EXPLANATORY MEMORANDUM

THE TOBACCO AND VAPES ACT 2026 (AGE OF SALE NOTICES AND CONSEQUENTIAL AMENDMENTS) REGULATIONS (NORTHERN IRELAND) 2026

(S.R. 2026 No. xxx)

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health to accompany the above-named Statutory Rule which is laid before the Northern Ireland Assembly.

1.2 The Tobacco and Vapes Act 2026 (Age of Sale Notices and Consequential Amendments) Regulations (Northern Ireland) 2026 (the Regulations) are made under Article 4D(4) of the Health and Personal Social Services (Northern Ireland) Order 1978 and section 171 of the Tobacco and Vapes Act 2026. It is subject to the negative resolution procedure.

1.3 The Regulations are to come into operation on 1 January 2027.

2. Purpose

2.1 The purpose of the Regulations is to prescribe the minimum size requirements for age of sale notices that retailers selling tobacco products in Northern Ireland will be required to display on their premises from 1 January 2027, following the introduction of the new age of sale for tobacco products under the Tobacco and Vapes Act 2026 ("the 2026 Act").

2.2 The Regulations also amend the requirements for age of sale notices that bulk tobacconists must display at the entrance to tobacco areas on their premises. In addition, the Regulations make consequential amendments to existing secondary legislation governing the display of tobacco products and tobacco product prices in Northern Ireland.

2.3 The Regulations revoke The Protection from Tobacco (Display of Warning Statements) Regulations (Northern Ireland) 1993, as the provisions contained in those Regulations will cease to have legal effect from 1 January 2027 following the revocation of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 by the Tobacco and Vapes Act 2026.

3. Legislative Background

Age of sale notices at point of sale

3.1 The Health and Personal Social Services (Northern Ireland) Order 1978 (HPSS 1978 Order) made it an offence to sell tobacco or cigarette papers to persons under the age of 16 in Northern Ireland. The minimum age of sale was subsequently raised to 18 through the Children and Young Persons (Sale of Tobacco etc) Regulations (Northern Ireland) 2008, in the exercise of powers conferred by the Smoking (Northern Ireland) Order 2006.

3.2. In 2022, The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations (Northern Ireland) 2021 came into operation under powers from the Health Miscellaneous Provisions Act (Northern Ireland) 2016 (HMPA 2016). These Regulations made it an offence to sell nicotine inhaling products to persons under 18. The Regulations also amended Article 4A of The HPSS 1978 Order to prohibit the purchase of nicotine products on behalf of a person under 18 (proxy purchase).

3.3 Article 5 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 ("the 1991 Order") sets out the previous requirement for tobacco retailers in Northern Ireland to display an age of sale notice at the point of sale stating, "It is illegal to sell tobacco products to anyone under the age of 18".

3.4 Section 76 of the 2026 Act amends HPSS 1978 Order to replace the existing age of sale notice requirement in the 1991 Order with a new requirement for tobacco retailers in Northern Ireland to display an age of sale notice at the point of sale stating "It is illegal to sell tobacco products to anyone born on or after 1 January 2009" from 1 January 2027.

3.5 The Protection from Tobacco (Display of Warning Statements) Regulations (Northern Ireland) 1993 ("the 1993 Regulations"), which were made under the power in Article 5 of the 1991 Order, prescribed the minimum dimensions of these notices, and the minimum size of the statement on the notice.

3.6 The 1993 Regulations will cease to have any legal effect on 1 January 2027 when the 1991 Order is revoked. Regulation 2 of the Regulations prescribes the minimum dimensions of the new notice which must be displayed in accordance with section 76 of the 2026 Act. Regulation 3 prescribes the minimum size of the statement to be contained in that notice.

Notices for bulk tobacconists

3.7 Regulation 5 (Display in bulk tobacconists) of The Tobacco Advertising and Promotion (Display) Regulations (Northern Ireland) 2012 ("the Display Regulations 2012") permits the display of tobacco products by bulk tobacconists in prescribed circumstances, this includes the requirement that a

notice must be exhibited at the entrance to the tobacco area which displays the statement in regulation 5(2)(b).

3.8 Regulation 4(3) of the Regulations amends Regulation 5 of the Display Regulations 2012 to update the prescribed wording and the minimum size of the statement which must be displayed on the notice. It also re-enacts the minimum size requirement for the notice. These changes ensure the age of sale notices to be displayed by bulk tobacconists align with the age of sale notice requirements for tobacco retailers in Northern Ireland, imposed by and under section 76 of the 2026 Act.

Display of Tobacco Products and Prices

3.9 Regulation 4 of the Regulations amends the Display Regulations 2012 in consequence of section 72 of the 2026 Act, which changes the required age at which an individual can legally be sold tobacco products from 18 years or over, to having been born before 1 January 2009. This Regulation replaces references to an individual being "aged 18 or over" or "aged under 18" with references to an individual's date of birth being either before 1 January 2009 or on or after 1 January 2009.

3.10 Regulation 5 of the Regulations makes equivalent amendments to regulation 7 of The Tobacco Advertising and Promotion (Display of Prices) Regulations (Northern Ireland) 2012 (price lists: available only on request). These amendments replace references to an individual being "aged 18 or over" or "aged under 18" with references to an individual's date of birth being either before, or on or after 1 January 2009.

3.11 Equivalent amendments to section 7B of the Tobacco Advertising and Promotion Act 2002 ("the 2002 Act") are being made by separate UK regulations.

4. Policy Background

4.1 The Tobacco and Vapes Act 2026 introduced a new age of sale for tobacco products across the UK. From 1 January 2027, it will be an offence to sell tobacco products, herbal smoking products and cigarette papers to anyone born on or after 1 January 2009. This replaces the previous minimum age of sale of 18 years. In practice, this means that the age of sale will increase incrementally over time.

4.2 This policy aims to create a 'smoke-free generation', reducing tobacco use in the UK population over time. It responds to the evidence that smoking is the number one preventable cause of death, disability and ill health. In Northern Ireland, tobacco use is responsible for around 2,000 deaths annually and places a substantial burden on health and social care services. Smoking is also a major driver of health inequalities and significantly increases the risk of a wide range of serious health conditions throughout an individual's lifetime.

Age of sale notices at point of sale

4.3 The 1993 Regulations prescribe the previous requirements for the age of sale notice to be displayed by tobacco retailers at each point of sale. Under those Regulations such notices must measure a minimum of 297 millimetres by 420 millimetres (A3 size) and each character must be a minimum of 36 millimetres high.

4.4 Section 76 of the 2026 Act introduced a requirement for tobacco retailers in Northern Ireland to display, in a prominent position visible at each point of sale, a notice stating "It is illegal to sell tobacco products to anyone born on or after 1 January 2009". This requirement comes into operation concurrently with the new age of sale provisions and replaces the previous age of sale notice requirement, which reflected the old offence of selling to anyone under the age of 18. The requirement to display an age of sale notice aims to raise awareness of the age of sale restrictions and encourage compliance.

4.5 The Regulations prescribe the minimum size requirements for the revised age of sale notices to be displayed in tobacco retail premises in Northern Ireland. The Regulations retain the existing minimum size of these notices, namely, 297 millimetres by 420 millimetres (A3 size). However, as the prescribed statement is longer than the previous wording required, the minimum character height is reduced from 36 millimetres to 21 millimetres to ensure the full statement fits onto an A3 notice.

Notices for bulk tobacconists

4.6 The Display Regulations 2012 provide an exemption from the prohibition on the display of tobacco products in shops for bulk tobacconists. This exemption permits bulk tobacconists to display tobacco products in a tobacco area, provided that certain requirements are met. One such requirement is the display of an age of sale notice at the entrance to the tobacco area.

4.7 Under the Display Regulations 2012, the requirements for the notices that bulk tobacconists had to display at the entrance to tobacco areas mirrored the requirements for point-of-sale notices for tobacco retailers (i.e. stating "It is illegal to sell tobacco products to anyone under the age of 18", at least 297 millimetres by 420 millimetres and each character at least 36 millimetres high).

4.8 The Regulations amend the requirements for these notices, so that they align with the new text and size requirements of the notices that tobacco retailers in Northern Ireland will be required to display at each point of sale, namely, the minimum character height is reduced from 36 millimetres to 21 millimetres to ensure the full statement fits onto an A3 notice.

Display of Tobacco Products

4.9 Section 7B of the 2002 Act contains an exemption that permits retailers to display tobacco products to a customer aged 18 or over, when a customer requests to purchase a tobacco product or requests information about a tobacco product. The UK Government is laying a statutory instrument to make consequential amendments to this exemption, to ensure alignment with the new age of sale offence introduced by the 2026 Act, and will apply only to individuals who can legally be sold tobacco products.

4.10 The Display Regulations 2012 contain a further exemption relating to requested displays to people aged 18 or over. This exemption ensures that no offence is committed if individuals other than the person who requested the display see the products, provided that certain criteria are met. These Regulations update the age-related references contained in that exemption to reflect the new age of sale introduced by the 2026 Act.

Display of Tobacco Prices

4.11 The Tobacco Advertising and Promotion (Display of Prices) Regulations (Northern Ireland) 2012 contain an exemption that permits retailers to display price lists containing pictures of tobacco products, only in response to customer requests for information about a tobacco product.

4.12 The Regulations amend the existing exemption, to align the age at which customers may, on request, be shown a picture price list for tobacco products with the new age of sale. This ensures that picture price lists for tobacco products may only be shown to customers who are legally old enough to purchase those products.

4.13 This amendment does not represent a change in policy; it maintains the existing policy that picture price lists for tobacco products may only be shown to individuals who are over the legal age of sale.

5. Consultation

5.1 From October to December 2023, the previous UK Government conducted a public consultation on proposals for inclusion in the Tobacco and Vapes Bill. The consultation received 27,921 responses, comprising 896 organisational responses and 27,025 responses from individuals.

5.2 The consultation sought views on the proposed change to the age of sale for tobacco products. Of those who responded, 63.2% supported the proposal, 32.2% opposed it and 4.6% were undecided.

5.3 The consultation also sought views on updating age-of-sale notices in retail premises to reflect the new age-of-sale requirements. A total of 71.8% of respondents agreed with the proposal, 22.6% disagreed and 5.6% were undecided. While respondents were not specifically asked about the size or appearance of notices, a small number provided comments on these matters.

5.4 The Regulations are technical and consequential in nature. They implement changes arising from the Tobacco and Vapes Act 2026 relating to the age of sale for tobacco products and do not introduce new policy. A separate public consultation was therefore not considered necessary.

5.5 Relevant stakeholders, including district councils, have been informed of the forthcoming changes. District councils are designated as the enforcement authorities in Northern Ireland for tobacco-related age of sale offences under the Tobacco Retailers Act (Northern Ireland) 2014.

6. Equality Impact

6.1 In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department conducted a screening exercise on the proposals and concluded that they do not have any significant implications for equality of opportunity.

6.2 The Rule will not affect any of the section 75 groups disproportionately. In light of this, the Department considers that an equality impact assessment is not necessary.

7. Regulatory Impact

7.1 It is anticipated that there will be an initial cost for retailers in terms of training staff and raising awareness of the new age of sale restriction and the product range to which it applies. However, this will be a one-off cost, as opposed to a recurring annual cost. There is some limited evidence to suggest that retailers do not view the process of age-checking as excessively burdensome.

7.2 The costs associated with retailers familiarising themselves with the wider changes to the age of sale have already been accounted for as part of the Impact Assessment for the 2026 Act. Those costs are expected to include the display related requirements introduced by these Regulations.

7.3 The cost to retailers of replacing age of sale signage was also estimated as part of the Impact Assessment for the 2026 Act. However, that Impact Assessment did not account for the cost to bulk tobacconists of replacing age of sale notices displayed at the entrance to tobacco areas on their premises. The costs to these businesses are expected to be small, given the small number of these businesses and the low cost of replacement notices.

7.4 As the Regulations, in terms of additional costs, are therefore expected to have only a minor, indirect, initial and transitory effect on businesses and do not impose any additional costs on voluntary organisations or the public sector, the Department considers that a regulatory impact assessment is not necessary.

8. Rural Needs

8.1 The Department has assessed the proposals in line with the Rural Needs Act (Northern Ireland) 2016 and has determined they will not have an adverse impact on rural communities.

9. Data Protection

9.1 The Department does not consider that the Regulations affect the obtaining, handling or use of personal information relating to retailers of tobacco, vape, or nicotine products. The Regulations are considered to be consistent with data protection principles as set out in both the General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679) and the Data Protection Act 2018.

10. Financial Implications

10.1 The Regulations will have no financial implications for the Department of Health.

10.2 The will be costs for retailers associated with familiarising themselves with the wider changes to the age of sale including the display related requirements introduced by these Regulations and the cost of replacing age of sale signage. The Regulations are expected to have only a minor effect on businesses.

11. Section 24 of the Northern Ireland Act

11.1 The Department is satisfied that the Regulations are compatible with section 24 of the Northern Ireland Act 1998.

12. EU Implications

12.1 None.

12.2 The Windsor Framework is an international arrangement between the UK and the EU under which the parties commit to binding international law obligations, including changes to the Protocol itself.

12.3 The Regulations are consequential upon the provisions of the UK-wide Tobacco and Vapes Act 2026, which primary legislation, the UK Government has confirmed, is enacted in keeping with the terms agreed in The Windsor Framework. That agreement includes the following undertakings:

i. Article 2 (Rights of individuals) - The United Kingdom shall ensure that no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Good Friday/ Belfast Agreement entitled Rights, Safeguards and Equality of Opportunity results from its withdrawal from the European Union, including in the area of

protection against discrimination, as enshrined in the provisions of European Union law listed in Annex 1 to this Protocol, and shall implement this paragraph through dedicated mechanisms; and,

ii. Article 5(4) (Customs, movement of goods) of The Windsor Framework requires that the provisions of European Union law listed in Annex 2 shall also apply, under the conditions set out in that Annex, to and in the United Kingdom in respect of Northern Ireland. Directive 2014/40/EU, also known as the Tobacco Products Directive (TPD), makes stipulation on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products. It is listed in an Annex 2 of The Windsor Framework.

13. Parity or Replicatory Measure

13.1 This Statutory Rule applies only to Northern Ireland. The UK Government and the devolved administrations in Scotland and Wales are developing separate regulations relating to age of sale notices. The UK and Welsh governments are also developing regulations that will make equivalent amendments to their respective secondary legislation governing the display of tobacco products and tobacco product prices.