



HOUSE OF LORDS

Delegated Powers and Regulatory Reform
Committee

22nd Report of Session 2024–25

**Tobacco and Vapes
Bill**

**Steel Industry
(Special Measures)
Act 2025**

Ordered to be printed 30 April 2025 and published 7 May 2025

Published by the Authority of the House of Lords

The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session, most recently on 29 July 2024, and has the following terms of reference:

- (i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;
- (ii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,
 - (b) section 7(2) or section 19 of the Localism Act 2011, or
 - (c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

- (iii) To report on documents and draft orders laid before Parliament under or by virtue of:
 - (a) section 85 of the Northern Ireland Act 1998,
 - (b) section 17 of the Local Government Act 1999,
 - (c) section 9 of the Local Government Act 2000,
 - (d) section 98 of the Local Government Act 2003, or
 - (e) section 102 of the Local Transport Act 2008.

Members

[Baroness Bakewell of Hardington Mandeville](#)

[Baroness Chakrabarti](#)

[Baroness Finlay of Llandaff](#)

[Lord Goodman of Wycombe](#)

[Viscount Goschen](#)

[Lord Hall of Birkenhead](#)

[Baroness Humphreys](#)

[The Earl of Lindsay](#)

[Baroness Ramsey of Wall Heath](#) (Chair)

[Lord Rowlands](#)

Registered Interests

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives.

Publications

The Committee's reports are published by Order of the House in hard copy and on the internet at www.parliament.uk/hldprcpublications.

Committee Staff

The staff of the Committee are Jen Mills (Clerk) and Kiran Kaur (Committee Operations Officer).

General Information

General information about the House of Lords and its Committees, including guidance to witnesses, details of current inquiries and forthcoming meetings is on the internet at <http://www.parliament.uk/business/lords/>.

Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk to the Delegated Powers and Regulatory Reform Committee, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is hldelegatedpowers@parliament.uk.

Twenty Second Report

TOBACCO AND VAPES BILL

1. The Tobacco and Vapes Bill was brought from the House of Commons on 27 March. The Bill makes provision (among other things) for the supply of tobacco, vapes and other products, including prohibiting the sale of tobacco to people born on or after 1 January 2009.
2. The Department of Health and Care has provided us with a Delegated Powers Memorandum (“the Memorandum”).¹
3. We received written evidence on the Bill from JTI UK.²
4. We draw the attention of the House to three delegated powers, in clauses 1, 10 and 68.

Clause 1 (sale of tobacco etc)

5. We are familiar with retailers being forbidden to sell items (e.g. illicit drugs) to anyone; likewise, being forbidden to sell items (e.g. cigarettes or alcohol) to those under the age of 18.
6. What is a new venture in legislation is to forbid the sale of items to someone born after a certain date but not before it, such that in due course it is legal to sell to a 25-year-old but not a 24-year-old, to a 41-year-old but not a 40-year-old, to a 61-year-old but not a 60-year-old, and so on.
7. Under clause 1, the ambit of potential criminal liability for retailers will inexorably expand with the passing of time. When the Bill was introduced into the House of Commons, clause 1 did not contain a delegated power. Clause 1 originally read as follows:

- “(1) It is an offence to sell any of the following to a person born on or after 1 January 2009—
- (a) a tobacco product;
 - (b) a herbal smoking product;
 - (c) cigarette papers.
- (2) It is a defence for a person charged with an offence under this section to prove—
- (a) that they were shown what appeared to be an identity document belonging to the purchaser and that the date of birth shown on that document was before 1 January 2009, or
 - (b) that they otherwise took all reasonable steps to avoid the commission of the offence.

1 Department of Health and Social Care, *Memorandum on the Tobacco and Vapes Bill from the Department of Health and Social Care to the Delegated Powers and Regulatory Reform Committee* (28 March 2025): <https://bills.parliament.uk/publications/60056/documents/6288> [accessed 6 May 2025]

2 Written evidence from JTI UK to the Delegated Powers and Regulatory Reform Committee (28 April 2025): <https://committees.parliament.uk/publications/47706/documents/249254/default/>

- (3) In subsection (2) “identity document” means—
- (a) a passport,
 - (b) a UK driving licence,
 - (c) a driving licence issued by any of the Channel Islands or the Isle of Man,
 - (d) a European Union photocard driving licence, or
 - (e) an identity card issued by the Proof of Age Standards Scheme and bearing its hologram (a PASS card).
- (4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.”
8. Clause 1(3) was amended in the Commons to remove the list of identity documents that retailers could accept as sufficient proof of age. Clause 1(2)(a) was amended so that it is now a defence for a person charged with an offence under clause 1 to prove:
- “that they took such steps as may be specified in regulations made by the Secretary of State to verify that the customer was born before 1 January 2009.”
9. The problem with clause 1(2)(a) is not in the delegated power itself. The original clause relied on a very particular list that was apt to become out of date in due course. Dealing with the matter in secondary legislation circumvents this problem. Rather, the problem is that regulations made under clause 1(2)(a) use the negative resolution procedure.
10. The defence under clause 1(2)(a) will be important to retailers for at least two reasons.
- First, retailers will naturally have difficulty (as time goes on) in distinguishing (say) a 50-year-old, who cannot be sold a herbal smoking product, and a 51-year-old who can. It could prove problematic in terms of customer relations even broaching the subject. But to avoid criminal conduct the matter might have to be broached.
 - Second, the defence is the difference between having a criminal record and not. Yet there is nothing on the face of the Bill that gives any indication as to the steps that retailers must take to verify that the purchaser was born before 1 January 2009. Everything will depend on the content of the regulations, concerning which there will be significant public interest.
11. Because the regulations only use the negative resolution procedure, in practice they are very unlikely to be debated before they are made and may not be debated at all. Accordingly, Parliament and retail interests will not have a formal opportunity (such as would be provided by the affirmative procedure) to satisfy themselves - before the regulations are made - that the regulations are reasonable and workable.

12. Paragraph 12 of the Memorandum offers three reasons for the negative resolution procedure:

- First, because it is a defence on the face of the Bill to have otherwise taken all reasonable steps to avoid committing the offence, the negative resolution procedure therefore affords an appropriate level of parliamentary scrutiny.

We do not think that the conclusion follows from the premise. The two defences in clause 1(2) are separate and require separate justifications. If one cannot rely on the defence under clause 1(2)(a) (the details of which will in due course be set out in regulations) the only way of avoiding criminal liability is the “otherwise (having) taken all reasonable steps” defence in clause 1(2)(b). This reinforces the importance of knowing the content of the clause 1(2)(a) defence, on which debates under the affirmative resolution procedure would provide valuable reassurance. The use of the negative resolution procedure means that the first anyone hears of the defence under clause 1(2)(a), as it exists in law, will be after the regulations are made.

- Second, the Memorandum argues that the detail in the regulations will be “technical, procedural and non-contentious”, as they will likely be already carried out by many retailers who follow good practice guidance.

This is assertion, particularly as the Bill says nothing about the content or status of any such guidance. Parliament will not have the chance to judge whether the regulations are merely technical or uncontroversial until Parliament sees them, which (in the case of the negative resolution procedure) will be after the regulations are made. Since breach of the regulations can result in a criminal conviction and given the unprecedented nature of the obligation not to sell products to people who may (in years to come) be in their 50s, 60s or 70s, retailers are likely to regard the regulations as being of considerable practical and legal importance; likewise, Parliament itself.

- Third, use of the affirmative resolution procedure is said to be an inappropriate use of parliamentary time relative to the nature of the power and the limited potential impact on retailers.

We believe that Parliament is the best judge of what is, and is not, an appropriate use of its time. To say that the regulations will have a limited impact on retailers overlooks the importance of the regulations, which may make the difference between retailers facing criminal liability or not. Furthermore, depending on what the regulations say (on which the Bill is silent) they may have a marked impact on retail activity in practice.

13. It is surprising that the Government, having been generous in the use of the affirmative resolution procedure throughout the Bill, should have been so parsimonious on this occasion.

14. **The importance of regulations made under clause 1(2)(a) justifies the use of the affirmative resolution procedure rather than the negative resolution procedure.**

Clause 10 (sale of vaping or nicotine products to under 18s)

15. Under clause 10 it is an offence to sell a vaping product or nicotine product to a person under the age of 18. It is a defence for a person to prove:
 - (a) that they took such steps as may be specified in negative resolution procedure regulations made by the Secretary of State to verify that the customer was at least 18 years old, or
 - (b) that they otherwise took all reasonable steps to avoid the commission of the offence.
16. The Memorandum (para 28) makes the point that the justification for the negative resolution procedure is the same as for clause 1. We have seen in the case of clause 1 that this justification is not compelling, and that the affirmative resolution procedure is more appropriate.
17. There is, however, an additional reason for adopting the affirmative resolution procedure in clause 10. The Memorandum (para 23) records that section 92 of the Children and Families Act 2014 (“the 2014 Act”) introduced regulation-making powers for the Secretary of State to make it an offence to sell nicotine products to under 18s. Clause 10 creates the offence of selling a vaping product or nicotine product to someone aged under 18.
18. What the Memorandum neglects to say is that the regulation-making provision in section 92 adopts the affirmative resolution procedure (see section 135(6)(d) of the 2014 Act). If the affirmative resolution procedure is currently acceptable for the sale of nicotine products, the negative resolution procedure should not be acceptable for regulations that cover both nicotine products and vaping products.
19. **The affirmative resolution procedure should equally apply to regulations made under clause 10(2)(a) as it should to regulations under clause 1.**

Clause 68 (age of sale for tobacco products etc: Northern Ireland)

20. Clause 68 is the Northern Ireland provision that corresponds to clause 1. The Memorandum (paragraph 145) states that the justification for the negative resolution procedure in clause 68 is the same as that contained in clause 1. We have seen in the case of clause 1 that this justification is not compelling, and that the affirmative resolution procedure is more appropriate.
21. **The affirmative resolution procedure should equally apply to regulations made under clause 68 as it should to regulations under clause 1.**

STEEL INDUSTRY (SPECIAL MEASURES) ACT 2025

22. The Steel Industry (Special Measures) Bill was brought from the House of Commons on Saturday 12 April and is now enacted, having passed all its parliamentary stages in both Houses and received royal assent on the same day. The Act:
- creates wide-ranging powers for the Secretary of State to make interventions in relation to steel undertakings in England that are at risk of ceasing to be used, whether on a permanent or temporary basis;
 - provides for unlimited fines and two years' imprisonment for non-compliance by steel undertakings (and its directors, managers, partners etc) with directions made under the Act by the Secretary of State;
 - allows the Secretary of State to seek a High Court injunction to secure the continued operation of specified assets;
 - allows the Secretary of State to make regulations providing for the payment of compensation to steel undertakings.
23. The Department for Business and Trade has provided us with a Delegated Powers Memorandum ("the Memorandum").³ Because the Bill and the Memorandum were not published until very shortly before the parliamentary debates, there was no time to undertake proper scrutiny in time for those debates. Given the way in which the Bill was fast-tracked through Parliament, and given the importance of the issues involved, we have decided to undertake post-legislative scrutiny.
24. **We draw the attention of the House to section 7 of the Act.** Section 7(1) provides the Secretary of State with the power to make regulations making provision for paying compensation to a steel undertaking, to which a notice under section 2(1) has been given, as a result of any exercise of the Secretary of State's functions under the Act.
25. The directions that can be given to a steel undertaking under section 2 are of extraordinary width. They include the power to require the undertaking to do any or all the following:
- use (or not use) assets in a specified way;
 - enter agreements, including contracts of employment;
 - change personnel;
 - manage matters in a particular way;
 - pay money to specified persons.

Failure to comply with directions can result in criminal prosecution, unlimited fines and two years' imprisonment.

³ Department for Business and Trade, *Memorandum on the Steel Industry (Special Measures) Act 2025 from the Department for Business and Trade to the Delegated Powers and Regulatory Reform Committee* (12 April 2025): https://publications.parliament.uk/pa/bills/cbill/59-01/0221/steel_industry_special_measures_dpm_12_april_2025.pdf [accessed 6 May 2025]

26. Moreover, if the Secretary of State considers that a steel undertaking has failed or is failing to comply with any part of a direction, or that there is a risk of so doing, the Secretary of State has powers to:

- enter the premises using force if necessary;
- run the undertaking, make loans, pay salaries;
- prevent the disposal of, or other dealings in respect of, specified assets;
- take whatever steps the Secretary of State considers appropriate for the purposes of securing the continued and safe use of specified assets;
- require any person on the premises, or any other person who has dealings with specified assets or with the steel undertaking, to give whatever assistance the Secretary of State may reasonably require for the purposes of securing the continued and safe use of specified assets.

27. In the light of:

- (a) the extraordinary nature of the obligations that can be forced on commercial organisations (under pain of unlimited fines and two years' imprisonment),
- (b) the potential magnitude of the compensation payable, and
- (c) the parliamentary and public interest in an Act conferring such wide powers against a commercial organisation,

it is surprising that the compensation scheme in section 7 is subject only to the negative resolution procedure. Section 7 is drafted in the widest terms, leaving everything to regulations with nothing substantive on the face of the Act.

28. The Government's arguments for the negative procedure are four-fold and are unconvincing:

- The Memorandum (para 22) says that regulations determining compensation under section 7 are likely "most often" to be used to make "technical, administrative and procedural arrangements" for the payment of compensation, which do not warrant taking up large amounts of parliamentary time.

The negative procedure will certainly not take up large amounts of parliamentary time. In practice it will take up no parliamentary time at all. Given the powers that the Government have taken against (*inter alia*) a major foreign commercial organisation, the terms of the compensation scheme are likely to be of considerable public, parliamentary and international interest. Given the wide powers (supported by the criminal and civil law) that can be exercised against commercial entities acting in good faith and in their commercial interests, the magnitude of the compensation might be considerable and attract public interest. Yet section 7 entails that no debate is required before the compensation scheme becomes law, just as the truncated legislative timetable admitted of virtually no debate on the matter when the Bill was enacted.

- The Memorandum (para 23) says that the power under section 7 is “not of a similar nature to those which are commonly subject to the affirmative procedure”.

We agree. The extraordinary background and context of the events triggering the compensation scheme under section 7 is unlike anything we have seen before. The idea that something so unusual and controversial (preceded by emergency legislation and perhaps involving substantial sums of public money) can be achieved through negative procedure regulations is highly unusual.

- The Memorandum says that the compensation scheme does not provide for the creation of criminal offences and does not involve amending or repealing primary legislation.

We agree. Compensation schemes are designed to compensate and don't typically involve the creation of criminal offences. The affirmative procedure can be, and often is, used when there are no criminal offences in issue and where primary legislation is not amended. In fact, the context of the section 7 scheme is underpinned by criminal offences, injunctions and other civil remedies. The significance and context of the compensation scheme demanded the use of the affirmative resolution procedure.

- The Memorandum says that the power in section 7 resembles similar powers in other legislation, which have been subject to the negative procedure; for example, the power in the Armed Forces (Pensions and Compensation) Act 2004 to establish compensation schemes for personnel injured in the armed or reserve forces.

The context and significance of the compensation scheme under section 7 is unique and bears no resemblance to the armed forces precedent. There can be few things on which parliamentarians are more likely to agree than the need for fair compensation for wounded service personnel. The context of section 7 is different. It is apt to involve controversial, ongoing and expensive action opposed by steel undertakings, perhaps against the background of criminal prosecutions against directors and others. The size of the compensation might be considerable. As for the mechanism according to which compensation is payable, it does not appear on the face of the Act; everything will depend on regulations.

29. **Had sufficient time been allowed to report on the Bill before enactment, we would have recommended that regulations under section 7 be subject to the affirmative resolution procedure.**

APPENDIX 1: MEMBERS' INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at <https://www.parliament.uk/hlregister>. The Register may also be inspected in the Parliamentary Archives. For the business taken at the meeting on 30 April 2025, the following interests were declared:

Baroness Finlay

Extensively involved in tobacco control measures during Parliamentary role

Viscount Goschen

Senior Client Partner for Korn Ferry International, which works for sectors including (among others) metals and mining

Attendance

The meeting was attended by Baroness Ramsey of Wall Heath, Lord Goodman of Wycombe, Baroness Bakewell of Hardington Mandeville, Viscount Goschen, Baroness Finlay of Llandaff, Lord Rowlands and Lord Hall of Birkenhead.