or vaping products are sold, for instance the manager or owner. This clause is based on the approach outlined in section 12A of the Children and Young Persons Act 1933 for restricted premises orders for breaches of the tobacco legislation.
- 93 This clause provides requirements for granting a restricted premises order and situations where the interested person might challenge a restricted premises order. If an enforcement authority has applied for a restricted premises order, they must make reasonable enquires and give notice to anyone appearing to them to be an interested person. An "interested person" could be the occupier of the premises or any other person who has an interest in the premises.
- 94 An interested person can make their case as to why they should not be issued with a restricted premise order, and they may apply to the court to alter or discharge the order.

Clause 14: Breach of restricted premises orders

- 95 Clause 14 makes it an offence to breach a restricted premises order as defined in clause 12 (Restricted premises order). This clause is based on section 12C of the Children and Young Persons Act 1933 which introduced fines for a breach of a restricted premises order. A breach of a restricted premises order includes the sale of a product that is prohibited, and this applies if someone knowingly, or should reasonably know, that the sale is prohibited. Anyone convicted of this offence could receive a fine where there is no maximum amount.

Clause 15: Power to extend restricted premises orders

- 96 Clause 15 provides the Secretary of State and Welsh Ministers with the power to add to the list of "relevant offences" for which a restricted premises order can be issued. The Secretary of State can change the definition as applies to premises in England and Welsh Ministers can change the definition as applies to premises in Wales. This is a new power for the Secretary of the State, but Welsh Ministers were given this power in section 51 of the Public Health (Wales) Act 2017.
- 97 Any additional offences must relate to restrictions around tobacco products, herbal smoking products, cigarette papers, vaping products and nicotine products. Before making regulations

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

Restricted sale orders

Clause 16: Restricted sale orders

- 98 Clause 16 provides that a persistent offender who breaches certain relevant restrictions can be prohibited from selling certain products (e.g. tobacco or vaping products). Restricted sales orders can be imposed for persistent breaches of clauses 1 (Sale of tobacco), 3 (Tobacco vending machines) and 7 (Sale of vaping products to under 18s). This clause replaces and is based on section 12B of the Children and Young Persons Act 1933 where restricted sale orders were introduced for repeated breaches of the age of sale legislation for tobacco and nicotine products.
- 99 If a person convicted with a relevant offence is a persistent offender, the enforcement officer can apply to the magistrates' court for a restricted sale order. A "persistent offender" is anyone convicted of a relevant offence who has committed a relevant offence on at least two other occasions within two years of the most recent offence.
- 100 A restricted sale order prohibits a named person within a business from selling any tobacco products, herbal smoking products, cigarette papers, vaping products, or any relevant nicotine product or from having any management role in any premises relating to sales of those products. This may last for a period of up to 12 months and the length of the order is determined by the court. The order will apply to the named individual regardless of where they are employed.

Clause 17: Breach of restricted sale orders

- 101 Clause 17 makes it an offence to not comply with a restricted sale order where it has been issued. This clause is based on section 12C of the Children and Young Persons Act 1933 which introduced fines for a breach of a restricted sale order. The clause provides that it is a defence for someone who is charged with the offence to prove they took all reasonable steps to avoid committing the offence and anyone convicted of this offence could receive a fine where there is no maximum amount.

Offences by bodies

Clause 18: Liability of others for certain offences committed by bodies

- 102 Clause 18 makes a relevant person potentially liable for an offence committed by a body where the offence has been committed with their consent, connivance, or neglect. A relevant person could include a director or manager of a company or someone with partner status in a partnership. In such cases the relevant person would be liable in addition to the body (such as the company or partnership) they are working for. This applies to clause 14 (Breach of restricted premises order) or any other offence under Part one of the Bill or any regulations made under clause 11 (Displays of vaping and nicotine products).

Enforcement functions

Clause 19: Enforcement by local weights and measures authorities

103 Clause 19 clause places a duty on local authorities to enforce the provisions in Part 1 of the Bill and any regulations made under clause 11 (Displays of vaping and nicotine products). It provides that the investigatory powers available to an enforcement authority are those in Schedule 5 (Investigatory powers) of the Consumer Rights Act 2015 (the 2015 Act). Investigatory powers provided by Schedule 5 of the 2015 Act include the powers to purchase products, observe the activities of a business, enter premises with or without warrant, inspect products, test any weighing or measuring equipment, require the production of documents, seize and detain goods, seize documents required as evidence, break open a container and to require assistance from persons on the premises.

Clause 20: Programme of enforcement: England

104 Clause 20 provides requirements for enforcement authorities in England to consider yearly a so-called 'programme of enforcement' and the potential design of the programme. This is a means of ensuring that a local authority in England considers whether they are enforcing offences effectively. The programme of enforcement itself is as described in the clause and is self-explanatory.

Clause 21: Programme of enforcement: Wales

105 Clause 21 provides requirements for enforcement authorities in Wales to consider yearly a so-called 'programme of enforcement' and the potential design of the programme. This is a means of ensuring that local authorities in Wales consider whether they are enforcing offences effectively. The programme of enforcement itself is as described in the clause and is self-explanatory.

Power of ministers to take over enforcement

Clause 22: Power of ministers to take over enforcement functions

106 Clause 22 provides a power for the Secretary of State or Welsh Ministers to carry out the enforcement of a particular case or a particular type of case instead of the local enforcement authority. The effect of this is that a national enforcement authority will undertake the investigation and enforcement, rather than the local enforcement authority as prescribed in clause 19 (Enforcement by local weights and measures authorities). This could arise if a local enforcement authority is unable or unwilling to undertake enforcement of a certain case.

Clause 23: Power of ministers to take over proceedings

107 Clause 23 provides a power for the Secretary of State or Welsh Ministers to take over the legal proceedings relating to any offence that has been committed under Part 1 of the Bill or regulations made under clause 11 (Displays of vaping and nicotine products). This will allow a national authority to undertake the legal proceedings in court instead of a local enforcement authority. This could arise if a local enforcement authority is unable or unwilling to undertake the legal proceedings of a certain case.

Fixed penalties

Clause 24: Fixed penalty notices

108 Clause 24 introduces fixed penalty notices (FPNs) for the enforcement of the age of sale legislation (clauses 1 and 7) and the proxy purchasing of tobacco and vaping products (clauses 2 and 8) and the free distribution of vaping products to under 18s (clause 9) in this Bill. The Children and Families Act 2014 introduced FPNs for the proxy purchasing of tobacco and vaping products; and this will be replaced by the FPN regime in the Bill.

109 A FPN offers the person the opportunity to avoid prosecution for the offence if they make a specific payment within a specified period. In this Bill the amount of the fine will be £100 if paid within 28 days and will be reduced by 50% if paid within 14 days. No legal proceedings can be initiated before the end of the 28-day period. If the person who has received the FPN fails to make the payment and the local enforcement authority decide to initiate proceedings against them for the offence, the time that is calculated for the magistrates' court will begin after the payment window of 28 days. This is mentioned in section 127(1) of the Magistrates' Court Act 1980. An FPN can be withdrawn by the local enforcement authority at any point.

Clause 25: Fixed penalties: use of proceeds

110 Clause 25 provides that any proceeds from FPNs that are issued under this Bill must be used by the local weights and measures authority in connection with functions under or any regulations made under this Bill, the Tobacco Advertising and Promotion Act 2002, Part 1 of the Health Act 2006 (smoke-free premises) and the Tobacco and Related Products Regulations 2016.

Clause 26: Power to change amount of fixed penalties

111 Clause 26 provides the Secretary of State and Welsh Ministers with a power to change the amount of the FPN and the percentage discount for early payment. This is included in the Bill to ensure there is flexibility for new regimes to adapt the penalty amount and the discounted amount to align with changing economic and social circumstances, such as changes in inflation. Any changes made to the amount through regulations are subject to affirmative resolution procedure and will be debated and voted on in both the House of Commons and the House of Lords.

Handing over tobacco etc to underage people in Wales

Clause 27: Handing over tobacco etc to underage people in Wales

112 Clause 27 is self-explanatory. It introduces Schedule 1.

Schedule 1: Handing over tobacco etc to underage people in Wales

113 This schedule amends the Public Health (Wales) Act 2017 to update the handing over of tobacco etc clause 27 to align with the new age of sale restrictions. The amendments outlined in the Bill are provided in both English and Welsh.

Consequential, transitional and transitory provision

Clause 28: Consequential amendments to do with this Part

114 Clause 27 states the consequential amendments to do with Part 1 and where these may be found in

the schedules 2, 3 and 4 according to when they come into force.

Schedule 2: Part 1 consequential amendments commencing after 2 months

115 This schedule details any consequential amendments that will be made to existing pieces of legislation that will come into force two months after the Bill is passed. This amends the Children and Young Persons Act 1933, the Children and Young Persons (Protection from Tobacco) Act 1991, the Health Act 2006, the Criminal Justice and Immigration Act 2008, Children and Families Act 2014 and the Public Health (Wales) Act 2017.

Schedule 3: Part 1 consequential amendments commencing after 6 months

116 This schedule details any consequential amendments that will be made to existing pieces of legislation that will come into force six months after the Bill is passed. This amends the Regulatory Enforcement and Sanctions Act 2008 and the Children and Families Act 2014.

Schedule 4: Part 1 consequential amendments commencing on 1 January 2027

117 This schedule details any consequential amendments that will be made to existing pieces of legislation that will come into force on 1 January 2027. This amends the Children and Young Persons Act 1933, the Protection of Children (Tobacco) Act 1986, Children and Young Persons (Protection from Tobacco) Act 1991, the Police Reform Act 2002, the Courts Act 2003, the Regulatory Enforcement and Sanctions Act 2008, the Health Act 2009, the Police Reform and Social Responsibility Act 2011 and the Children and Families Act 2014.

Clause 29: Power to make consequential provision

118 Clause 29 provides the Secretary of State with the power to make regulations that are consequential on Part 1. This power enables existing legislation to be amended, repealed or revoked as a consequence of the provisions in Part 1 of this Bill.

Clause 30: Application of programmes of enforcement to old offences

119 Clause 28 will ensure that the programme of enforcement for England and Wales clauses 20 and 21 in the Bill will apply to existing tobacco and vaping product control measures and then to the new measures in the Bill as these come into force.

Clause 31: Application of fixed penalty regime to old offences

120 Clause 31 provides for the FPN regime (clause 24 fixed penalty notices) in this Bill to apply to existing offences to sell tobacco and vaping products, or purchase these products on behalf of, someone underage. Two months after Royal Assent enforcement authorities will be able to apply FPNs for breaches of existing tobacco and vaping age of sale restrictions (sales to under 18s). Six months after Royal Assent new age of sale restrictions will apply to non-nicotine vaping products in the same way as nicotine vaping products and the FPN regime will then apply to underage sales of both nicotine and non-nicotine vaping products. From 1 January 2027 when the new age of sale restrictions for tobacco products, herbal smoking products and cigarette papers come into force FPNs will apply to enforce these new restrictions.

121 Up until the 1 January 2027, clause 25 (Fixed penalties: use of proceeds) applies to section 91 of the Children and Families Act 2014

Clause 32: Transitional provision: general

122 Clause 32 provides transitional provisions and the effect of this provision is self-explanatory.

Crown application

Clause 33: Crown application

123 Clause 33 provides that Part 1 of the Bill and any regulations made under Part 1 bind the Crown.

This means that the new age of sale restrictions applies in relation to all bodies and persons acting as servants of the Crown such as government departments, prisons run by His Majesty's prison service, and to members of the armed forces. The Crown itself may not be prosecuted for an offence under this Part but that is not the case for persons in the service of the Crown such as civil servants or prison employees.

Interpretation etc

Clause 34: Interpretation of Part

124 Clause 34 provides the definitions for this Part and the effect of this provision is self-explanatory.

Clause 35: Meaning of "nicotine product"

125 Clause 35 provides the meaning of a "nicotine product" which is explained in clause 10 (Power to extend vaping provisions to nicotine products). The clause is self-explanatory.

Clause 36: Alignment of definitions in other legislation

126 Clause 36 updates the definition for a "tobacco product" in the interpretation section of the Tobacco Advertising and Promotion Act 2002. The current definition of a "tobacco product" is 'a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed.' And the updated definition is 'a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked, chewed or consumed in any other way'.

127 The effect of this clause is to ensure consistency between the new regime that is being introduced by this Bill and the existing legislative regime. The updated definition is clearer and ensures all tobacco products, however they are consumed, are captured.

Part 2: Sale and distribution: Scotland

128 The clauses in Part 2 extend to Scotland.

Tobacco etc

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

Clause 37: Age of sale for tobacco products etc

130 Clause 37 amends existing Scottish tobacco legislation to align with the new age of sale for tobacco products, herbal smoking products and cigarette papers as brought forward by the Bill, ensuring

alignment across the UK.

- 131 The Tobacco and Primary Medical Services (Scotland) Act 2010 (the 2010 Act) currently makes it an offence to sell tobacco products and cigarette papers to anyone who is under the age of 18 and makes related provisions for this. This clause amends this legislation by replacing references to anyone “under the age of 18” to anyone “born on or after 1 January 2009”. The effect is that it will be an offence for a person to sell a tobacco product, herbal smoking product (given amendments in clause 41, Extension of tobacco legislation to herbal smoking products) or cigarette papers to a person who is born on or after 1 January 2009. Amendments are also made to update references to the defence to the offence.
- 132 The clause also updates the proxy purchasing offence. The effect of this (alongside amendments made by clause 41) is that it will be an offence for a person aged 18 or over to knowingly buy or attempt to buy a tobacco product, herbal smoking product or cigarette papers on behalf of a person born on or after 1 January 2009.
- 133 The clause amends the display of warning statements to align with the new age of sale restrictions. The effect is that the notice which must be displayed under section 8 of the 2010 Act must contain the following statement: “It is illegal to sell tobacco products to anyone born on or after 1 January 2009”.
- 134 This clause also updates the ‘age verification policy’ provisions in the 2010 Act to ensure the age verification 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 (vapes).
- 135 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.
- 136 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. The clause 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. 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.

Clause 38: Sale of unpackaged cigarettes

- 137 Clause 38 amends the Tobacco and Primary Medical Services (Scotland) Act 2010 and makes it an offence to sell cigarettes that are not in their original packaging. Tobacco retailers must sell cigarettes in the packaging that they are supplied to the retailer in and not doing so is an offence.
- 138 Anyone who is convicted of this offence could receive a fine up to £1,000 (level 3 on the standard scale).

Clause 39: Repeal of offence of purchasing tobacco products by under 18s

139 Clause 39 omits section 5 (Purchase of tobacco products by people under 18) of the Tobacco and Primary Medical Services (Scotland) Act 2010 (the 2010 Act). Section 5 of the 2010 Act made it an offence for someone under the age of 18 to buy or attempt to buy a tobacco product or cigarette papers. Omitting this section of the 2010 Act means it is no longer an offence for someone under the age of 18 to buy or attempt to buy tobacco products or cigarette papers. This is in line with the current position in England and Wales where the age of sale restrictions applies to the sale of tobacco products, not purchasing. This will make the law consistent with England and Wales and therefore easier to interpret and enforce.

Clause 40: Repeal of powers to confiscate tobacco products from person under 18

140 Clause 40 omits section 7 (Confiscation of tobacco products from people under 18) of the Tobacco and Primary Medical Services (Scotland) Act 2010 (the 2010 Act). Section 7 of the 2010 Act allowed a constable with reasonable grounds for suspecting that a person in a public place is under the age of 18 and is in possession of a tobacco product or cigarette papers, to require the person to surrender the tobacco product or cigarette papers. Omitting this section of the 2010 Act means constables can no longer confiscate tobacco products or cigarette papers from someone who they suspect to be under 18 and in possession of a tobacco product or cigarette papers. This is in line with the position in England and Wales and will make the law consistent and therefore easier to interpret and enforce.

Clause 41: Extension of tobacco legislation to herbal smoking products

141 Clause 41 amends existing Scottish legislation to extend the scope of various provisions in the Tobacco and Primary Medical Services (Scotland) Act 2010 (the 2010 Act) that apply to tobacco products to include herbal smoking products. Herbal smoking products are not currently in scope of the age of sale restrictions in the 2010 Act. This Bill includes herbal smoking products for the age of sale restrictions in England and Wales and this clause enables alignment between Scotland and the rest of the UK.

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

143 The clause also makes provision to extend the existing prohibition of vending machines for the sale of tobacco products and nicotine vapour products in Scotland so that it applies to herbal smoking products. This is in line with the approach in clause 3 for England, Wales and Northern Ireland.

144 The clause inserts definitions of “herbal smoking product”, “herbal smoking product business” and “tobacco, herbal smoking product or nicotine vapour product business” in the 2010 Act.

Clause 42: Power to make provision about warning statements

145 Clause 42 amends section 8 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (the 2010 Act) to re-enact, with some modification, the existing power for Scottish Ministers to make provision about warning statements. It gives Scottish Ministers powers to make regulations to make provision about the size or appearance of the statement on the notice and any other aspect of the notice. This aligns with the approach for England, Wales and Northern Ireland in clauses 5, 6 and 50. The Sale of Tobacco (Display of Warning Statements) (Scotland) Regulations 2011 were made

using the old powers in section 8 of the 2010 Act, but because this Bill is re-enacting those powers, sections 17(2)(b) and 23A of the Interpretation Act 1978 mean that the regulations will remain in force.

Vaping and nicotine products

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

Clause 43: Power to regulate nicotine products

147 Clause 43 provides the Scottish Ministers with powers to extend existing measures which apply to nicotine vapour products to include other types of nicotine product (e.g. pouches). The Tobacco and Primary Medical Services (Scotland) Act 2010 (the 2010 Act) introduced various restrictions and requirements for nicotine vapour products (the definition of nicotine vapour product includes both nicotine and non-nicotine vapes). This power allows Scottish Ministers to amend the 2010 Act so that provisions which apply to nicotine vapour products in sections 4A, 4B, 4C, 4D and 6A of the 2010 Act apply to a broader range of nicotine products, such as nicotine pouches, which are currently out of scope of the existing restrictions and requirement. This aligns with the approach for England and Wales that was outlined in clause 10 (Power to extend vaping provisions to nicotine products).

148 The clause provides the definition for "nicotine product" that is the same definition as outlined in clause 34 (Meaning of "nicotine product").

Clause 44: Free distribution of nicotine products

149 Clause 44 amends existing Scottish legislation to extend the Scottish Ministers' existing powers to regulate the free distribution of nicotine vapour products, to include other nicotine products (e.g. pouches). The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (the 2016 Act) introduced a regulation making power that allows the Scottish Ministers to make regulations that prohibit or restrict the free distribution of nicotine vapour products. This clause amends this power to enable regulations to be made that prohibit or restrict the free distribution of other nicotine products, such as nicotine pouches.

Clause 45: Displays of vaping and nicotine products

150 Clause 45 amends existing Scottish legislation to give Scottish Ministers the power to introduce regulations around the display of vaping and nicotine products. This clause gives Scottish Ministers an equivalent power to that of the Secretary of State and Welsh Ministers, contained in clause j301.

151 The clause amends the Tobacco and Primary Medical Services (Scotland) Act 2010 (the 2010 Act) and gives Scottish Ministers the powers to impose prohibitions, requirements, or limitations on the display of nicotine vapour products and nicotine products and their prices, as well as the display of empty retail packaging, where the products are sold.

152 The clause confirms that a website does not fall within the meaning of place and so Scottish Ministers cannot use this provision to regulate the display of nicotine vapour products and nicotine products on websites. This is included to maintain consistency with section 3 of the 2010 Act. However, this is not intended to produce a different result to clause 11 for England and Wales and

clause 54 for Northern Ireland which do not explicitly state that a website is not a place.
153 Breaching these regulations is an offence and anyone convicted of this offence could receive a fine of up to £2,500 (level 4 on the standard scale).

Miscellaneous and consequential provision

Clause 46: Alignment of definitions

154 Clause 46 inserts a new definition of “tobacco product” in section 35 (interpretation of Part 1) of the Tobacco and Primary Medical Services (Scotland) Act (the 2010 Act) to align with the new definition of a tobacco product as outlined in clause 36 (Alignment of definition of “tobacco product” in other legislation) for England and Wales. The clause also updates the definition of “nicotine vapour product” in section 35A of the 2010 Act by specifying that “vapour” includes aerosolises and vaporises. This updated definition provides greater clarity on what is included.

Clause 47: Power to make consequential provision

155 Clause 47 gives Scottish Ministers a regulation making power to make provision that are consequential on Part 2 of this Bill. These could include changes to legislation that are consequential on the introduction of Part 2 of this Bill.

Part 3: Sale and distribution: Northern Ireland

156 The clauses in Part 3 extend to Northern Ireland.

Tobacco etc

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

Clause 48: Age of sale for tobacco products etc

158 Clause 48 amends existing Northern Irish tobacco legislation to align with the new age of sale restrictions for tobacco products and cigarette papers. The Health and Personal Social Services (Northern Ireland) Order 1978 (the 1978 Order) makes it an offence to sell tobacco or cigarette papers to anyone who is under the age of 18 and makes the purchase of tobacco, cigarette papers or relevant nicotine product on behalf of a person under the age of 18 an offence. Herbal smoking products are captured in the definition of tobacco in the 1978 Order and so are also included in the new age of sale restrictions for tobacco and cigarette papers.

159 Clause 48 makes amendments to change the age of sale of tobacco products and cigarette papers from 18 to anyone born on or after 1 January 2009. The clause also updates the proxy purchasing offence. The effect of this is that it will be an offence for a person aged 18 or over to knowingly buy or attempt to buy a tobacco or cigarette papers on behalf of a person born on or after 1 January 2009.

160 The clause also updates the restrictions around the automatic machine to align with the new age of sale.

161 Article 5 of the Children and Young persons (Protection from Tobacco) (Northern Ireland) Order 1991 introduced requirements for retailers to display age of sale notices that say, “It is an offence to sell tobacco to anyone who is under the age of 18”. This clause updates the statement to say, “It is

an offence to sell tobacco to anyone who is born on or after 1 January 2009”.

162 This clause omits Article 14 in the Smoking (Northern Ireland) Order 2006 that gave the Department of Health in Northern Ireland the powers to introduce regulations to amend the age of sale restrictions for tobacco and the age displayed on warning statements and Article 5 of the 1978 Order that enabled the seizure of tobacco from under 18s.

163 This clause also amends the Tobacco Retailers Act (Northern Ireland) 2014 to include the purchase of tobacco on behalf of persons born on or after 1 January 2009 in the list of offences that an authorised officer has the power to enter any premise, unless a private dwelling, to assess whether a crime has been committed on the premises. It also extends the FPN regime to include breaches of the offence for the purchase of tobacco on behalf of someone who is born on or after 1 January 2009.

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

164 Clause 49 provides the Department of Health in Northern Ireland with the power to introduce regulations to amend the definition of “sale” to mean sale by retail in Part 2 of the Health and Personal Social Services (Northern Ireland) Order 1978 (the 1978 Order). This would mean that business to business sales would not be caught by this offence. This is similar to the existing approach in the Health and Personal Social Services (Northern Ireland) Order 1978 (the 1978 Order) that includes an explicit exemption for persons employed in trade and this change achieves this by amending the 1978 Order. This power enables Northern Ireland to align the definition of “sell” with the definition of “sale” for England and Wales in clause 34.

Clause 50: Power to make provision about warning statements

165 Clause 50 amends Article 5 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (the 1991 Order) to re-enact, with some modification the existing power for the Department of Health in Northern Ireland to make provisions about warning statements. It gives the Department of Health in Northern Ireland powers to make regulations to make provision about the size or appearance of the statement of the notice and any other aspect of the notice, for example the colour of the notice.

166 The Protection from Tobacco (Display of Warning Statements) Regulations (Northern Ireland) 1993 were made using the old powers in Article 5 of the 1991 Order but because this Bill is re-enacting those powers, sections 17(2)(b) and 24 of the Interpretation Act 1978 mean that the regulations will remain in force.

Vaping and nicotine products

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

Clause 51: Power to regulate non-nicotine vapes etc

168 Clause 51 provides the Department of Health in Northern Ireland with powers to regulate the sale of non-nicotine vaping products in Northern Ireland to prohibit the sale of non-nicotine vaping products to persons under 18. This is achieved by amending The Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (the 2016 Health Act). The 2016 Act provided powers for the Department of Health in Northern Ireland to prohibit the sale of nicotine products to someone under the age of 18. The inclusion of non-nicotine vaping products aligns with the approach taken

for England and Wales.

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

169 Clause 52 provides the Department of Health in Northern Ireland with powers to make regulations to amend this section to define “sale” as sale by retail. Should regulations be made this would mean that business to business sales would not be caught by this offence. This aligns with the approach in clause 48 (Power to restrict tobacco offences to sale by retail). It achieves this by amending section 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (the 2016 Order) which provides the power to prohibit the sale of nicotine products to anyone under 18.

Clause 53: Free distribution of vapes and nicotine products

170 Clause 53 provides the Department of Health in Northern Ireland with powers to regulate the free distribution of nicotine products and non-nicotine vaping products by amending The Health (Miscellaneous Provisions) Act 2016 (the 2016 Health Act). The 2016 Health Act does not include any restrictions on the free distribution of nicotine products. This clause provides powers to introduce such restrictions, and this aligns closely with clause 9 (Free distribution of vaping products to under 18s) for England and Wales.

171 The inserted section 2A provides powers for the Department of Health in Northern Ireland to make regulations prohibiting someone giving away (or causing or permitting the giving away of) a nicotine product or non-nicotine vaping product, or a coupon that can be redeemed for one of these products to someone under 18.

172 The clause provides that it is a defence for the person convicted to prove they took all reasonable precautions and exercised all reasonable actions to avoid committing the offence. A person convicted of the offence could receive imprisonment, a fine, or both.

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

173 Clause 54 provides the Department of Health in Northern Ireland with powers to regulate the display of vaping and nicotine products by amending The Health (Miscellaneous Provisions) Act (NI) 2016 (the 2016 Health Act). Under current legislation, there are no restrictions on the displays of vaping and nicotine products in Northern Ireland.

174 This clause provides powers for the Department of Health in Northern Ireland to make regulations imposing prohibitions, requirements or limitations surrounding the display of nicotine products and non-nicotine vaping products and their prices, as well as the display of empty retail packaging, and makes it an offence to breach these regulations. Anyone convicted of the offence could receive a punishment of imprisonment, a fine, or both.

Clause 55: Consequential amendments to do with sections 50 to 53

175 Clause 55 introduces schedule 5 and is self-explanatory.

Enforcement

Clause 56: Power to extend restricted premises orders

176 Clause 56 amends the Tobacco Retailers Act (Northern Ireland) 2014. The amendments update the list of offences that are classified as a tobacco, nicotine or non-nicotine vape offence. The clause also

introduces a regulation making power for the Department of Health in Northern Ireland to amend the definition of a “tobacco, nicotine or non-nicotine vape offence” to add in new offences if they relate to tobacco, cigarette papers, nicotine products or non-nicotine vaping products. This clause has a similar effect as clause 15 (Power to extend restricted premises orders) for England and Wales.

Consequential provision

Clause 57: Power to make consequential provision

177 Clause 57 gives the Department of Health in Northern Ireland the power to introduce regulations that make provisions that are consequential on Part 3 of this Bill.

Part 4: Product requirements

178 The measures outlined in Part 4 extend to the whole of the UK. Before making regulations under Part 4 the Secretary of State must obtain the consent of the Welsh Ministers, Scottish Ministers and the Executive Office in Northern Ireland if the regulations contain provision which would be within the legislative competence of the Senedd Cymru, the Scottish Parliament or the Assembly, as outlined in clause 66.

179 Clauses 58, 59 and 60 are re-enacting the regulation making powers to make provision about the retail packaging etc. of tobacco products in section 94 of the Children and Families Act 2014 (the 2014 Act) in a way that allows the powers to be exercised without having to satisfy the test in section 94(1). Therefore, this Bill repeals section 94 of the Children and Families Act 2014 as the provisions are restated in this Bill. The Standardised Packaging of Tobacco Products (SPoT) Regulations 2015 were made using the powers in section 94 but because this Bill is re-enacting those powers, section 17(2)(b) of the Interpretation Act 1978 means that the SPoT Regulations will remain in force.

180 In relation to this part, “travel retail sector” means retail outlets in the UK at which tobacco products may be purchased only by people travelling on journeys to destinations outside the UK. “Production” which in relation to a product, means the manufacture of the product, or the putting of a name, trademark or other distinguishing mark on the product by a person, the effect of which is to hold the person out as being the manufacturer of the product. “Supply” which in relation to a product, includes offering or agreeing to supply it, or exposing or possessing it for supply, of products.

181 Any regulations made under Part 4 of the Bill are subject to the affirmative resolution procedure.

Tobacco product requirements

182 Annex C illustrates examples of tobacco products that in the government’s view are in scope of each clause in Part 4. This is not intended to be an exhaustive list of products.

183 Clause 69 (Interpretation of Part 4) and 70 (Meaning of “nicotine product”) provide definitions for Part 4, including the meaning of “packaging” which in relation to a product means the external packaging of the product (including any wrapper), the internal packaging of that product, or any other material attached to or included with the product or anything within in the internal or external packaging. “Retail packaging” in relation to a product, means the packaging in which it is, or intended to be, presented for sale by retail.

Clause 58 j22: Tobacco retail packaging

184 Clause 58 provides powers for the Secretary of State to make regulations about the packaging of tobacco products, re-enacting with some modifications the existing power to make provision about the retail packaging of tobacco products set out in section 94(6) of the Children and Families Act 2014 (the 2014 Act). The Standardised Packaging of Tobacco Products (SPoT) Regulations 2015 introduced prohibitions, requirements and limitations using the powers in the 2014 Act and the effect of the SPoT regulations is unchanged by this Bill.

185 The power in this clause could be used to regulate various aspects of retail packaging, including the appearance of such packaging as well as the information provided on it and its shape and texture.

186 If the regulations provide for offences for the failure to comply with requirements in the regulations under clause 58, the regulations must specify that prosecutions could be dealt with by summary procedure or on indictment with the maximum potential penalties that are specified in this clause. If the prosecution is dealt with by summary procedure in a magistrate's court in England and Wales an individual could receive an unlimited fine or a term of imprisonment for up to six months, if in Scotland they could receive a fine of up to £5,000 or imprisonment for up to 12 months and if in Northern Ireland a fine of up to £5,000 or imprisonment for up to three months. If the prosecution is dealt with on indictment in a Crown Court in England and Wales an individual could receive an unlimited fine or imprisonment of up to two years.

Clause 59: Flavour of tobacco products

187 Clause 59 provides powers for the Secretary of State to make regulations about the flavour of tobacco products and is re-enacting the existing power to make provision about tobacco flavours in section 94(8) of the 2014 Act with some modifications. The EU Tobacco Products Directive 2014 banned the use of characterising flavours 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 (menthol ban applied in May 2020) or hand rolled tobacco in the UK.

188 The clause provides the Secretary of State with powers to introduce regulations about the flavour of tobacco products. The regulations may impose prohibitions, requirements, and limitations in relation to the production, including manufacture, and importation of flavoured tobacco products that are expected to be consumed in the UK, be sold in the retail travel sector or supplied for business. As the regulations relate to the production, importation, and supply of products, any individual or organisation involved in the supply chain would be required to adhere to the regulations.

189 Provisions can be made about how the flavour of a product is determined, for example, this power could be used to set up an independent advisory panel to help the Secretary of State determine if a product has a certain flavour.

190 Regulations made under this power may create offences which must be triable as a summary complaint or on indictment with the maximum penalties as set out in clause 58 (Tobacco retail packaging).

Clause 60: Other tobacco product requirements

191 Clause 60 provides powers for the Secretary of State to introduce regulations on tobacco products.

This relates to the products themselves, rather than regulations for the packaging as provided in clause 58. This is re-enacting, with some modification, the power to make provision about the requirements for tobacco products set out in section 94(8) of the Children and Families Act 2014 (the 2014 Act). The provision about what the regulations may cover outlined in subsection (1) of this clause is the same as in section 94(8) of the 2014 Act. The Standardised Packaging of Tobacco Products (SPoT) Regulations 2015 introduced prohibitions, requirements and limitations using the powers in the 2014 Act. The effect of the SPoT regulations is unchanged by this Bill.

192 The power could be used to make provision about the tobacco product itself, rather than the packaging, for instance the regulations which may be made under this power may specify the colour of the products or what is permitted to be printed on the body of the product (such as text, for example).

193 Regulations made under this power may create offences which must be triable as a summary complaint or on indictment with the maximum penalties as set out in clause 58 (Tobacco retail packaging).

Vaping and nicotine product requirements

194 Annex C illustrates examples of vaping and nicotine products that in the government's view are in scope of each clause in Part 4. This is not intended to be an exhaustive list of products.

195 Clauses 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) make provision for the Secretary of State to regulate vaping and nicotine products. A "vaping product" means a "vape" which is the device used to vape, or a "vaping substance" which is the substance to be vaped, as defined in clause 69. Vaping products that do not include nicotine are included.

196 Clause 70 defines "nicotine products".

Clause 61: Retail packaging of vaping products and nicotine products

197 Clause 61 provides the Secretary of State with a power to regulate the retail packaging of vaping products or nicotine products. Retail packaging means the packaging in which the product is, or intended to be, presented for sale by retail and packaging means the external packaging, including the wrapper, the internal packaging and any other material attached or included in the product. The power in this clause could be used to regulate various aspects of retail packaging, including the appearance of such packaging as well as the information provided on it and its shape and texture. A refill container containing a vaping liquid could be treated as packaging for these purposes. The power to make regulations conferred by this clause is intended to align with the power to make regulations conferred by clause 58 in respect of the retail packaging of tobacco products.

198 Currently there is a wide variety of colourful retail packaging used for vaping and nicotine products on the market. Regulations made under this power may, for example, restrict the variety/range of colours and imagery that can be used on the retail packaging for such products. The government plans to make regulations using these powers with the aim of reducing the appeal and attractiveness of vaping and nicotine products to children and young people.

199 Regulations made under this power may create offences which must be triable as a summary complaint or on indictment with the maximum penalties as set out in clause 58 (Tobacco retail packaging).

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

- 200 Clause 62 provides the Secretary of State with a power to make regulations about the substances that may be included in (as well as the amount of any given substance) and the flavour of vaping products or nicotine products. There are currently no restrictions on the flavour of vaping products or nicotine products. There are limited restrictions on the substances that can be included in nicotine containing vaping products under provisions in the Tobacco and Related Products Regulations 2016.
- 201 Regulations made under this power may, for example, prohibit certain ingredients (such as vitamins, colourings or prohibited additives) being used in vaping and nicotine products, including additives which impart a particular flavour (taste and smell) for vaping products.
- 202 The regulations made under this power may include provision about how the flavour of a product is to be determined, for example, this power could be used to set up an independent expert advisory panel to assist and provide advice to the Secretary of State in determining if a product has a certain flavour.
- 203 Regulations made under this power may create offences which must be triable as a summary complaint or on indictment with the maximum penalties as set out in clause 58 (Tobacco retail packaging).

Clause 63: Other product requirements of vaping and nicotine products

- 204 Clause 63 provides the Secretary of State with a power to make regulations about other product requirements for vaping products and nicotine products. These requirements will relate to the product itself, rather than the packaging, for instance the regulations which may be made under this power may specify the permitted colour of the products or what is permitted to be printed on the body of the product (such as images, for example).
- 205 The power to make regulations conferred by this clause is intended to align with the power to make regulations conferred by clause 60 (Other tobacco product requirements) in respect of other product requirements of tobacco products.
- 206 Regulations made under this power may create offences which must be triable as a summary complaint or on indictment with the maximum penalties as set out in clause 58 (Tobacco retail packaging).

Supplementary

Clause 64: Power to include provision about enforcement

- 207 Clause 64 provides the Secretary of State with a power to make provision about enforcement including provision conferring functions on the relevant enforcement authorities and provision enabling the relevant national authority (the Secretary of State, Welsh Ministers, Scottish Ministers or the Department of Health in Northern Ireland) to take over enforcement (of a particular description or case) from a relevant enforcement authority. A relevant enforcement authority is a local weights and measures authority in England, Scotland and Wales and a district council in Northern Ireland.
- 208 Regulations made under this power may include provision applying, with or without

modifications, any of the enforcement provisions of the Consumer Rights Act 1987 or provision corresponding or similar to any of those provisions.

209 The effect of this clause is to give relevant enforcement authorities the same enforcement powers that are conferred on them to enforce the provisions of the Tobacco and Related Products Regulations 2016 and the Standardised Packaging of Tobacco Product Regulations 2015. The enforcement provisions provided under these regulations are considered to be effective in enforcing the types of offences that may be created by regulations made under the powers in Part 4.

Clause 65: Power to make provision binding the Crown

210 Clause 65 means that when regulations are made under Part 4 on tobacco, vaping and nicotine product requirements the requirements imposed under the regulations could be applied to the Crown in the same way as the measures in Part 1 of the Bill explicitly to the Crown. If this is done, for example, such product requirements must also be met where a product is being sold on the Crown Estate. The Crown itself may not be prosecuted for an offence under regulations made under Part 4 but that is not the case for persons in the service of the Crown.

Clause 66: Power to amend other legislation

211 Clause 66 provides that consequential provision made by regulations under Part 4 may amend, repeal or revoke any legislation (whenever passed or made).

Clause 67: Consent to regulations under this Part

212 Clause 67 requires the Secretary of State to obtain the consent of the Welsh Ministers, the Scottish Ministers and the Executive Office in Northern Ireland where regulations contain provision which would be within the legislative competence of Senedd Cymru, the Scottish Parliament and the Northern Ireland Assembly if contained in an Act of any of the Senedd, the Scottish Parliament or the Assembly respectively.

Clause 68: Consequential repeal

213 Clause 68 omits section 94 of the Children and Families Act 2014 (the 2014 Act) relating to the retail packaging of tobacco. These are replaced by clauses 58 (Tobacco retail packaging), 59 (Flavour of tobacco products) and 60 (Other tobacco product requirements) in this Bill.

Interpretation

Clause 69: Interpretation of Part

214 Clause 69 provides definitions for relevant terms for Part 4 of the Bill and the effect of this provision is self-explanatory.

Clause 70: Meaning of “nicotine product”

215 Clause 69 provides the same definition for a “nicotine product” as clause 35 and which has been outlined in the explanation of clause 10 (Power to extend vaping provisions to other nicotine products).

Part 5: Notification requirements etc for vaping and nicotine products

Clause 71: Extension of notification requirements etc.

216 Clause 71 provides the Secretary of State with a power to extend regulations 31,33-35, 39 and 40 of the Tobacco and Related Products Regulations 2016 (TRPR) to non-nicotine vaping products and nicotine products. These provisions concern notification, reporting and vigilance requirements in respect of products in scope. In particular, producers are required to notify before placing nicotine containing vaping products and refill containers on the UK market. The Medicines and Healthcare products Regulatory Agency (MHRA) publishes all notifications for Great Britain on an ECIG portal and they are notified on EU-CEG in Northern Ireland. The Electronic Cigarettes etc. (Fees) Regulations 2016 impose fees in connection with the notification and reporting requirements under TRPR. Accordingly, this clause provides a power to make provision in regulations to amend these regulations consequentially. These regulations would be subject to the affirmative resolution procedure.

Clause 72: Power to amend information to be notified

217 Clause 72 provides the Secretary of State with a power to amend regulation 31 the Tobacco and Related Products Regulations 2016 for the purpose of amending the information that must be notified or submitted under that provision. This power will allow for the introduction of new data requirements or remove an obligation to comply with certain data requirements for the purposes of notification. For example, an amendment may be made by such regulations to require that an image of the product or its packaging be submitted. These regulations would be subject to the affirmative resolution procedure.

Clause 73: Exceptions to publication

218 Clause 73 provides a regulation making power for the Secretary of State to create exceptions to the duty to publish information under regulation 34 of the Tobacco and Related Products Regulations 2016. For example, regulations made under this power may provide for a notification to be removed when the required notification fee has not been paid. These regulations would be subject to the affirmative resolution procedure.

Clause 74: Consent to regulations under Part 5

219 Clause 74 provides that before making regulations under Part 5 of the Bill the Secretary of State must obtain consent of the Executive Office in Northern Ireland if the regulations contain provision that is within the legislative competence of the Northern Ireland Assembly. Consent is required if regulations may relate to consumer protection which is devolved for Northern Ireland.

Part 6: General

Clause 75: Application to Parliament

220 Clause 75 provides that this Bill or regulations made under it apply to the Parliamentary estate.

Clause 76: Regulations: general

221 Clause 76 provides that where regulations are made under this Bill, the regulations may make consequential, supplementary, incidental, transitional, or saving provision and allows regulations to introduce different provision for different purposes and different provision for different parts of the UK. For example, in respect of regulations made under powers in Part 5 (Notification requirements etc for vaping and nicotine products), different provision may need to be made for Great Britain and Northern Ireland. The MHRA publishes all notifications for Great Britain on an ECIG portal whereas they are notified on EU-CEG in Northern Ireland. This does not apply to regulations made under clauses 79 (Commencement) and 80 (Transitional provision).

Clause 77: Regulations: procedure

222 Clause 77 provides the procedure for making regulations under this Bill. Regulations made by the Secretary of State or Welsh Ministers under this Bill are to be made by statutory instrument.

223 Regulations made under this Bill by Scottish Ministers are to be made by Scottish Statutory Instruments.

224 Reference is made to section 27 (Scottish statutory instruments) of the Interpretation and Legislative Reform (Scotland) Act 2010 as this outlines the procedure for the development of regulations.

225 The power of the Department of Health in Northern Ireland to make regulations under clause 57 (Power of the Department of Health in Northern Ireland to make consequential provision) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).

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

227 This clause does not apply to the regulations made under clauses 79 (Commencement) and 80 (Transitional provision).

Clause 78: Extent

228 Clause 78 provides for the extent of this Bill. A table on territorial extent of each clause in the Bill can be found at Annex A.

229 Any amendment or repeal made by Part 1 of the Bill has the same extent as the original provision that is amended or repealed, and Part 1 extends to England and Wales only.

230 Part 2 extends to Scotland only.

231 Part 3 extends to Northern Ireland only.

232 Parts 4, 5 and 6 of the Bill extend to England and Wales, Scotland and Northern Ireland.

Clause 79: Commencement

233 Clause 79 provides the commencement dates for the various clauses and Parts in this Bill. The Commencement section of the Explanatory Notes provides a detailed summary and explanation of these commencement dates.

Clause 80: Transitional provision

234 Clause 80 provides a power to make the transitional or saving provisions.

235 Welsh Ministers may by regulations make transitional or saving provision in relation to the coming into force of clause 27 or Schedule 1 (Handing over tobacco etc to underage people in Wales).

236 Scottish Ministers may by regulations make transitional or saving provision in relation to when any

provision of Part 2 (Sale and Distribution: Scotland).

237 The Department of Health in Northern Ireland may by regulations make transitional or saving provision relating to the coming into force of any provision in Part 3 (Sale and Distribution: Northern Ireland). Any such regulations must be made by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.

238 The Secretary of State may by regulations make transitional or saving provision relating to the coming into force of any provision of this Bill that is not clause 27 (Handing over tobacco etc to underage people in Wales), Schedule 1 (Handing over tobacco etc to underage people in Wales), Part 2 (Sale and Distribution: Scotland) or Part 3 (Sale and Distribution: Northern Ireland).

Clause 81: Citation

239 Clause 81 provides that this Bill can be cited as the Tobacco and Vapes Act 2024 once passed.

Commencement

240 Clause 79 provides for commencement of the various clauses in this Bill. The whole Bill, excluding the following specific measures, comes into force two months after the day on which it is passed so the new enforcement regime can apply as soon as possible.

241 Age of sale of vaping products etc in England and Wales, including clauses 7 (Sale of vaping products to under 18s), 8 (Purchase of vaping products on behalf of under 18s), 29 (Power to make consequential provision) and Schedule 3 (Part 1 consequential amendments commencing after 6 months) come into force six months after the Bill is passed to give businesses time to prepare ahead of implementation.

242 Age of sale of tobacco etc, including clauses 1 (Sale of tobacco etc), 2 (Purchase of tobacco etc on behalf of others), 3 (Tobacco vending machines), 4 (Sale of unpackaged cigarettes), 5 (Age of sale notice at point of sale: England), 6 (Age of sale at point of sale: Wales), 28(3) (Consequential amendments to do with Part 1), 37 (Age of sale for tobacco products etc), 41 (Extension of tobacco legislation to herbal smoking products) and Schedule 4 come into force on the 1 January 2027, such that the age of sale requirements will change when those who are 15 or younger turn 18. This will give the businesses and the public time to prepare for the change.

243 The power to make regulations under clause 5(4) and (5) and clause 6(4) and (5) come into force two months after this Bill is passed.

244 Clause 27 and Schedule 1 (Handing over tobacco etc to underage people in Wales) come into force on such day as the Welsh Ministers may by order appoint; different days may be appointed for different purposes. Subject to this, any amendments made by this Bill of a provision that is not yet in force comes into force at the same time as the provision amended.

245 Part 6 comes into force on the day on which the Bill is passed.

Financial implications of the Bill

246 The measures in the Bill are enabling and as a result most of the proposals will not place direct costs

- on health and care organisations purely by their enactment.
- 247 Smoking places a significant cost on society. ASH estimates that the total costs of smoking in England are £17 billion.¹² Uplifting this estimate based on the relative size of the population in England compared to the whole of the UK, the government estimates the costs of smoking to the UK to be around £21 billion. This includes a £17 billion loss to productivity per year through smoking related lost earnings, unemployment, and early death, as well as costs to the NHS and social care sector of £2.3 billion and £1.3 billion respectively.
- 248 The Impact Assessment provides an economic assessment of this policy. In relation to costs, the analysis showed the overall reduction in tobacco consumption over 30 years in the UK is expected to reduce profits for tobacco retailers by £2,291m, and for tobacco wholesalers by £506m. It is expected that tobacco retailers will incur familiarisation costs of £9m, costs due to increased time to check people's IDs of £117m and costs to put up new signage in shops of £0.2m. These costs are in 2027 prices.
- 249 The reduction in tobacco consumption would also reduce the amount of tobacco duty collected by HMRC. It is estimated that the cumulative reduction in tobacco duty receipts over 30 years in the UK would be £26,061m. However, this reduction in the tobacco duty revenue represents a transfer from the government collecting this tax to the people in society previously paying the tax. The people that no longer take up smoking because of this policy benefit from an increase in the amount they can spend on other goods and services and the government loses an equal amount that they can spend. Therefore, this reduction in tax revenue does not make society as a whole better or worse off.
- 250 To discourage non-smokers and young people from taking up vaping and to raise revenue to help fund public services like the NHS, the government will introduce a new excise duty on vaping products. Registrations and approvals for the tax will start from 1 April 2026, and the tax will take effect from 1 October 2026. To support the role vapes can play in helping smokers give up cigarettes, tobacco duty will also be increased to maintain the financial incentive to choose vaping over smoking. The government published a consultation on the design of the new duty on 6 March 2024.
- 251 In relation to financial benefits, the analysis showed the expected benefits in the UK accrued from the health benefits of a reduction in the number of people taking up smoking would result in monetised QALYs gains from fewer deaths of £480m. There will also be wider societal benefits, including productivity gains of £24,588m, reduced healthcare usage costs of £3,263m, reduced social care usage costs of £1,955m, and reductions in fire costs associated with smoking of £1,029m. These benefits are in 2027 prices.
- 252 The benefits of the policy will continue beyond 30 years and increase in size due to the nature of the policy option. From 2066 onwards the benefits are estimated to outweigh the costs, including the loss in duty revenue, and over a longer time period the benefits are estimated to be significantly higher than the costs. For example, the policy is estimated to provide a total net benefit of over £60 billion by 2100.
- 253 With the new legal age of sale, local authorities would need to check the same number of businesses, and the government expects it to take the same amount of time to investigate any potential offences.

¹² ASH. 2023. [£14bn a year up in smoke – economic toll of smoking in England revealed - ASH](#)

Local authorities may incur some additional costs to familiarise themselves with the new law, but do not expect this to be a significant cost.

- 254 To help support the enforcement of underage sales of tobacco products, an extra £30 million will be provided to enforcement agencies every year for the next five years which will help strengthen tobacco and vaping enforcement work. As part of this funding, HMRC and Border Force's 'Stubbing out the problem: A new strategy to tackle illicit tobacco' is UK wide, is supported by over £100 million new funding over the next 5 years to boost HMRC and Border Force enforcement capability. The allocation of funding for country-specific services in Scotland, Wales and Northern Ireland, such as for local authority Trading Standards services, is the responsibility of relevant ministers in those countries.
- 255 As it is local authorities that will be responsible for checking compliance with the new law on the legal age of sale for tobacco, the government does not anticipate any additional enforcement costs for the police. However, there may be additional costs for the justice system and a Justice Impact Test and New Burdens Assessment will be completed.
- 256 In relation to vaping, it is estimated that there would be costs to vape manufacturers, retailers and wholesalers for all of the vaping regulations (restrictions on flavours, packaging requirements and regulations on point-of-sale displays). These would include costs to familiarise themselves with the new regulations as well as a reduction in profits.
- 257 The main health benefits expected as a result of the vaping policies is a reduction in the number of children and young people that take up vaping. As there is currently limited evidence on the health impacts of vaping, particularly the long-term harms of vaping, it has not been possible to quantify the health benefits from a reduction in the number of children and young people that take up vaping. However, evidence from Canada, suggests that for every young person not taking up vaping the health benefits to the individual could be over £14,000.

Parliamentary approval for financial costs or charges imposed

- 258 The Bill will require a money resolution to authorise new charges on the public revenue (broadly speaking, new public expenditure). The resolution here is required because the Bill confers enforcement functions on weights and measures authorities, which are local authorities. As the Secretary of State has powers to pay grants to local authorities in respect of their functions this means that the Bill requires a money resolution given the potential for additional public expenditure out of money provided by Parliament.
- 259 The Bill will require a ways and means resolution in respect of clause 71. Clause 71(1) allows the Secretary of State to make regulations extending certain provisions of the Tobacco and Related Products Regulations 2016 (S.I. 2016/507) in relation to vaping products and nicotine products. Those provisions include requirements about the notification of products to the Secretary of State. The Electronic Cigarettes etc. (Fees) Regulations 2016 (S.I. 2016/521) sets out fees that must be paid in respect of such notifications. Under clause 71(3) there would be power to extend the fees regime to notifications in respect of vaping products and nicotine products. Given that this may be

characterised as a charge on the people a ways and means resolution is required.

Compatibility with the European Convention on Human Rights

260 The Rt Honourable Victoria Atkins MP, Secretary of State for Health and Social Care, has made a statement under section 19(1)(a) of the Human Rights Act 1998 that, in her view, the provisions of the Bill are compatible with the Convention rights.

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

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

Environmental Law

263 The Rt Honourable Victoria Atkins MP, Secretary of State for Health and Social Care, is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would be environmental law for the purposes of section 20 of the Environment Act 2021. Accordingly, no statement under that section has been made.

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

264 The Rt Honourable Victoria Atkins MP, Secretary of State for Health and Social Care, is of the view that the Bill as introduced into the House of Commons does not contain provision which, if enacted, would affect trade between Northern Ireland and the rest of the United Kingdom. Accordingly, no statement under section 13C of the European Union (Withdrawal) Act 2018 has been made.

Related documents

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

- [Children and Young Persons Act 1933](#)
- [Creating a smokefree generation and tackling youth vaping consultation: government response](#)
- Delegated Powers Memorandum
- [Health \(Miscellaneous Provisions\) Act \(Northern Ireland\) 2016](#)
- [Health and Personal Social Services \(Northern Ireland\) Order 1978](#)
- [Health and Social Care Committee recommendations on youth vaping](#)
- [Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Act 2016](#)
- Impact Assessment
- [Proxy Purchasing of Tobacco, Nicotine Products etc. \(Fixed Penalty Notice\) \(England\) Regulations 2015](#)
- [Public Health \(Wales\) Act 2017](#)
- [Retained EU Law \(Revocation and Reform\) Act 2023](#)
- [Science and Technology Committee report and recommendations on an inquiry on e-cigarettes](#)
- [Smoke-free generation: tobacco control plan for England](#)
- [Stopping the start: our new plan to create a smokefree generation](#)
- [The Children and Families Act 2014](#)
- [The Khan review: making smoking obsolete](#)
- [The Tobacco Advertising and Promotions Act 2002 \(TAPA\)](#)
- [Tobacco and Related Products Regulations 2016](#)
- [United Kingdom Internal Market Act 2020](#)
- [Youth vaping call for evidence analysis](#)

Annex A - Territorial extent and application in the United Kingdom

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
1 Sale and distribution: England and Wales							
Clause 1	Yes	Yes	Yes	No	No	No	No
Clause 2	Yes	Yes	Yes	No	No	No	No
Clause 3	Yes	Yes	Yes	No	No	No	No
Clause 4	Yes	Yes	Yes	No	No	No	No
Clause 5	Yes	No	No	No	No	No	No
Clause 6	No	Yes	Yes	No	No	No	No
Clause 7	Yes	Yes	Yes	No	No	No	No
Clause 8	Yes	Yes	Yes	No	No	No	No
Clause 9	Yes	Yes	Yes	No	No	No	No
Clause 10	Yes	Yes	Yes	No	No	No	No
Clause 11	Yes	Yes	Yes	No	No	No	No
Clause 12	Yes	Yes	Yes	No	No	No	No
Clause 13	Yes	Yes	Yes	No	No	No	No
Clause 14	Yes	Yes	Yes	No	No	No	No
Clause 15	Yes	Yes	Yes	No	No	No	No
Clause 16	Yes	Yes	Yes	No	No	No	No
Clause 17	Yes	Yes	Yes	No	No	No	No
Clause 18	Yes	Yes	Yes	No	No	No	No
Clause 19	Yes	Yes	Yes	No	No	No	No
Clause 20	Yes	No	No	No	No	No	No
Clause 21	No	Yes	Yes	No	No	No	No
Clause 22	Yes	Yes	Yes	No	No	No	No
Clause 23	Yes	Yes	Yes	No	No	No	No
Clause 24	Yes	Yes	Yes	No	No	No	No
Clause 25	Yes	Yes	Yes	No	No	No	No
Clause 26	Yes	Yes	Yes	No	No	No	No
Clause 27	No	Yes	Yes	No	No	No	No
Clause 28	Yes	Yes	Yes	No	No	No	No
Clause 29	Yes	Yes	Yes	No	No	No	No
Clause 30	Yes	Yes	Yes	No	No	No	No
Clause 31	Yes	Yes	Yes	No	No	No	No
Clause 32	Yes	Yes	Yes	No	No	No	No
Clause 33	Yes	Yes	Yes	No	No	No	No
Clause 34	Yes	Yes	Yes	No	No	No	No
Clause 35	Yes	Yes	Yes	No	No	No	No
Clause 36	Yes	Yes	Yes	No	No	No	No
2 Sale and distribution: Scotland							
Clause 37	No	No	No	Yes	Yes	No	No
Clause 38	No	No	No	Yes	Yes	No	No

Clause 39	No	No	No	Yes	Yes	No	No
Clause 40	No	No	No	Yes	Yes	No	No
Clause 41	No	No	No	Yes	Yes	No	No
Clause 42	No	No	No	Yes	Yes	No	No
Clause 43	No	No	No	Yes	Yes	No	No
Clause 44	No	No	No	Yes	Yes	No	No
Clause 45	No	No	No	Yes	Yes	No	No
Clause 46	No	No	No	Yes	Yes	No	No
Clause 47	No	No	No	Yes	Yes	No	No

3 Sale and distribution: Northern Ireland							
Clause 48	No	No	No	No	No	Yes	Yes
Clause 49	No	No	No	No	No	Yes	Yes
Clause 50	No	No	No	No	No	Yes	Yes
Clause 51	No	No	No	No	No	Yes	Yes
Clause 52	No	No	No	No	No	Yes	Yes
Clause 53	No	No	No	No	No	Yes	Yes
Clause 54	No	No	No	No	No	Yes	Yes
Clause 55	No	No	No	No	No	Yes	Yes
Clause 56	No	No	No	No	No	Yes	Yes
Clause 57	No	No	No	No	No	Yes	Yes
4 Product requirements							
Clause 58	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 59	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 60	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 61	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 62	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 63	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 64	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 65	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 66	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 67	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 68	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 69	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 70	Yes	Yes	Yes	Yes	Yes	Yes	Yes
5 Notification requirements etc for vaping and nicotine products							
Clause 71	Yes	Yes	No	Yes	No	Yes	Yes
Clause 72	Yes	Yes	No	Yes	No	Yes	Yes
Clause 73	Yes	Yes	No	Yes	No	Yes	Yes
Clause 74	No	No	No	No	No	Yes	Yes
6 General							
Clause 75	Yes	No	No	No	No	No	No
Clause 76	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 77	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 78	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 79	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 80	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 81	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Annex B – Summary of substantive measures in the Bill

This table lists the clauses in Parts 1-5 of the Bill and outlines how the clause relates to the existing legislative framework. The supplementary clauses have not been included in this list.

Clause in Bill	Relation to existing legislation
Part 1: Sale and distribution: England and Wales	
1: Sale of tobacco etc	This replaces the existing age of sale of 18 in the Children and Young Persons Act 1933.
2: Purchase of tobacco etc on behalf of others	This replaces the existing restriction on purchasing on behalf of others from section 91 of the Children and Families Act 2014.
3: Tobacco vending machines	It is currently an offence to make available for use a tobacco vending machine. Clause 3 re-enacts and consolidates the existing legislation without changing the law. Provision is made in Schedule 4 for repeal of the existing legislation on 1 January 2027: section 3A of the Children and Young Persons (Protection from Tobacco) Act 1991 which was an amendment to that Act made by section 22 of the Health Act 2009 which is also repealed. The Protection from Tobacco (Sales from Vending Machines) (England) Regulations 2010 made under section 3A will automatically be revoked when section 3A is repealed.
4: Sale of unpackaged cigarettes	This re-enacts the requirements under section 3 of the Children and Young Persons (Protection from Tobacco) Act 1991.

5: Age of sale notice at point of sale: England	This replaces the requirements under section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991.
6: Age of sale notice at point of sale: Wales	This replaces the requirements under section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991 for Wales.
7: Sale of vaping products to under 18s	This replaces sale of vaping products provisions from Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 made under section 92 of the Children and Families 2014 Act.
8: Purchase of vaping products on behalf of under 18s	This replaces section 91 of the Children and Families Act 2014.
9: Free distribution of vaping products to under 18s	This is a new offence.
10: Power to extend vaping provisions to other nicotine products	This is a new power.
11: Displays of vaping and nicotine products	This is a new power.
12: Restricted premises orders	This replaces and is based on section 12A of the Children and Young Persons Act 1933.
13: Restricted premises orders: interested persons	This replaces, and is based on, section 12A of the Children and Young Persons Act 1933.
14: Breach of restricted premises orders	This replaces, and is based on, the law from section 12C of the Children and Young Persons Act 1933.
15: Power to extend restricted premises orders	This is a new power for the Secretary of State. This power already exists for Welsh Ministers from section 51 of the Public Health (Wales) Act 2017.
16: Restricted sale orders	This replaces, and is based on, section 12B of the Children and Young Persons Act 1933.
17: Breach of restricted sale orders	This replaces, and is based on, section 12C of the Children and Young Persons Act 1933.
18: Liability of other for certain offences committed by bodies	These are based on standard enforcement provisions.
19: Enforcement by local weights and measures authorities	

20: Programme of enforcement: England	
21: Programme of enforcement: Wales	
22: Power of ministers to take over enforcement functions	
23: Power of minister to take over proceedings	
24: Fixed penalty notices	This is a new provision.
25: Fixed penalties: use of proceeds	This is a new provision.
26: Power to change amount of fixed penalties	This is a new power.
27: Handing over tobacco etc to underage people in Wales	This amends the Public Health (Wales) Act 2017.
31: Application of fixed penalty regime to old offences	This is a new provision applying to existing offences to sell tobacco and vaping products, or purchase these products on behalf of, someone underage.
36: Alignment of definition of “tobacco product” in other legislation	This is a new provision.
Part 2: Sale and distribution: Scotland	
37: Age of sale for tobacco products etc	These clauses amend the Tobacco and Primary Medical Services (Scotland) Act 2010.
38: Sale of unpackaged cigarettes	
39: Repeal of offence of purchasing tobacco products by under 18s	
40: Repeal of powers to confiscate tobacco products from person under 18	
41: Extension of tobacco legislation to herbal smoking products	
42: Power to make provision about warning statements	
43: Power to regulate nicotine products	
44: Free distribution of nicotine products	This amends the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016.
45: Displays of vaping and nicotine products	This is a new power.
46: Alignment of definitions	This is a new provision.

Part 3: Sale and distribution: Northern Ireland	
48: Age of sale for tobacco products etc	These clauses amend the Health and Personal Social Services (Northern Ireland) Order 1978.
49: Power to restrict tobacco offences to sale by retail	
50: Power to make provision about warning statements	This amends Article 5 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991.
51: Power to regulate non-nicotine vapes etc	This amends the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016.
52: Power to restrict nicotine products offence to sale by retail	
53: Free distribution of vapes and nicotine products	This is a new power.
54: Power to regulate displays of vaping and nicotine products	This is a new power.
56: Power to extend restricted premises orders	This is a new power.
Part 4: Product requirements	
58: Tobacco retail packaging	These clauses re-enact with modifications section 94 of the Children and Families Act 2014.
59: Flavour of tobacco products	
60: Other tobacco product requirements	
61: Retail packaging of vaping products and nicotine products	This is a new power.
62: Contents and flavouring of vaping products and nicotine products	This is a new power.
63: Other product requirements of vaping and nicotine products	This is a new power.
Part 5: Notification requirements etc for vaping and nicotine products	
71: Extension of notification requirements etc.	This is a new power that enables certain Regulations in the Tobacco and Related Products Regulations 2016 to be extended.
72: Power to amend information to be notified	This is a new power that enables the Regulation 31 in the Tobacco and Related Products Regulations 2016 to be amended.

73: Exceptions to publication

This is a new power that enables Regulation 34 in the Tobacco and Related Products Regulations 2016 to be amended.

Annex C – Products captured

Annex C illustrates examples of tobacco and related products, vaping and nicotine products currently on the UK market that are in the government’s view are in scope of each clause of the Bill. This is not intended to be an exhaustive list of products.

Part	Clause	Products Captured
Part 1: Sale and Distribution: England and Wales	1: Sale of tobacco etc 2: Purchase of tobacco etc on behalf of others 3: Tobacco vending machines	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigarette papers • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Herbal Shisha
	4: Sale of unpackaged cigarettes 5: Age of sale notice at point of sale: England 6: Age of sale notice at point of sale: Wales	<ul style="list-style-type: none"> • Cigarettes • Cigarettes • Hand rolling tobacco • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Nasal tobacco (snuff) • Chewing tobacco

		<ul style="list-style-type: none"> • Heated tobacco • Blunts tobacco
7: Sale of vaping products to under 18s 8: Purchase of vaping products on behalf of under 18s 9: Free distribution of vaping products to under 18s		<ul style="list-style-type: none"> • Flavoured or unflavoured Nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes)
10: Power to extend vaping provisions to nicotine products		<ul style="list-style-type: none"> • Nicotine pouches • capture future emerging nicotine products that are not: (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.
11: Displays of vaping and nicotine products		<ul style="list-style-type: none"> • Flavoured or unflavoured nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches • capture future emerging nicotine products that are not: (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.

	<p>27: Handing over tobacco etc to underage people in Wales</p>	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigarette papers • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Snus (already banned) • Herbal Shisha • Flavoured or unflavoured nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches • capture future emerging nicotine products that are not: • (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.
<p>Part 2: Sale and distribution: Scotland</p>	<p>37: Age of sale for tobacco products etc</p>	<p>If amended in accordance with clauses j30 and j29 of the Bill, sections 4, 4B, 4C, 6 and 9 of the Tobacco and Primary Medical Services (Scotland) Act 2010 will apply to tobacco products, herbal smoking products and cigarette papers.</p>

		<p>This will therefore cover products such as:</p> <ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigarette papers • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Chewing tobacco • Heated tobacco • Blunts (tobacco and herbal) • Herbal Shisha
	<p>41: Extension of tobacco legislation to herbal smoking products</p>	<p>If amended in accordance with the Bill, section 8 of the 2010 Act will apply to a tobacco business, covering (but not limited to) a business which sells products such as:</p> <ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts (tobacco)

	<p>43: Power to regulate nicotine products</p>	<p>The Bill will insert sections 9A and 35B into the 2010 Act. The powers will cover products such as:</p> <ul style="list-style-type: none"> • Nicotine pouches • Future emerging nicotine products that are not: <ul style="list-style-type: none"> (a) a tobacco product; (b) a smoking related product (defined in section 35 of the 2010 Act); (c) a herbal smoking product; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products.
	<p>44: Free distribution of nicotine products</p>	<p>If amended in accordance with clause j36 of the Bill, section 18 of the Health (Tobacco, Nicotine etc, and Care) (Scotland) Act 2016 will apply to nicotine vapour products and nicotine products. This power would therefore be extended to cover products such as:</p> <ul style="list-style-type: none"> • Nicotine pouches • Future emerging nicotine products that are not: <ul style="list-style-type: none"> (e) a tobacco product; (f) a smoking related product (defined in section 35 of the 2010 Act); (g) a herbal smoking product; (h) any device which is intended to be used for the consumption of tobacco products or herbal smoking products.
	<p>45: Displays of vaping and nicotine products</p>	<p>The Bill will insert clause j106 into the 2010 Act. This would apply to nicotine vapour products and other nicotine products.</p> <p>The power would therefore cover products such as:</p> <ul style="list-style-type: none"> • Flavoured or unflavoured Nicotine vapes- liquid bottles, disposable (single use), pods/cartridges

		<ul style="list-style-type: none"> • Flavoured or unflavoured Non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Non nicotine liquid in Shortfills/longfills bottles • Vape devices: tank based, single use, cartridge/pod systems includes E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non nicotine vapes) • Supplement infused vapes • Nicotine pouches • Future emerging nicotine products that are not: <ul style="list-style-type: none"> (a) a tobacco product; (b) a smoking related product; (c) a herbal smoking product; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products.
Part 3: Sale and distribution: Northern Ireland	48: Age of sale for tobacco products etc	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigarette papers • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff) • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Snus (already banned)

	<p>51: Power to regulate non-nicotine vapes etc</p>	<ul style="list-style-type: none"> • Herbal Shisha <p>Non-nicotine vaping products are defined as a vaping product that is not a nicotine product. A “nicotine product” means —</p> <ul style="list-style-type: none"> • a device which is intended to enable nicotine to be consumed by an individual or otherwise to be delivered into the human body; • an item which is intended to form part of a device within paragraph (a); or • a substance or item which consists of or contains nicotine, and which is intended for human consumption or otherwise to be delivered into the human body. <p>It does not matter whether the device is also intended to enable any other substance to be consumed by an individual or otherwise to be delivered into the human body. The following are not nicotine products:</p> <ul style="list-style-type: none"> • Tobacco • Cigarette papers • Any device which is intended to be used for the consumption of lit tobacco. <p>53: Free distribution of vapes and nicotine products</p> <p>Non-nicotine vaping products are defined as a vaping product that is not a nicotine product. A “nicotine product” means —</p> <ul style="list-style-type: none"> • a device which is intended to enable nicotine to be consumed by an individual or otherwise to be delivered into the human body; • an item which is intended to form part of a device within paragraph (a); or • a substance or item which consists of or contains nicotine, and which is intended for human consumption or otherwise to be delivered into the human body. <p>It does not matter whether the device is also intended to enable any other substance to be consumed by an individual or otherwise to be delivered into the human body. The following are not nicotine products:</p> <ul style="list-style-type: none"> • Tobacco • Cigarette papers <p>Any device which is intended to be used for the consumption of lit tobacco.</p> <p>54: Power to regulate displays of vaping and nicotine products</p> <p>Non-nicotine vaping products are defined as a vaping product that is not a nicotine product. A “nicotine product” means —</p> <ul style="list-style-type: none"> • a device which is intended to enable nicotine to be consumed by an individual or otherwise to be delivered into the human body;
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		<ul style="list-style-type: none"> • an item which is intended to form part of a device within paragraph (a); or • a substance or item which consists of or contains nicotine, and which is intended for human consumption or otherwise to be delivered into the human body. <p>It does not matter whether the device is also intended to enable any other substance to be consumed by an individual or otherwise to be delivered into the human body.</p> <p>The following are not nicotine products:</p> <ul style="list-style-type: none"> • Tobacco • Cigarette papers <p>Any device which is intended to be used for the consumption of lit tobacco.</p>
<p>Part 4: Product Requirements</p>	<p>58: Tobacco retail packaging</p>	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigarette papers • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Chewing tobacco • Nasal tobacco (snuff) • Heated tobacco • Blunts tobacco and herbal • Snus (already banned) • Herbal Shisha
	<p>59: Flavour tobacco products 60: Other tobacco product requirements</p>	<ul style="list-style-type: none"> • Cigarettes • Hand rolling tobacco • Cigarette papers • Cigars • Cigarillos • Pipe tobacco • Waterpipe tobacco (e.g shisha) • Herbal smoking products • Nasal tobacco (snuff)

		<ul style="list-style-type: none"> • Chewing tobacco • Heated tobacco • Blunts tobacco and herbal • Snus (already banned) • Herbal Shisha
	<p>61: Retail packaging of vaping products and nicotine products</p>	<ul style="list-style-type: none"> • Flavoured or unflavoured nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches • capture future emerging nicotine products that are not: <ul style="list-style-type: none"> (a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.
	<p>62: Contents and flavour of vaping products and nicotine products</p>	<ul style="list-style-type: none"> • Flavoured or unflavoured nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches • capture future emerging nicotine products that are not:

		<p>(a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.</p> <ul style="list-style-type: none"> • Flavoured or unflavoured nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches • capture future emerging nicotine products that are not: <p>(a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.</p> <ul style="list-style-type: none"> • Flavoured or unflavoured nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Flavoured or unflavoured non-nicotine vapes- liquid bottles, disposable (single use), pods/cartridges • Nicotine shot liquids to be placed in Shortfills/Longfills • Vape devices: tank based, single use, cartridge/pod systems including E-hookah; e-cigars; e-pipes • Heated nicotine sticks • Herbal/Vitamin vapes-liquid or single use, pod/cartridge (classed as non-nicotine vapes) • Nicotine pouches • capture future emerging nicotine products that are not: <p>(a) a tobacco product; (b) a herbal smoking product; (c) cigarette papers; (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; (e) vaping products.</p>
<p>Part 5: Notification requirements etc for vaping and nicotine products</p>	<p>71: Extension of notification requirements etc 72: Power to amend information to be notified 73: Exceptions to publication</p>	

Annex D – Compatibility with the European Convention on Human Rights

THE BILL AND CONVENTION RIGHTS

Smokefree generation policy

Clause 1 – Sale of tobacco etc

Clause 37 – Age of sale for tobacco products etc

Clause 48 – Age of sale for tobacco products etc

1. Clause 1 makes it an offence in England and Wales to sell a tobacco product, a herbal smoking product or cigarette papers ('tobacco products') to a person born on or after 1st January 2009. This replaces the current age of sale restriction of 18 for these products. Clauses 37 and 48 make the same provision for Scotland and Northern Ireland by amending the Tobacco and Primary Medical Services (Scotland) Act 2010 and the Health and Personal Social Services (Northern Ireland) Order 1978 respectively.
2. There will be no change to the law for anyone who can presently be sold tobacco products (so is over 18 now) nor for those who reach the age of 18 before 1st January 2027. The cohort in respect of whom the smokefree generation policy will apply are too young to be sold tobacco products at present. It will not be an offence for someone in this cohort to possess tobacco products nor will smoking be criminalised. The impact for businesses will be on future sales of tobacco products, to a group who cannot currently be sold these products, with a reduction in overall sales of tobacco products in the United Kingdom over time.

Article 1 Protocol 1

3. The smokefree generation policy which will apply to a cohort of the UK population born on or after 1st January 2009 may engage the right of peaceful enjoyment to the possessions of those businesses affected by an expected reduction in sales of tobacco products to the UK market. If, or to the extent that, Article 1 Protocol 1 (A1P1) is engaged then the Department considers that any interference can be justified and is proportionate.

4. The smokefree generation policy is provided for by law as it is contained in primary legislation subject to significant parliamentary scrutiny. The provisions pursue legitimate aims including preventing young people from becoming addicted to tobacco and protecting public health by gradually eliminating use of tobacco products. The Department considers that the measures are a proportionate means to achieve these aims with no less restrictive measure achieving the same effect, and do not impose an undue burden on affected businesses.

Article 8 with Article 14

5. Individuals born before 1 January 2009 will be able to be sold tobacco products from age 18 as now. Someone born on 31st December 2008 will be in a different position from someone born on 1 January 2009. This difference in treatment could potentially engage the right to enjoy ECHR rights without discrimination (Article 14) if this measure is within the ambit of a substantive ECHR right such as Article 8.

6. The Department's view is that these measures which control the sale of tobacco products without otherwise prohibiting or limiting what individuals can do would not engage the right to private and family life (Article 8). The legislation would not criminalise individuals in the affected cohort for possessing tobacco products or smoking.

7. Alternatively, if these measures are within the ambit of Article 8, the Department considers that any interference (Article 8) and any differential treatment (Article 14) can be justified and is proportionate. The only practical way for the measure to be introduced is with a cut-off date after which individuals cannot be sold tobacco; this prohibition is limited in that it will apply to a subset of individuals only (those born on or after 1st January 2009). The justification for any difference of treatment is that this is necessary in order to introduce the measure to achieve the legitimate aim of the protection of public health. There is no less restrictive way to achieve the aim of ultimately making smoking and use of tobacco obsolete. Any interference with Article 8 is justified under Article 8(2) for being in accordance with the law and necessary and proportionate in a democratic society in pursuit of a legitimate aim to protect public health.

8. Accordingly, the Department considers that these provisions are compatible with Article 1 Protocol 1 of the ECHR and Article 8 of the ECHR read with Article 14.

Powers of entry, search and seizure

Clause 19 – Enforcement by local weights and measures authorities

Clause 64 – Power to include provision about enforcement

9. Clause 19 makes provision for enforcement in England and Wales by local weights and measures authorities ('Trading Standards officers'), in relation to the smokefree generation policy and associated offences in Part 1 of the Bill. To enforce these offences, Trading Standards officers are given the investigatory

powers set out in Schedule 5 to the Consumer Rights Act 2015. These include powers to request the production of specified information or documents, a power to enter premises and a power to inspect, seize and test documents, goods or products.

10. Regulations made under **Clause 64** may make provision about enforcement in relation to regulations made under Part 4, including applying provisions of the Consumer Protection Act 1987 to provide Trading Standards officers with investigatory powers such as to enter premises, search and seize documents or goods.

AIP1 and Article 8

11. The powers of entry, search and seizure which are or may be conferred by these clauses may be used to enter premises to obtain information for the purposes of an investigation or seize goods, and therefore engage Article 8 and AIP1.

12. The purpose of providing these powers is to facilitate high quality investigations to support effective enforcement. They will only be used for this purpose and there are safeguards provided in Schedule 5 of the Consumer Rights Act 2015 and the Consumer Protection Act 1987 to ensure that these powers are compatible with ECHR rights. Furthermore, the powers are exercisable only by local weights and measures authorities, public bodies who are required by section 6 of the Human Rights Act 1998 to act compatibly with ECHR rights.

13. The Department considers that any interference with Article 8 is justified under Article 8(2) for being in accordance with the law and necessary in a democratic society and any interference with AIP1 is justified on the basis that it is prescribed by law, in pursuit of a legitimate aim and proportionate. These powers have a clear and rational connection to the pursuit of a legitimate aim in preventing crime as well as protection of health. The safeguards in place for the exercise of these powers will ensure that they are exercised proportionately.

14. Accordingly, the Department considers the powers which are or may be conferred by these clauses are compatible with Article 8 and AIP1 of the ECHR.

TOBACCO AND VAPES BILL

EXPLANATORY NOTES

These Explanatory Notes relate to the Children Not in School (Registers, Support and Orders) Bill introduced in the House of Commons on 20 March 2024 (Bill 189).

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