FROM THE MINISTER OF HEALTH

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Dear Keith

THE TOBACCO AND VAPES ACT 2026 (AGE VERIFICATION DEFENCE TO UNDERAGE SALES) REGULATIONS (NORTHERN IRELAND) 2026

The Department of Health proposes to make a Statutory Rule under the powers conferred by Articles 3(3) and 4H(3) of the Health and Personal Social Services (Northern Ireland) Order 1978[1] ("the 1978 Order").

The Statutory Rule is subject to the draft affirmative resolution procedure before the Assembly and will be made and laid once all the necessary approvals are in place.

Purpose of the Statutory Rule

The Statutory Rule helps to deliver the age of sale provisions contained in the Tobacco and Vapes Act 2026 ("the 2026 Act"), which is UK in extent, and a Westminster enactment which has the support of the Assembly[2]. The 2026 Act received Royal Assent on 29th April 2026. Sections 72, and 80 of the 2026 Act amend Part 2 of The Health and Personal Social Services (Northern Ireland) Order 1978, to establish a new legislative framework governing the age of sale for tobacco, vaping and nicotine products.

From 1 January 2027, it will be unlawful to sell tobacco products, herbal smoking products or cigarette papers to anyone born on or after 1 January 2009. This change replaces the existing minimum age of sale of 18. As a result, the legal age for purchasing these products will increase progressively over time. The Act also inserts new Article 4H into the 1978 Order which made it an offence, from the 29th October 2026, to sell vaping products or nicotine products to persons under the age of 18.

[1] S.I. 1978/ 1907 (N.I. 26); Article 3 was substituted by section 72 of Tobacco and Vapes Act 2026 (c.18) and Article 4H was inserted by section 80 of that Act

[2] A Legislative Consent Motion (LCM) was agreed by the NI Assembly on 10 February 2025

The Rule prescribes the steps that a person may take to verify that a customer was born before 1 January 2009 before the sale of tobacco products, herbal smoking products or cigarette papers, or that a customer is aged 18 or over before the sale of vaping products or nicotine products.

The Regulations provide for such steps to be taken by means of physical identification documents, like those already required in respect of the sale of alcohol. The document must be one of the following:

a) a passport;
b) a photocard driving licence;
c) an electoral identity card; or
d) a photographic identity card of a type approved by the National Proof of Age Standards Scheme (PASS).

The physical identification documents listed above provide a defence to those offences in article 3(2)(a) (Age of sale for tobacco products etc) and article 4H(2)(a) (Sale of vaping or nicotine products to under 18s) of the 1978 Order. To satisfy this defence using a physical identity document, the person charged with an age of sale offence must prove that they inspected a document that the customer showed them before the sale.

In addition to specifying the physical identification documents that may be accepted as proof of age, the Regulations also provide retailers with the option to use digital identification, verified by government approved digital verification service providers, as an acceptable method of age verification for the sale of tobacco, vaping and nicotine products. The inclusion of government-approved digital verification services is intended to provide retailers and consumers with a secure alternative method of age verification.

This Rule is necessary to support the effective implementation of the age-of-sale provisions contained in the 2026 Act as they apply to Northern Ireland. It provides clarity for retailers on the age verification methods that may be used when selling tobacco, vaping and nicotine products, thereby supporting compliance with the new legislative framework. The provisions in these regulations will commence on 1 February 2027.

Previous Engagement with the Committee

None

Financial Implications

There are no financial cost implications for the Department.

This Rule broadly aligns the use of physical identification for age verification with the age verification provisions contained in The Licensing (Northern Ireland) Order 1996 for alcohol sales. This aims to ensure that the many retailers who sell alcohol and products within the scope of these regulations can take a consistent approach to age verification across both sets of products, which should minimise any additional costs to business.

However, businesses will be impacted if they choose to implement digital verification services (DVS) to verify a customer's age before selling tobacco products, herbal smoking products, cigarette papers, vaping products or nicotine products.

There is expected to be a cost incurred by businesses that adopt DVS because of DVS providers charging licence holders for the provision of their DVS. In the absence of evidence on how much DVS providers will charge. Cost estimates developed for England and Wales have calculated an average charge of 15p per DVS check. Equivalent cost estimates have not been produced for Northern Ireland.

Consultation

Between October and December 2023, the previous UK government consulted on proposals for the Tobacco and Vapes Bill, receiving 27,921 responses from individuals and organisations. The consultation showed majority support for the key measures, with 63.2% of respondents supporting the proposed generational increase in the age of sale for tobacco products. Although the questions in the consultation focused on the core policies under consideration for inclusion in the primary legislation, several of the responses were relevant to these regulations. Some of the responses suggested forms of physical and digital identification that should be acceptable proofs of age and highlighted the need to consider customers who may not hold common forms of identification.

The Department engaged with representatives of the Northern Ireland retail sector on the proposals contained in the Regulations. Retail Organisations were provided with an opportunity to consider the proposals and provide feedback. No concerns or issues were raised.

This Rule supports the effective implementation of the age of sale provisions contained in the 2026 Act which have already been impact assessed. The Department, therefore, did not consider a separate public consultation was necessary.

Compliance with section 24 of the Northern Ireland Act 1998

The proposals in this Statutory Rule relate solely to the provisions, as listed above, and do not impose restrictions on individual rights. The Department has concluded that the proposals are compatible with the European Convention on Human Rights and section 24 of the Northern Ireland Act 1998. Furthermore, as the changes in the Rule are administrative in nature and do not alter or result in a diminution of rights, safeguards or equality of opportunity, they do not, therefore, engage Article 2(1) of the Windsor Framework. Given the scope of the proposals, engagement with either the Equality Commission for Northern Ireland or the Northern Ireland Human Rights Commission was not considered necessary.

Consideration by the Executive

The SL1 and draft Statutory Rule have not been considered by the Executive as there was no requirement to do so. The Statutory Rule does not engage paragraph 2.4 of the Ministerial Code.

Equality Impact

An Equality Screening was carried out by the Department. The policy proposals have been considered under section 75 of the Northern Ireland Act 1998. The Department considers the proposals to fully comply with the legislation with no adverse impact on any of the section 75 Groups. An equality impact assessment is not considered necessary.

Regulatory Impact

The Regulations do not impose any mandatory additional costs on businesses, voluntary organisations, or the public sector. The Department considers that a regulatory impact assessment is not necessary.

Businesses may incur costs where they elect to utilise digital verification services (DVS) to verify a customer's age prior to the sale of tobacco products, herbal smoking products, cigarette papers, vaping products or nicotine products. Any such costs would arise from a voluntary business decision to adopt digital age-verification measures and are not a requirement imposed by these Regulations.

Rural Needs Impact Assessment

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.

Data Protection Impact

These Regulations, which are specific to Northern Ireland, do not introduce new requirements for the collection, handling and processing of data.

The use of digital identification, as a method for age verification, is entirely optional and, therefore, does not place a mandatory requirement on either customers or retailers to use or adopt digital verification services. For those customers and retailers who choose to use digital identification, such data provided will be processed by a government approved digital verification service provider.
The Regulations are made under, and give effect to, the tobacco age-of-sale provisions contained in the 2026 Act, which has already been impact assessed.

The Department considers that these regulations are compliant with the requirements of the Data Protection Act 2018 and the GDPR and that the Regulations are consistent with the data protection principles set out therein. A Data Protection Impact Assessment is not considered necessary.

Child Rights Impact

The proposals do not involve any direct impact on children's rights; therefore, a Child Rights Impact Assessment is not considered necessary.

Windsor Framework

UK Government has confirmed that the 2026 Act as enacted is in keeping with the terms agreed in The Windsor Framework. That agreement includes the following undertakings:

- Article 2 (The Rights of Individuals) of the Windsor Framework which provides for no diminution of rights, safeguards or equality of opportunity, as set out in that part of the 1998 Belfast (Good Friday) Agreement entitled *Rights, Safeguards and Equality of Opportunity* which results from the UK's withdrawal from the European Union.
- Article 5(4) (Customs, movement of goods) and Annex 2 of the Windsor Framework, which requires that the provisions of European Union law listed in Annex 2 of that agreement shall also apply, under the conditions set out in that Annex, to and in the United Kingdom in respect of Northern Ireland.

The proposed regulations are wholly consequential upon the 2026 Act and, therefore, they are also in keeping with the terms agreed in The Windsor Framework.

Specifically, the provisions of the Regulations do not introduce a diminution of rights, safeguards or equality of opportunity as set out in the 1998 Belfast ("Good Friday") Agreement, as required by Article 2 (The Rights of Individuals) and Annex 1 of the Windsor Framework.

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. This EU Directive is listed in Annex 2 of The Windsor Framework. The proposed regulations are consistent with, and do not diminish the requirements of, Article 5(4) (Customs, movement of goods) and Annex 2 of the Windsor Framework.

Position in Great Britain

The UK Government is currently developing separate Age Verification Regulations for England and Wales. The policy intent of those Regulations are consistent with those of this Statutory Rule. Both regulations intend to support the effective implementation of the new age-of-sale provisions for tobacco, vaping and nicotine products, and provide greater clarity for retailers and consumers regarding age-verification requirements. The Scottish Government is continuing to consider policy options for age verification and has not yet commenced the development of corresponding regulations.

Position in Republic of Ireland

The Republic of Ireland (RoI) enacted *the Public Health (Tobacco) (Amendment) Act 2024 (Act No. 47 of 2024)*, which was signed into law on 13 November 2024, and raises the minimum legal age for purchasing tobacco products in Ireland to 21 and strengthens

restrictions on nicotine inhaling products. It prohibits the retail sale of tobacco products to anyone under 21 and prohibits the retail sale of nicotine inhaling products (e-cigarettes, vapes) to persons under 18. A defence exists if the child presented valid ID (age card, passport, or driving licence).

Unlike the UK, the RoI does not have equivalent primary legislation which creates a smoke-free generation. The UK legislation means that the age of sale gradually rises over time.

Any other information

None.

Proposed timing of consideration of the SL1

The SL1 has been submitted to the Committee in accordance with the minimum four-week timeframe and the Department would propose that the Committee considers it at their next scheduled meeting to ensure that the regulations come into operation as soon as possible.

Proposed Operational Date

These Regulations must be in operation no later than 1st February 2027, to support sections 72 (Age of sale for tobacco products etc), and 80 (Age of sale for vaping and nicotine products), of the Tobacco and Vapes Act 2026. It is proposed that the Statutory Rule will be made and laid as soon as all necessary approvals are received. A draft of the proposed Statutory Rule is attached.

When the finalised Statutory Rule together with the Explanatory Memorandum has been laid at the Assembly Business Office, the Business Office will submit copies to the Committee.

I should be grateful if you would please bring this matter to the attention of the Committee for Health at your earliest convenience.

Yours sincerely

Robbie

Robbie Butler MLA
Minister of Health

cc.
NI Human Rights Commission
Equality Commission
Gary Mervyn (Departmental Assembly Liaison Officer)
Siobhan Broderick (Director of Population Health, Department of Health NI)
Lesley Heaney (Head of Tobacco Control and Infected Blood Compensation Policy Branch, Department of Health NI)