

LEGISLATIVE CONSENT MEMORANDUM

Tobacco and Vapes Bill

Legislative Consent Motion

1. The draft motion, which will be tabled by the Health Minister, is:

“That this Assembly endorses the principle of Northern Ireland’s inclusion in the UK Tobacco and Vapes Bill to introduce a progressive smoking ban across the UK and to stop vapes and other nicotine products being branded and advertised to appeal to children, insofar as the provisions of that Bill relate to matters falling within the legislative competence of the NI Assembly and agrees to the Bill’s extension to Northern Ireland”.

Background

2. This memorandum has been laid before the Assembly by the Health Minister under Standing Order 42A(2). The Tobacco and Vapes Bill was introduced in the House of Commons on 5 November 2024. The latest version of the Bill can be found at: <https://bills.parliament.uk/bills/3879/publications> and supporting documents at: <https://www.gov.uk/government/collections/the-tobacco-and-vapes-bill-2024>
3. The Bill passed its Second Reading¹ in the House of Commons on 26 November 2024.

Summary of the Bill and its policy objectives

4. The King’s Speech in July 2024 detailed the intention of the UK Government (UKG) to bring forward legislation to progressively increase the age at which people can buy cigarettes and impose limits on the sale and marketing of vapes to create a smoke free generation by stopping children who turn 15 in 2024 (or younger) from ever legally being sold cigarettes. The legislation is being developed on a UK-wide basis.
5. The Bill is intended to make provision about the supply of tobacco, vapes and other products, including provision prohibiting the sale of tobacco to

¹ <https://hansard.parliament.uk/commons/2024-11-26/debates/6BDDDB4B2-ECAD-4540-992E-ECA12F9A1924/TobaccoAndVapesBill>

people born on or after 1 January 2009; and to enable product requirements to be imposed in connection with vapes and other nicotine products. The Bill includes a range of measures covering the intention to:

- i. Create a smoke free generation, gradually ending the sale of tobacco and herbal smoking products and cigarette papers, seeking to break the cycle of addiction and disadvantage. The Bill therefore includes provision making it an offence for anyone born on or after 1 January 2009 to be sold the said tobacco products. (This provision is to be commenced on 1 January 2027 when people born on 1 January 2009 turn 18.) Banning the sale of non-nicotine vapes and other nicotine products to under 18s, as well as the sale of vapes (defined in the Bill to include nicotine and non-nicotine vapes) or other nicotine products from vending machines, the advertising and sponsorship of vapes and other nicotine products, and the free distribution of vapes, nicotine products, herbal smoking products, and cigarette papers to all ages.
- ii. Regulation making powers to:
 - Allow all devolved governments in the UK to regulate point of sale displays for vapes and other nicotine products (each government will be required to bring forward regulations separately).
 - Allow all devolved governments in the UK to restrict vape and other nicotine product flavours and packaging, which will be achieved through UK wide regulations with consent of devolved governments. On this, the Department of Health and Social Care (DHSC) judge that a single regulation regime across the whole of the UK is the most appropriate means of ensuring a coherent and operable enforcement regime regarding these products.
 - Allow all devolved governments in the UK to extend smoke-free places to additional places, which may include outside areas that are workplaces or open to the public, and to allow smoke free places to be vape and heated tobacco free places (each government will be required to bring forward regulations separately).
 - Extend measures in the Bill to other products (devices), ensuring that measures can be updated to capture any

emerging harmful products (each government will be required to bring forward regulations separately).

- iii. Strengthening of enforcement activity by extending the NI Tobacco Retail Register to include vaping products and nicotine products. The Bill will also allow the Department to introduce a licensing scheme for the retail sale of tobacco, herbal smoking products, cigarette papers, vapes and nicotine products in the longer-term following consultation. Similar powers are included for England and Wales, but not Scotland, where the Government has made the decision to retain and extend its existing registration scheme.
6. The Bill modifies, amends, extends and re-enacts several existing tobacco and vaping control measures to create a consistent legislative framework. These changes will help to ensure a consistent application of the law, improve readability and subsequent enforcement.
7. The Bill broadly seeks to align provisions across the UK, building on the existing legislative frameworks that apply.
8. The current legal age of sale for tobacco is 18. The Westminster Bill will make it an offence for anyone born on or after 1 January 2009 to be sold tobacco products by amendments to existing age of sale legislation. These measures are in line with the recommendations of the Khan Review from 2022.
9. There is no intention to criminalise smoking. The policy intention is for a gradual phasing out of tobacco use, and the measures proposed have the advantage of not introducing restrictions on people who can already legally smoke (which would be the effect if we were to simply raise the age of sale, for example, from 18 to 21). Rather the impact would only be felt when children currently aged 15 and under (who are not currently legally permitted to be sold tobacco) turn 18 (i.e. from 1 January 2027). The Bill will also make the necessary age-related changes in respect of existing compulsory retail signage and proxy purchasing offences.
10. The key UKG proposals in relation to e-cigarettes (vapes) include restricting flavours, plain packaging and bans on point-of-sale displays. The intention is to address the unacceptable marketing of these products towards children and young people.
11. Whilst e-cigarettes may have a role to play in helping people to stop smoking, the long-term harms of continued use are unknown. The Institute of Public

Health in Ireland undertook a rapid review of evidence² on behalf of the Department, and findings point to reliable evidence that vaping does act as a gateway to tobacco smoking amongst young people. This substantiates the view that measures to address the appeal of these products to children are justified.

12. The consumption of nicotine in children and adolescents has deleterious impacts on brain development, leading to long-term consequences for brain development and potentially leading to learning and anxiety disorders (WHO³). The UKG command paper relating to these proposals, published on 5 October 2023, also notes that there are 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 inhaling colours and flavours are unknown, but they are certainly very unlikely to be beneficial.
13. In addition, there are growing concerns about social and educational harms among the increasing numbers of post-primary school children who are vaping.

Provisions which deal with a Transferred Matter - Parts 3, 5, 6, 7 and 8

14. The key proposals are considered transferred matters and therefore fall within the competence of the NI Assembly. **Part 3** relates specially to NI and sets out matters relating to public health. In the main, it amends the Health and Personal Social Services (NI) Order 1978 (Parts 1 and 2 relate specifically to England/Wales and Scotland respectively):
 - (i) Amendments to existing tobacco legislation in this jurisdiction to align with the new age of sale restrictions for tobacco products, herbal smoking products and cigarette papers (clause 68).
 - (ii) Amendments to align the proxy purchasing offence with the new age of sale restrictions (clause 69).
 - (iii) Amendments that broadly restate the existing offence where a person has the management or control of premises where a tobacco vending machine is available for use (clause 70).
 - (iv) Amendments that broadly restate the existing offence to sell cigarettes that are not in their original packaging (clause 71).

² <https://www.publichealth.ie/news/report-review-systematic-reviews-health-effects-vaping-children-and-adolescents#:~:text=This%20report%20found%2012%20systematic%20reviews%20investigating%20the,subsequent%20tobacco%20cigarette%20use%20based%20on%20longitudinal%20data.>

³ https://apps.who.int/gb/fctc/pdf/cop6/fctc_cop6_10rev1-en.pdf

- (v) Amendments that broadly restate the existing requirements of a tobacco retailer to display an age of sale notice amended to take account of the new age of sale (clause 72). This also includes powers to make regulations about aspects of the notice e.g. size or appearance.
- (vi) Amendments to ban the manufacture (clause 73), sales (clause 74), and possession with intent to supply (clause 75) of relevant oral tobacco products, such as snus.
- (vii) Amendments to make it an offence to sell a vaping or nicotine product to a person who is under the age of 18 (clause 76). Currently there are no age of sale restrictions for nicotine products other than vapes in Northern Ireland.
- (viii) Amendments to extend proxy purchasing restrictions to all vaping products as well as nicotine products (clause 77).
- (ix) Amendments to make it an offence for a person who manages or controls a premise to have a vape or nicotine product vending machine available for use (clause 78).
- (x) Power to regulate the display of relevant products (tobacco products, herbal smoking products, cigarette papers, vaping and nicotine products) and their prices (clause 79).
- (xi) Amendments to make free distribution of a relevant product (tobacco product, herbal smoking product, cigarette paper, vaping or nicotine product) an offence (clause 80).
- (xii) Amendments to provide requirements for district councils in Northern Ireland to consider a 'programme of enforcement' and the potential design of the programme on a yearly basis (clause 81).
- (xiii) Power to amend the list of identity documents that can be used by retailers to verify a customer's age (clause 82).
- (xiv) Amendments to the Interpretation Provision in the Health and Personal Social Services (Northern Ireland) Order 1978 (clause 83).
- (xv) Amendments to the Tobacco Retailers Act (NI) 2014 extending the existing registration scheme in Northern Ireland for tobacco product businesses to include retailers of vaping and nicotine products (clause 84 and Schedule 10).
- (xvi) Amendments to the Tobacco Retailers Act (Northern Ireland) 2014 (the 2014 Act) to provide for the creation of a licensing scheme for the retail sale of tobacco, herbal smoking products, cigarette papers, vapes and nicotine products in the longer-term following consultation (clause 85 and Schedules 11, 12 and 13).
- (xvii) Powers to amend provisions extending them to cover any device that enables a tobacco product to be consumed (clause 86).
- (xviii) Consequential amendments, (clause 87 and Schedules 14 and 15) that includes amendments to the 2014 Act to update the list of offences

that are classified as a tobacco, vape or nicotine offence and for which a person can be issued with a Fixed Penalty Notice (FPN).
(xix) Transitional provisions (clause 88).

15. **Part 4** of the Bill extends to the whole of the UK and concerns oral tobacco products such as snus. It enables customs officials to seize and detain imported relevant oral tobacco products in order to enable an enforcement authority (e.g. a District Council in Northern Ireland) to take over. However, the imported relevant oral tobacco products may not be detained for a period of more than 48 hours (the calculation of 48 hours excludes all UK bank holidays and weekends). This will not cover the importation of snus for personal use.
16. **Part 5** of the Bill provides the Secretary of State with regulation making powers to enable requirements to be set in relation to product standards, including packaging and features of products, contents and flavour, to enable establishment of a registration scheme and for information to be provided to support registration and check for compliance with product standards and for testing of products for quality and safety.
17. The measures outlined in **Part 5** extend to the whole of the UK. Depending upon the nature of any future regulations, these **may** concern transferred functions relating to consumer protection and/or public health. Accordingly, clause 111 sets out that the Secretary of State must obtain consent where regulations relate to matters falling within the legislative competence of the Northern Ireland Assembly. The consent mechanism at clause 111 reflects that which was previously established by the Children and Families Act 2014, namely that consent to future regulations would be sought from The Executive Office (TEO) in Northern Ireland where matters are transferred.
18. The EU Tobacco Products Directive (the Directive) sets EU wide requirements for tobacco products and e-cigarettes to harmonise the EU market for these products. The Tobacco and Related Products Regulations 2016 (TRPR) implemented the Directive. The current product standards, labelling requirements etc for tobacco products and e-cigarettes are therefore in the main set out in TRPR.
19. TRPR also requires producers to provide notification before placing tobacco products, herbal smoking products and **nicotine containing** vaping products and refill containers on the UK market. In respect of nicotine containing vaping products, the Medicines and Healthcare Products

Regulatory Agency (MHRA) publishes all notifications for Great Britain on an ECIG portal and they are notified on EU-Common Entry Gate in respect of Northern Ireland. In relation to packaging of tobacco products, part of the Directive, was implemented by The Standardised Packaging of Tobacco Products Regulations 2015.

20. Under the Windsor Framework Agreement, the requirements of the Directive continue to apply in relation to Northern Ireland. If regulations are made under the powers in Part 5 of the Bill which cover matters which the Directive applies to, then appropriate provision will be made in respect of Northern Ireland to ensure that the UK government meets its obligations under the Windsor Framework. Also, any regulations made under Part 5 will be subject to NI consent through the consent mechanism as laid out at clause 111 (Consent to regulations under Part 5).
21. **Part 6** of the Bill restates existing advertising restrictions in relation to tobacco and extends these to herbal smoking products and cigarette papers along with vapes and nicotine products. The Tobacco Advertising and Promotion Act (2002) (the 2002 Act) prohibited the advertising of tobacco products to the public (with the exemption of specialist tobacconists); provided a power to prohibit or restrict brandsharing and prohibited sponsorship agreements which promote tobacco products. This Bill repeals and replaces the 2002 Act. Part 6 makes similar provision relating to advertising, sponsorship and brandsharing as the 2002 Act to include herbal smoking products, cigarette papers, vaping and nicotine products, for the whole of the UK.
22. In respect of brandsharing, Clause 123 provides the Secretary of State powers to ban brandsharing in relation to these products (with consent of devolved governments where the provisions would be within devolved competence). The existing restrictions on advertising of nicotine vapes, as set out in Part 7 of the Tobacco and Related Products Regulations 2016, are also replaced by this Part of the Bill. The settings where advertising is banned for nicotine vapes under these regulations will be captured by this Part and extended to include further settings such as public transport, billboards, and posters, and capture nicotine products that are currently not captured in a similar way to tobacco products. Provision made in the Bill will maintain the existing ban on tobacco advertising. Part 6 extends to the whole of the UK
23. **Part 7** of the Bill provides powers to each UK government to extend smoke-free places to additional places, which may include outside areas that are workplaces or open to the public. It also provides powers to make smoke-free places also vape and heated tobacco free and powers to make

regulations in relation to no-smoking signage. Clauses 153 to 157 are the relevant clauses specific to Northern Ireland along with schedule 20.

24. **Part 8** of the Bill includes a number of general provisions related to regulation procedure, transitional provisions and commencement etc. and is therefore considered as engaging the legislative consent process. Part 8 also includes specific provision which gives Northern Ireland departments a regulation making power to make provision that is consequential on Part 3 (sale and distribution: Northern Ireland) of this Bill (clause 164), as well as on clauses 153-157 and schedule 20 (smoke-free places).
25. A copy of the Bill has been shared with the Departmental Solicitor's Office (DSO) and it has confirmed that the provisions set out within Parts 3, 5, 6, 7 and 8 of the Bill, are, at least in part, within the legislative competence of the NI Assembly and therefore engage the legislative consent process of the NI Assembly.

Reasons for making the Provisions

26. In Northern Ireland, more than 2,000 people die every year from smoking attributable conditions. In fact, the smoking attributable death rate in Northern Ireland is significantly higher than the rate in England. In addition to the unacceptable human costs, our hospitals spend in excess of £200m every year treating smoking-related conditions and there is detriment to our economic productivity through the impact of ill-health on the workforce. Tobacco use is a huge threat to public health, but it is a threat that is entirely preventable.
27. There is also growing local concern in relation to youth vaping. Whilst vaping may have a role to play in helping some people to stop smoking, the current marketing of these devices to appeal to young people and children is unethical and robust action is required to address this.
28. The measures are in keeping with the strategic direction of the current NI Tobacco Control Strategy and the identified need to extend the Department's successor strategy to address youth vaping concerns.

Reasons for utilising the Bill rather than an Act of the Assembly

29. Whilst the matters in question fall within the competence of the NI Assembly, there are a number of compelling reasons for Northern Ireland

to be included in the Bill and why the alternative option (i.e. bringing forward separate NI primary legislation) would be less desirable:

- i. To progress NI primary legislation would be time consuming and it is likely that bringing forward local measures would result in a delay (as opposed to the provisions immediately available in rest of the UK) due to other pressures on this small government and also the strong possibility that litigation by the Tobacco Industry directed at NI if we bring forward our own primary legislation on these issues. If there are such delays, NI's population would be at a disadvantage in terms of progressing significant public health measures which will deliver benefits to individuals, the health service and the economy.
- ii. Whilst these are transferred matters, the overwhelming public support for the measures in NI, expressed through the consultation published in January 2024 (see below), underpins the rationale to seek the same provision as the other devolved governments in respect of the opportunity for inclusion in the Bill. There is likely to be considerable public criticism if the NI Assembly were to reject this opportunity.
- iii. There is a clear efficiency in inclusion in UK-wide legislation that would allow for the NI Assembly's time to be spent on local measures that do not have an immediate alternative legislative vehicle available.
- iv. Given the significance of these public health matters, along with the public support, there would appear to be little political gain in insisting on taking forward separate primary legislation when that poses a risk that we will not be able to implement at the same speed as England, Scotland and Wales.

Consultation

30. The results of a UK wide public consultation on the policy intention (undertaken during the previous UK Government mandate) were published on 29 January 2024⁴.

31. There was particularly strong support for the measures from people in Northern Ireland. The consultation received 27,025 responses from individuals, of which 1,221 were from Northern Ireland. This made up 4.5%

⁴ <https://www.gov.uk/government/consultations/creating-a-smokefree-generation-and-tackling-youth-vaping/outcome/creating-a-smokefree-generation-and-tackling-youth-vaping-consultation-government-response>

of the total responses (from individuals) which represents a proportionately high response in terms of the NI population. In relation to individual responses:

- 62.5% of UK respondents reported they were in favour of the smoke-free generation (age of sale) proposal, **with the highest support coming from NI - 79%** (second highest was Scotland with 65.5% supporting the proposal). Support was similarly much higher in NI for the other proposals.
- **75.6% in NI supported a restriction on vape flavours** (46% in all of UK – 52% of all UK responses disagreed).
- When asked '*Which option do you think would be the most effective way to restrict vapes to children and young people?*', **85.3% in NI supported a restriction on the display of vapes – that is to be kept behind the counter and not to be displayed, similar to tobacco products** (68.5% across all of UK).
- When asked '*Which option do you think would be the most effective way for the UK Government and devolved administrations to restrict the way vapes can be packaged and presented to reduce youth vaping?*', **66% in NI supported prohibiting the use of all imagery and colouring and branding (standardised packaging) for both the vape packaging and vape device** (45.8% across all of UK).
- Whilst not included in this Bill, **90.4% in NI were in favour of restricting the sale and supply of disposable vapes** (79.3% in all UK). That particular issue is being taken forward by The Minister for the Environment, Agriculture and Rural Affairs.

Human Rights and Equality

32. The DHSC is of the view that the Bill is compatible with the Convention of Rights. The policy proposal is considered to be compliant with age discrimination legislation (Equality Act 2010 and ECHR Article 14) as there is an objective and reasonable justification behind them – the reduction of harm from smoking to public health, which data and the consultation support.
33. The primary legislation provisions have no detrimental impact on protected groups or on health inequalities. No adverse impact on any of the groups listed under section 75 has been identified. Any regulations made subsequently under the powers provided to the Department will be subject as appropriate to equality screening.
34. In addition, local rural screening confirms the same conclusion as DHSC i.e. that there is no significant impact.

35. Consideration of Windsor Framework implications is a matter for the UKG, as it pertains to a Westminster Bill. UKG advise that the provisions of the Bill are consistent with the Windsor Framework.

Financial Implications

36. Further restrictions on tobacco and e-cigarettes would likely come with some additional enforcement and communications costs. However, several of these measures are not new e.g. enforcement measures are already in place in relation to tobacco age of sale and age of sale of nicotine vapes. While the exact costs will need further consideration, it is worth noting that in the long term some additional expenditure is likely to be justified.
37. Hospital treatment costs for tobacco attributable disease are in excess of £200m per year and in 2023 the British Heart Foundation reported that the estimated annual cost to society of smoking in Northern Ireland is around £400million.
38. A Northern Ireland Audit Office (NIAO) report on Tackling the Public Health Impacts of Smoking and Vaping (Jan 2024)⁵ notes a Public Health Agency (PHA) estimate of other factors, including premature deaths and excess sickness absence, indicating that local annual economic costs arising from smoking are around £450 million.

Summary of Regulatory Impact

39. The UK government has completed a UK-wide impact assessment⁶ which is summarised below.
40. In relation to costs, the analysis shows the overall reduction in tobacco consumption over 30 years in the UK is expected to reduce profits for tobacco retailers by £2,129m, and for tobacco wholesalers by £457m. It is expected that tobacco retailers will incur familiarisation costs of £8m, costs due to increased time to check people's IDs of £82m and costs to put up new signage in shops of £0.2m. These costs are in 2024 prices.

⁵ <https://www.niauditoffice.gov.uk/files/niauditoffice/documents/2024-01/NI%20Audit%20Office%20Report%20-%20Tackling%20the%20Public%20Health%20Impacts%20of%20Smoking%20and%20Vaping.pdf>

⁶ [The Tobacco and Vapes Bill 2024 - GOV.UK](#)

41. 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 £23,750. 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. Therefore, this reduction in tax revenue does not make society as a whole better or worse off.
42. In relation to financial benefits, the analysis showed that over 30 years, the expected benefits in the UK accrued from the health benefits of raising the legal age of sale for tobacco products would result in monetised Qualified Adjusted Life Years (QALYs) gains from fewer deaths of £417m. There will also be wider societal benefits, including productivity gains of £27,298m, reduced healthcare usage costs of £2,814m, reduced social care usage costs of £1,838m, and reductions in fire costs associated with smoking of £982m. The benefits of the policy will continue beyond 30 years and increase in size due to the nature of the policy option. For example, the policy is estimated to provide monetised benefits as a result of the cumulative QALY gains from avoided mortality to a total net benefit of over £57.4 billion by 2100. With the new legal age of sale, local authorities would need to check the same number of businesses, and the UK Government expects it to take the same amount of time to investigate any potential offences. District Councils may incur some additional costs to familiarise themselves with the new law, but these costs are not expected to be significant.
43. To discourage non-smokers and young people from taking up vaping and to raise revenue to help fund public services, the government has introduced 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. On 30 October 2024 the Government published its consultation response and launched a subsequent technical consultation on additional compliance measures (closing on 11 December 2024)⁷.

⁷https://assets.publishing.service.gov.uk/media/6757050fd89258d2868daea1/Vaping_Products_Duty_consultation_response.pdf

44. Given that tobacco smoking contributes to the risk of developing more than 50 serious conditions, local health charities spend much time and resource dealing with the consequences of smoking. It is expected that any reduction in smoking rates will have a significant positive impact for health charities' work and objectives.
45. In relation to the vaping provisions, the measures are primarily intended to reduce youth access and appeal. The sale of nicotine vapes to under 18s is already prohibited so the impact would primarily be felt by those selling non-nicotine vapes.

Engagement to date with the Health Committee

46. The Minister of Health wrote to the Chair of the Health Committee advising that the Secretary of State had written to seek his agreement in principle to the inclusion of provisions in relation to devolved matters in the Bill. The Minister advised the Committee in this letter of his intention to lay a Legislative Consent Motion on the matter and provided written briefing on the Bill as part of that correspondence.
47. The Chief Medical Officer and Departmental policy officials briefed the Committee at its meeting on the 14 November 2024 and a follow-up response addressed further queries raised.
48. Members will be aware that an earlier version of the Tobacco and Vapes Bill was introduced to Parliament in March 2024 by the previous UK Government and the NI Assembly agreed a legislative consent motion in respect of NI inclusion in that bill on the 21 May 2024.
49. As part of that process the Chief Medical Officer and tobacco policy officials also briefed the Committee at its meeting on the 14 March 2024. The Committee members were supportive of the measures at that time. Further information and evidence on the specific detail of that Bill's provisions was subsequently provided to the Health Committee. The Committee members remain supportive of the measures.
50. At its meeting on the 5 December 2024, the Executive agreed to the Minister for Health laying a Legislative Consent Memorandum. Agreement was required due to the cross-cutting nature of the Bill.

Conclusion

51. It is the view of the Minister of Health that this legislation provides a significant opportunity to improve public health for people here, particularly our children and future generations. The Minister of Health, supported by advice of the Chief Medical Officer, strongly believes it is imperative that the provisions under the Tobacco and Vapes Bill are extended to Northern Ireland alongside the rest of the UK.
52. The Minister of Health considers that, in the interests of good government and consistency across the UK, in so far as the provisions of the Tobacco and Vapes Bill that deal with a transferred matter they should extend to Northern Ireland.

Department of Health
18 December 2024