EXPLANATORY MEMORANDUM

THE TOBACCO AND VAPES ACT 2026 (AGE VERIFICATION DEFENCE TO UNDERAGE SALES) REGULATIONS (NORTHERN IRELAND) 2027

(S.R. 2027 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 Verification Defence to Underage Sales) Regulations (Northern Ireland) 2027 (the Regulations) are made using powers provided under Articles 3(3) and 4H(3) of the Health and Personal Social Services (Northern Ireland) Order 1978 ("the 1978 Order"). They are subject to the draft affirmative resolution procedure before the Assembly.

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

2. Purpose

2.1 The purpose of the Regulations is to prescribe the steps which a person may take in order to verify that a customer was born before 1 January 2009, a criterion which must be established before the sale of tobacco products, herbal smoking products or cigarette papers may be legally made, or that a customer is aged 18 years or over before the legal sale of vaping products or nicotine products may be made.

2.2 Under Articles 3(2)(a) and 4H(2)(a) of the 1978 Order, a person charged with an offence of selling those products to someone under the age of sale may establish a defence by proving that they took the steps specified in the Regulations. The specified steps provide for age verification using both physical identity documents and digital identification and set out the circumstances in which a person charged with an age of sale offence may rely on each method.

3. Legislative Background

Tobacco age of sale

3.1 The 1978 Order made it an offence to sell tobacco or cigarette papers to persons under the age of 16 in Northern Ireland. Article 14 of the Smoking (Northern Ireland) Order 2006 included a power for the Department to amend, by regulations, the age limit for the sale of tobacco products (but not lower than 16 years). The minimum age of sale was subsequently increased to 18 through the

Children and Young Persons (Sale of Tobacco etc) Regulations (Northern Ireland) 2008.

3.2 Under Article 3 of the 1978 Order, a person charged with an offence of selling tobacco or cigarette papers to a person aged under 18 may rely on a defence where they may demonstrate that they had taken all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

3.3 Section 72 of the 2026 Act amends Article 3 of the 1978 Order to establish a new age of sale offence for tobacco products, herbal smoking products and cigarette papers from 1 January 2027.

3.4 The 2026 Act also replaces the existing statutory defence contained in the 1978 Order with the following defences:

3.4.1 Article 3(2)(a) of the 1978 Order provides that it is a defence for a person charged with a tobacco age of sale offence to prove that they took such steps as may be specified in regulations made by the Department of Health to verify that the customer was over the age of sale. The Regulations prescribe the steps that must be satisfied in order to make such a defence.

3.4.2 Article 3(2)(b) of the 1978 Order provides an alternative defence, that the person charged with the offence 'otherwise took all reasonable steps to avoid the commission of the offence'.

<u>Vaping and nicotine products age of sale</u>

3.5 The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations (Northern Ireland) 2021 were introduced under powers in the Health Miscellaneous Provisions Act (Northern Ireland) 2016 ("the 2016 Act"). These Regulations made it an offence to sell nicotine inhaling products to persons under 18. The Regulations also amended Article 4A of the 1978 Order to prohibit the purchase of nicotine products on behalf of a person under 18 years of age (proxy purchase).

3.6 The 2016 Act provides a defence, whereby a person may demonstrate that they had taken all reasonable precautions and exercised all due diligence to avoid committing the offence of selling nicotine inhaling products to a person aged under 18.

3.7 The 2026 Act repeals the statutory defence contained in the 2016 Act with effect from 29 October 2026.

3.8 Section 80 of the 2026 Act inserts Article 4H into the 1978 Order which establishes a new age of sale offence for vaping products and relevant nicotine products from 29 October 2026.

3.9 Article 4H(2)(a) of the 1978 Order provides that it is a defence for a person charged with a vaping product or nicotine product age of sale offence to prove that they took such steps as may be specified in regulations made by the Department of Health to verify that the customer was over the age of sale. The Regulations prescribe the steps that must be satisfied to meet these defences.

3.10 Article 4H(2)(b) of the 1978 Order provides an alternative defence, that the person charged with the offence 'otherwise took all reasonable steps to avoid the commission of the offence'.

4. Policy Background

4.1 The 2026 Act[1] introduced new age of sale requirements for relevant products across the UK, these include but are not limited to:

- Tobacco Products;
- Herbal Smoking Products;
- Nicotine Products;
- Vaping Products.

4.2 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.

4.3 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.

4.4 From 29 October 2026, it is an offence to sell any vaping product or nicotine product to a person who is under the age of 18. This replaces the previous age of sale restrictions which applied only to nicotine inhaling products. The change aims to close gaps in the previous legislative framework and ensure that non-nicotine vapes and nicotine products cannot be sold to anyone under the age of 18. Extending restrictions to cover all vapes aims to prevent children and young people accessing these products and to avoid loopholes which can be exploited. Nicotine products, particularly nicotine pouches, are becoming increasingly popular. Research published by the Public Health Agency in 2025 found that, in Northern Ireland 20% of 11–16-year-olds had tried a nicotine vape at least once and 15% are current nicotine vape users.

4.5 The Regulations prescribe steps that a person may take to verify a customer's age before selling any of these products. Under the 1978 Order as amended, a

[1] Part 3 (Sale and distribution: Northern Ireland) (see also section 86 for product definitions).

person charged with an age of sale offence may rely on a statutory defence by proving that they took the relevant steps specified in the Regulations. This aims to provide greater clarity for retailers about how they can verify the age of customers attempting to buy these products and to encourage them to implement robust age verification procedures, thereby supporting the success of the new age of sale provisions.

4.6 The Regulations provide for two alternative methods of age verification: verifying a physical identity document meeting certain criteria or digital identification meeting certain criteria. These criteria are outlined below. A person charged with an age of sale offence who can prove that they took the specified steps for either method before selling the product will be able to rely on the defence.

4.7 The provisions relating to the use of physical identification documents for age verification have been designed to broadly align with the relevant age verification provisions contained within The Licensing (Northern Ireland) Order 1996 (the 1996 Order) for alcohol sales, thereby supporting consistency for retailers and consumers across age-restricted products.

4.8 The 1978 Order also provides a separate defence where a person charged with an age of sale offence proves that they otherwise took all reasonable steps to avoid committing the offence. This defence is provided under Articles 3(2)(b) and 4H(2)(b) of the 1978 Order inserted by sections 72 and 80 of the 2026 Act. That separate defence remains available, and compliance with the steps specified in the Regulations is, therefore, not the only means of establishing a defence to an age of sale offence.

Physical Identification Documents

4.9 Regulation 3 of the Regulations provides for steps that must be taken by a person to verify the age of a customer by means of physical identification documents, for the purposes of the defence to those offences in Articles 3(2)(a) and 4H(2)(a) of the 1978 Order.

4.10 To satisfy the 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. The document must be:

(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).

4.11 For tobacco products, herbal smoking products or cigarette papers, the date of birth must be before 1 January 2009. For vaping and nicotine products, the date of birth must confirm that the customer is 18 or over.

4.12 These requirements broadly align with the requirements in the 1996 Order for alcohol sales. This aims to ensure that the many retailers who sell alcohol and products in scope of these Regulations can take a consistent approach to age verification across both sets of products.

Digital Identification Documents

4.13 Regulation 4 of the Regulations provides, alternatively, that a person charged with an age of sale offence may satisfy the defence by proving that they verified the customer's age through certain forms of digital identification, rather than a physical identity document.

4.14 The Regulations do not require individuals to use digital identification for age verification, nor do they require businesses to adopt its use, and customers and retailers may prefer to continue to use physical identity documents. Rather, the Regulations provide an additional voluntary option for age verification. This aligns with the UK Government's wider commitment to modernise age verification, reflecting how some people now shop, and technological advancements whilst minimising the sharing of personal data and avoiding the need to carry physical identity documents.

4.15 The digital identification provisions in the Regulations refer to digital verification services ("DVS"), as defined under section 27 of the Data (Use and Access) Act 2025 ("the 2025 Data Act") and their providers ("DVSP") listed in the statutory digital verification services register ("DVS register"), which is established and maintained under section 32 of the 2025 Data Act.

4.16 The 2025 Data Act established a statutory regime of standards, governance and oversight for registered DVS. To be listed in the DVS register, a DVSP must hold a valid certificate issued by an accredited conformity assessment body (who must be so accredited by the UK Accreditation Service). That certificate must confirm that they are providing DVS in accordance with the UK DVS trust framework published under section 28 of the 2025 Data Act ("the DVS trust framework").

4.17 The rules in the DVS trust framework draw on existing technical standards, best practice, guidance and legislation. They also place rigorous security requirements on certified DVSPs based on robust international standards. The DVS trust framework rules are intended to support secure and privacy-enhancing DVS.

4.18 To satisfy the defence using digital identification, the person charged with an age of sale offence must prove that they confirmed that the customer provided digital identification, which the person could verify in line with their DVS agreement (see paragraph 4.19 below). They must prove that they then used this digital identification provided by the customer to verify that the customer met the relevant age requirement. This verification must take place through

technological means, for example by scanning a QR code or through another technical mechanism provided by the DVS; a visual inspection of the digital identification will not be sufficient.

4.19 A person can only accept and verify digital identification if they are covered by an agreement with a UK Government-registered DVSP ("the relevant DVSP") for the delivery of DVS, where the following criteria are met:

4.19.1 The relevant DVSP has agreed that, while providing its services, it will confirm whether the customer has attained the relevant age. This means that the relevant DVSP must provide information (such as a date of birth, age, or yes/no response) that enables the person selling the relevant product to determine whether a customer attempting to buy tobacco products, herbal smoking products or cigarette papers was born before 1 January 2009 or whether a customer attempting to buy vaping or nicotine products is at least 18 years old.

4.19.2 The relevant DVSP has agreed that it will deliver identification that reaches at least a 'medium level of confidence', as defined in either version 0.4 or 1.0 of the DVS trust framework, depending upon which version (of the DVS trust framework) the registered DVS being provided is registered against.

4.19.3 The level of confidence must have been verified by a DVSP, whether that DVSP is the DVSP providing the service to the person selling the product (i.e. the relevant DVSP) or another DVSP.

4.19.4 The relevant DVSP is registered as a provider of those services in accordance with either version 0.4 or version 1.0 of the DVS trust framework.

4.20 The Regulations recognise both version 0.4 and version 1.0 of the DVS trust framework to support the transition between framework versions and ensure that services registered against either version can continue to be relied upon.

4.21 The requirements set out above aim to prevent the improper use of digital identification for the purposes of verification and are designed to protect an individual's data.

4.22 The requirements are also intended to ensure that digital identification used for age verification is based on robust evidence about the individual and can be trusted to relate to that individual. This reduces the risk of someone fraudulently obtaining a digital proof of age or using one that relates to someone else. By requiring use of a registered DVSP and preventing visual inspection of the digital identification being relied upon for the proof of age check, the Regulations support persons selling relevant products to be confident that the proof of age has not been tampered with, for example, by altering a screenshot of the digital identification being relied upon.

4.23 DVS can be used both for in-person sales and online sales of tobacco products, herbal smoking products, cigarette papers, vaping products and nicotine products.

Corporate defendants

4.24 To satisfy this defence, the person charged with the offence must have completed the steps specified in these Regulations. Any person who cannot provide evidence that they completed these steps may still be able to rely upon the alternative defence in the 1978 Order, namely, that they took all reasonable steps to avoid committing the offence. This may apply to corporate defendants where they are unable to show they have completed the steps specified in the Regulations directly but can demonstrate they have taken other actions. It will be for a court to determine what constitutes all reasonable steps under the alternate defence. The Department intends to update its existing guidance to support corporate retailers with compliance with age verification requirements.

Coming into Operation

4.25 The Regulations come into operation on 1 February 2027, and the defence established by these Regulations applies in relation to tobacco, vaping, and nicotine related offences committed on or after this date. Consequently, there will be a short interim period between the commencement of the new vaping products and nicotine products age of sale offence under Article 4H of the 1978 Order on 29 October 2026, the new tobacco age of sale offence under Article 3 of the 1978 Order on 1 January 2027 and the date on which the defence provided by these Regulations begins to apply.

4.26 The alternative defence contained in the 1978 Order is available to persons charged with committing an offence under Articles 3(2)(b) and 4H(2)(b) in the interim period. For vaping and nicotine products the defence is available from 29 October 2026 and for tobacco products, herbal smoking products and cigarette papers, the defence is available from 1 January 2027.

Previous policy and effect of these Regulations

4.27 Previous legislation which set out the old age of sale offences for tobacco, cigarette papers and nicotine inhaling products did not prescribe specific age verification measures that persons selling these products could take to demonstrate compliance.

4.28 The Regulations provide a prescribed route to establishing a defence by setting out specific age verification steps which must be followed. This is intended to provide greater certainty to retailers about how best to verify customers' age when selling products that fall within the scope of the 2026 Act.

4.29 This new defence applies to the new age of sale offences in the 2026 Act.

4.30 The Regulations do not affect the separate defence in the 2026 Act for a person charged with an age of sale offence which is to prove that they otherwise took all reasonable steps to avoid committing the offence.

4.31 Without these Regulations, a person charged with an age of sale offence would be able to rely on the defence set out in Articles 3(2)(b) and 4H(2)(b) of the 1978 Order. However, the approach of setting out a separate defence in these regulations provides additional clarity for retailers. It also provides clarity for retailers about how they can use digital forms of age verification.

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. 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.

5.2 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.

5.3 The Regulations support 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.

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 Regulations will not affect any of the section 75 groups disproportionately. In light of this, the Department did not consider that an equality impact assessment was necessary.

7. Regulatory Impact

7.1 A full impact assessment has not been prepared for these Regulations as they do not impose any direct costs to businesses, beyond those already accounted for in the Impact Assessment for the 2026 Act. This estimated that the cost to

UK retailers for age verification of the smoke-free generation policy would be £83.5m based on 2024 prices[1]. The contents of these Regulations should not impact on those estimates. Indirect impacts in relation to the digital identification provisions, which were not accounted for in the Impact Assessment for the 2026 Act, are detailed below.

7.2 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.

7.3 Firstly, businesses will need to familiarise themselves with the guidance on the steps that may be taken to verify a customer's age using digital identification before selling the products in scope. Secondly, businesses that adopt DVS will need to train staff, and thirdly, 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. No Northern Ireland specific evidence is available regarding how much DVS providers will charge. Cost estimates developed for England and Wales have calculated an average charge of £0.15 per DVS check. Equivalent cost estimates have not been produced for Northern Ireland.

7.4 Businesses that adopt DVS will also incur costs to implement the necessary technology. However, we expect these costs to be minimal as DVS is expected to be compatible with existing infrastructure such as QR codes or Near Field Communication (NFC).

7.5 The Regulations will impact small and micro businesses that implement DVS. Small and micro businesses may face potential barriers in adopting digital identification such as implementation costs and infrastructure constraints. As adoption of DVS is voluntary, there are no direct costs. However, smaller businesses that do not implement DVS may risk losing customers over time if customer reliance grows.

7.6 The impact on the public sector is that district council officers, who will enforce the regulations, will need to familiarise themselves with the new age verification requirements.

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

[1] this was unable to be quantified for shisha bars.

9.1 The Department does not consider that the Regulations affect the collection, handling and processing of data. The provision of data through specified physical identification documents as a means of verification with regards to satisfying new age of sale requirements in respect of tobacco, vaping and nicotine products, replicates existing provisions already in place in Northern Ireland for the sale of alcohol.

9.2 The use of digital identification for age verification whilst new is entirely voluntary, and, therefore, customers and/or retailers are not required to use or adopt digital verification services. For those customers and retailers who choose to use or adopt digital identification, the Regulations make provision that such data will be processed through a registered DVSP in accordance with applicable data protection legislation.

9.3 The Regulations are 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 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.

11. Section 24 of the Northern Ireland Act 1998

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

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 NI Protocol itself.

12.3 The Regulations support the implementation of the age of sale 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 is developing separate age verification regulations for England and Wales.

14. Monitoring and review

14.1 The approach to monitoring this legislation is through wider evaluation of the 2026 Act. Section 165 of the 2026 Act creates a statutory requirement for the Secretary of State in Great Britain to carry out a review of its operation within 4-7 years of passage. It is expected this review will capture any relevant findings on age verification, as an integral part of the operation of the age of sale provisions introduced by the Act.