

# LEGISLATIVE CONSENT MEMORANDUM

## TOBACCO AND VAPES BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales that has regard to devolved matters.
2. The Tobacco and Vapes Bill (“the Bill”) was introduced in the House of Commons on 5 November 2024. The Bill can be found at: <https://bills.parliament.uk/bills/3879/publications>

### Policy Objective(s)

3. The stated policy objectives of the Bill are to introduce measures to stop people from ever starting smoking and becoming addicted to tobacco products, as well as introducing measures to reduce youth vaping. The core measures in the Bill will:
  - create a smoke-free generation, gradually ending the sale of tobacco products across the country and breaking the cycle of addiction and disadvantage by making it an offence to sell tobacco products to anyone born on or after 1 January 2009;
  - enable regulation to strengthen the existing ban on smoking in public places to reduce the harms of passive smoking, particularly around children, families and vulnerable people.
  - ban vapes and nicotine products from being deliberately branded, promoted and advertised to children to stop the next generation from becoming hooked on nicotine;
  - strengthen enforcement activity to support implementation of the above measures and provide powers to introduce a licensing scheme for the retail sale of tobacco, herbal smoking products, cigarette papers, vapes and nicotine products in England, Wales and Northern Ireland and extend the retail registration scheme in Scotland.
  - the Bill sits alongside wider support across the health service to support smokers to quit.
4. 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, close loopholes, improve readability and subsequent enforcement. The Bill broadly seeks to align provisions across the UK, building on the existing legislative frameworks that apply across the UK.

## Summary of the Bill

5. The Bill is sponsored by the Department of Health and Social Care (DHSC).
6. The Bill is in 8 parts. Part 1 of the Bill extends to England and Wales and concerns the sale and distribution of the restricted products. Part 2 extends to Scotland and Part 3 extends to Northern Ireland. Part 4 and 5 of the Bill extends to the whole of the UK. Part 4 concerns the seizure and detention powers in relation to snus etc. Part 5 concerns product, standards and information requirements. Part 6 extends to the whole of the UK and concerns advertising and sponsorship requirements. Part 7 extends to the whole of the UK and includes provisions on smoke-free, vape-free and heated tobacco-free places in England, Wales, Scotland and Northern Ireland. Part 8 of the Bill extends to the whole of the UK and includes standard provisions that help the legislation to function effectively.
7. The key provisions of the Bill, insofar as they extend to Wales, cover the areas of tobacco products and cigarette papers, herbal smoking products, snus, vaping and nicotine products, advertising and sponsorship, retail licensing and enforcement. In addition to new provisions, the Bill also seeks to re-enact and consolidate existing tobacco and vaping product legislation.

### Tobacco

To create a smoke-free UK and to minimise the harms of smoking the Bill will:

- a. create a smoke-free generation by gradually ending the sale of tobacco products across the country so children born on or after 1 January 2009 will never be legally sold these products. The Bill will therefore make changes to the legal age of sale for tobacco products to prevent people from starting smoking in the first place; It will be an offence to sell tobacco products, herbal smoking products and cigarette papers to anyone born on or after 1 January 2009 from 1 January 2027. The existing power for the age of sale of tobacco to be increased to not more than 18 (section 13 Health Act 2006) will be repealed following the new age of sale introduced by the Bill and the existing age of sale offence (section 7 Children and Young Persons Act 1933) will be repealed and re-stated in the Bill to align with the new provisions;
- b. make it an offence for a person aged 18 or over to buy, or attempt to buy any such products for someone who was born on or after 1 January 2009; repeal and re-state the existing proxy purchasing offence around tobacco (section 91 Children and Families Act 2014), to align with the new provisions;
- c. amend the age of sale notice requirements; tobacco retailers will need to align their age of sale notices with the new age of sale restrictions to read "It is illegal to sell tobacco products to anyone born on or after 1 January 2009" to support enforcement and provide clear messaging; signage requirements will be bilingual in Wales; the existing provisions around the

age of sale notice (section 4 Children and Young Persons (Protection from Tobacco) Act 1991) will be repealed and re-stated in the Bill to align with the new provisions;

- d. protect the public from the harms of second-hand smoke (passive smoking) by providing a power to strengthen and expand existing smoke-free legislation from indoor to outdoor public places in other parts of the UK. Welsh Minsters already have powers to make additional places smoke-free via the power in section 13 of the Public Health (Wales) Act 2017);
- e. repeal and re-state the existing offences around the sale of tobacco from vending machines (extending to cigarette papers), and the sale of unpackaged cigarettes, (sections 3 and 3A Children and Young Persons (Protection from Tobacco) Act 1991);
- f. the offence of handing over tobacco to under age people in Wales (Chapter 4, Part 3 Public Health (Wales) Act 2017), which is not yet in force, will be updated to align with the new age of sale for tobacco products, cigarette papers and herbal smoking products;
- g. provide the Secretary of State power to extend provisions in Part 1 applying to tobacco products to include tobacco related devices and items forming part of those devices,
- h. restate existing powers and requirements surrounding the packaging and advertising of tobacco products (section 94 Children and Families Act 2014), replace the existing prohibition on free distributions (and include discounts) for the purpose of promoting tobacco products (section 9 of the Tobacco Advertising and Promotion Act 2002) and extend its scope to cigarette papers and herbal smoking products, provide powers for new regulations for the display of cigarette papers and herbal smoking and tobacco products, their prices and empty retail packaging (replacing existing display restrictions and powers for tobacco under the Tobacco Advertising and Promotion Act 2002), and re-enact a ban on the production and supply of snus.

### Vaping and other nicotine products

To stop vapes (also known as electronic cigarettes, e-cigarettes, electronic nicotine delivery system (ENDS), or vaporisers) and consumer nicotine products (such as nicotine pouches) from being deliberately promoted, branded and advertised to children, the Bill will:

- a. ban vaping products and nicotine products from being sold to under 18s and ban the free distribution and discount of these products;
- b. ban advertising, promotion and sponsorship agreements for vapes and nicotine products mirroring existing impactful restrictions on tobacco;

- c. provide regulation making powers to regulate the flavours, packaging, and other product standards of vapes and nicotine products;
- d. provide powers to regulate the display of vapes and nicotine products, empty retail packaging and their prices;
- e. ban the presence of vape and nicotine product vending machines;
- f. introduce powers to introduce a new and more robust registration scheme for all vapes and nicotine products. This scheme would also cover tobacco products and non-nicotine vapes.
- g. introduce powers to extend smoke-free laws so that they could also prohibit the use of vapes and heated tobacco products in specified areas where smoking is prohibited.
- h. amend the existing offence of handing over tobacco to under age people in Wales (Chapter 4, Part 3 Public Health (Wales) Act 2017), which is not yet in force, to include all vaping and nicotine products, herbal smoking products and cigarette papers in line with the new provisions in the Bill.

#### All restricted products

- a. Expands existing requirements for producers or importers to provide information to all restricted products.
- b. Provisions to require producers to carry out a study of a product and report on the results;
- c. Provisions to require the testing of products to ensure compliance with the product regulations;
- d. Requiring producers or importers to have processes in place to collect information about the effect of the products on human health and safety;
- e. Extend the advertising ban of restricted products to internet service providers;
- f. Extending the advertising ban applicable to TV and radio broadcasters and other on-demand content services, to all restricted products.
- g. Power to extend the advertising and sponsorship provisions, and the advertising ban applicable to TV and radio broadcasters etc to heated tobacco products.

#### Enforcement

The Bill will strengthen enforcement activity to prevent underage sales of tobacco and vapes by:

- a. providing enforcement authorities in England and Wales with the power to issue Fixed Penalty Notices of £200 for the underage sale, proxy sale, and free distribution of cigarette papers and tobacco, herbal smoking, vaping and nicotine products, breaches of age of sale notice restrictions and display restrictions, and FPNs of £2,500 for offences in connection with licensing;
  - b. giving the Secretary of State and the Welsh Ministers regulation-making powers to change the amount of fixed penalties to ensure they remain proportionate;
  - c. updating the existing FPN regime in Scotland to extend it to capture all tobacco, vaping and nicotine products, and include free distribution of tobacco, vaping and nicotine product offences;
  - d. updating Northern Ireland legislation such that the existing FPN regime is extended to capture all tobacco, vaping and nicotine products, and include free distribution of tobacco, vaping and nicotine products and display offences;
  - e. setting out that it is a defence for retailers charged with an age of sale offence to prove that they checked the ID of the prospective customer and that the ID proved the customer was of legal age, thereby supporting retailers to check ID;
  - f. providing powers to introduce a licensing scheme for the retail sale of tobacco products, herbal smoking products, cigarette papers, vaping and nicotine products in England, Wales and Northern Ireland, and expand the retailer registration scheme in Scotland;
  - g. retaining elements of the current enforcement approach for tobacco and vape regulations, including criminal fines in addition to restricted premises orders and restricted sale orders for persistent offenders.
  - h. Enabling local weights and measures authorities to use the court-based enforcement powers set out in the Digital Markets, Competition and Consumers Act 2024 to enforce the provisions of the Bill and the Tobacco and Related Products Regulations 2016.
8. The Bill is supported by the governments of all four nations who share ambitions to eradicate smoking and to tackle youth vaping. Whilst the Bill's development has been led by the DHSC, co-operation between the Welsh Government, DHSC, Scottish Government and Northern Ireland Executive on the policy and Bill development has been strong and sustained.
  9. The Welsh Government's ambition is for Wales to be smokefree by 2030: <https://www.gov.wales/tobacco-control-strategy-wales>. Our Delivery Plan Towards a Smokefree Wales, sets out the actions that are being taken to work toward that ambition: <https://www.gov.wales/tobacco-control-strategy-wales-delivery-plan>.

10. In June 2022, the Independent Khan Review into the UK government's smokefree 2030 ambition was published:  
<https://www.gov.uk/government/publications/the-khan-review-making-smoking-obsolete>. The review made 15 recommendations to achieve a smokefree society, one of which was that the government should increase the age of sale of tobacco products from 18, year on year until no one can legally be sold them. The Review also recommended the introduction of a tobacco license for retailers, to limit the availability of tobacco across the country and an increase smokefree places to de-normalise smoking and protect young people from second-hand smoke. In relation to vapes, the Khan Review recommended the UK government ban cartoons or imagery on the packaging, a review of vape flavours and descriptions, and prohibit vape companies distributing free vape samples. Whilst the proposals in the Khan Review were for England, many of the recommendations were of relevance to the position in Wales and our smokefree ambition.
11. In April 2023, the UK Government launched the Youth Vaping: call for evidence (<https://www.gov.uk/government/calls-for-evidence/youth-vaping-call-for-evidence/youth-vaping-call-for-evidence>) to explore where the government could go further in protecting children from the risks from vaping. It explored a range of issues, including regulatory compliance, the marketing and promotion of vapes, the role of social media, and the environmental impact of vaping. The call for evidence found that the promotion, display, variety and packaging of vapes is enticing children and young people to start using these products. However, the findings reiterated that vapes can be an effective way to help adult smokers quit smoking.
12. A joint four nations consultation on proposed UK-wide actions to tackle smoking and youth vaping was undertaken between 12 October 2023 and 6 December 2023. The consultation paper and the outcome document (published on 29 January 2024 and which stated the agreed position in all four governments) is available here: <https://www.gov.uk/government/consultations/creating-a-smokefree-generation-and-tackling-youth-vaping>.
13. The Tobacco and Vapes Bill was previously laid in Parliament on 20 March 2024 <https://bills.parliament.uk/bills/3703> Progress on the Bill halted when Parliament was dissolved prior the General Election.
14. During the Bill's development, the Welsh Ministers met and corresponded with Ministers in the UK government with responsibility for tobacco to discuss and agree inter-government working on the measures, the consultation, its outcome, policy approaches and the Bill's development.

### **Provisions in the Bill for which consent is required**

15. It is my view that the test in Standing Order 29.1 is met and the consent of Senedd Cymru is required in relation to the entirety of the Bill, except for clauses 5, 13, 16, 17, 18, 33, 35(1), 36(1), 38(3) and 39(1), Parts 2 and 3, clauses 136-146, 153-158, 159, 162, 164, and 171.

16. The following is a summary of the provisions of the Bill that contain provision in relation to Wales that has regard to devolved matters and therefore trigger the requirement for consent. Where the provision contains a power for Welsh Ministers to make subordinate legislation, the Senedd procedure applicable to the power is also indicated.

### **Part 1: Sale and distribution: England and Wales**

17. Part 1 of the Bill deals with the sale and distribution of tobacco products, herbal smoking products, vaping products, consumer nicotine products and cigarette papers. It extends to England and Wales.

18. The relevant clauses in this Part that meet the test in SO 29 are:

- Clauses 1 to 4 and 6 – Sale of tobacco etc
- Clause 7 to 9 – Snus etc
- Clauses 10 to 12 – Sale of vaping and nicotine products etc
- Clause 14 – Display of products or prices
- Clause 15 – Free distribution and discounts
- Clauses 19 to 22 and Schedules 3 and 4 – Retail licensing: Wales
- Clauses 23 to 27 - Restricted premises orders
- Clauses 28 to 30 - Restricted sale orders
- Clause 31 – Offences by bodies
- Clauses 32 and 34 – Enforcement functions
- Clauses 35 (2) and 36 (2) - Power of ministers to take over enforcement
- Clauses 37, 38(1), (2), (4), (5) and 39(2) to (4)– Fixed penalties
- Clause 40 and Schedule 5 - Handing over tobacco etc to underage people in Wales
- Clause 41 to 44 and Schedules 6 and 7- Consequential, transitional and transitory provision
- Clause 45 and 46 – Powers to adjust scope
- Clause 47 - Crown application
- Clauses 48 and 49 - Interpretation etc

### **Clauses 1 to 4 and 6 – Sale of tobacco etc**

19. These clauses make restrictions around the sale by retail of tobacco products, herbal smoking products or cigarette papers in England and Wales.

20. Clause 1 introduces a new age of sale restriction for tobacco products, herbal smoking products and cigarette papers. The intention is to capture any products that contain tobacco and are used as consumer products as well as other herbal products that are smoked, due to the harmful nature of smoking. Cigarette papers have also been included as they are burnt with tobacco. The clause makes it an offence to sell these products to anyone who is born on or after 1 January 2009.

21. The age of sale restriction does not apply to sales in the course of a business so would not prevent someone born after 1 January 2009 from being employed in a tobacco retail business or wholesaler. The age of sale restriction does not make

it an offence for someone born on or after 1 January 2009 to possess or use tobacco products, herbal smoking products or cigarette papers.

22. The clause provides that it is a defence for someone who is charged with the offence to prove they were shown what appeared to be an identity document (such as a passport or UK Driving License) belonging to the purchaser and that the date of birth shown on that document was before 1 January 2009, or that they otherwise took all reasonable steps to avoid committing the offence. An individual who is convicted with this offence could receive a fine of up to £2,500 (level 4 on the standard scale).
23. Clause 2 makes it an offence for any adult aged 18 or over to buy, or attempt to buy tobacco products, cigarette papers or herbal smoking products on behalf of anyone who is born on or after 1 January 2009, commonly referred to as 'proxy purchasing'. This ensures alignment with the new age of sale restriction in clause 1. Only individuals aged 18 or over can commit the offence to avoid the criminalisation of children. The clause sets out the circumstances in which defences will apply. An individual who is convicted with this offence could receive a fine of up to £2,500 (level 4 on the standard scale).
24. Clause 3 sets out that it is an offence if a person manages or controls a premises where a tobacco vending machine ("an automatic machine from which tobacco products, herbal smoking products or cigarette papers may be bought") is available for use on the premises. The clause re-enacts and consolidates the existing provisions which introduced a regulation making power to prohibit the sale of tobacco from an automatic machine in England and Wales. This has been updated to also include cigarette papers to align with the products in scope of the age of sale provision. A person who is convicted of an offence under this provision could receive a fine of up to £2,500 (level 4 on the standard scale).
25. Clause 4 re-enacts (without changing the law) the existing prohibition against selling cigarettes when they are not in their original packaging. Tobacco retailers must sell cigarettes in the packaging that they are supplied to the retailer in (defined as original packaging) and not doing so is an offence. Anyone who is convicted of this offence could receive a fine up to £1,000 (level 3 on the standard scale).
26. Clause 6 makes the same provision for Wales as clause 5 makes for England. The clause replaces the previous age of sale notice requirement with a requirement for a tobacco retailer in Wales to display notices stating the new age of sale notice requirements in a prominent position with the text in English and Welsh that says, "It is illegal to sell tobacco products to anyone born on or after 1 January 2009" and "Mae'n anghyfreithlon gwerthu cynhyrchion tybaco i unrhyw un a anwyd ar neu ar ôl 1 Ionawr 2009". The new sign must be displayed from 1 January 2027. The penalty for failure to display a notice is a fine of up to £1,000 (level 3 on the standard scale).
27. Clause 6(4) provides a regulation making power for Welsh Ministers to stipulate requirements for the size or appearance of the statement to be displayed on the notice or any other aspect of the notice, one example could be the colour of the



notice. Requirements for the notice will be set in regulations before 1 January 2027. Clause 6 is a re-enactment with modifications of the regulation making power under Section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991. The Protection from Tobacco (Display of Warning Statements) Regulations 1992 were made using the powers in section 4. The power is subject to the negative resolution procedure.

### **Clauses 7, 8 and 9 – Snus etc**

28. Clause 7 makes it an offence to manufacture a tobacco product in the UK that is intended for oral use, is not intended to be inhaled or chewed and consists wholly or partly of tobacco in powder or particulate form (“snus”). It re-enacts the existing prohibition (Regulation 17 of the Tobacco and Related Products Regulations 2016) and the Bill extends these restrictions to include a ban on snus intended for export which simplifies enforcement and reduces the possibility of such harmful products being available within the UK. An individual who is convicted of an offence under this provision may receive a fine or may be imprisoned for a term not exceeding 2 years, or both.
29. Clause 8 re-enacts the existing provision and makes it an offence to sell, or offer or expose for sale, snus within the UK. The Bill extends these restrictions to include a ban on snus intended for export which simplifies enforcement and reduces the possibility of such harmful products being available within the UK. It is a defence for a person charged with an offence under this provision to prove that they took all reasonable steps to avoid committing the offence. An individual who is convicted of an offence under this provision may receive a fine or may be imprisoned for a term not exceeding 2 years, or both.
30. Clause 9 makes it an offence for a person to have snus in their possession with intent to supply it in a course of business. It will not be an offence to possess snus for personal use or to give as a personal gift. An individual who is convicted of an offence under this provision may receive a fine or may be imprisoned for a term not exceeding 2 years, or both.

### **Clauses 10 to 12 - Sale of vaping and nicotine products etc**

31. These clauses restrict the sale of vaping and nicotine products. These products are defined in clause 48 and is a change from the existing age of sale provision, as set out in the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 which currently only includes nicotine vapes. The clauses enable a range of vaping and nicotine products to be regulated and have been made to ensure a consistent approach across these products. The change will come into force six months after the Bill is passed.
32. Clause 10 makes it an offence to sell a vaping or nicotine product to a person who is under the age of 18. The clause provides that it is a defence for someone who is charged with an offence under this clause to prove they were shown what appeared to be an identity document belonging to the purchaser and it confirmed that the customer was 18 or over, or that they otherwise took all reasonable

steps to avoid committing the offence. Anyone convicted with this offence could receive a fine of up to £2,500 (level 4 on the standard scale).

33. Clause 11 makes it an offence for a person aged 18 or over to buy, or attempt to buy, a vaping product or a nicotine product on behalf of someone who is under the age of 18, also known as proxy purchasing. This clause replaces section 91 of the Children and Families Act 2014 (the 2014 Act) which currently only applies to nicotine vapes so that the new restriction will apply to proxy purchasing for all vapes and nicotine products. The clause provides that it is a defence for a person charged with an offence to prove that they had no reason to suspect that the other person was under the age of 18. Anyone convicted with this offence could receive a fine of up to £2,500 (level 4 on the standard scale).
34. Clause 12 makes it an offence for a person who manages or controls a premises to have a vape or nicotine product vending machine (“an automatic machine from which vaping/nicotine products may be bought”) available for use on the premises. The offence will come into force six months after the Bill achieves Royal Assent, this is so that premises that currently contain a vape or nicotine product vending machine will have time to remove or stock the machine with alternative products. The clause introduces a new offence as there are currently no restrictions on the use of vape vending machines or nicotine product vending machines, unlike tobacco vending machines, which were banned by regulations made under the Children and Young Persons (Protection from Tobacco) Act 1991. A person convicted of the offence may receive a fine of up to £2,500 (level 4 on the standard scale).

#### **Clause 14 – Display of products or prices**

35. Clause 14 provides the Welsh Ministers with powers to regulate the display by retailers of tobacco products, herbal smoking products, cigarette papers, vaping products and nicotine products and their prices, as well as the display of empty retail packaging, in a place in Wales. Similarly, to England, there are already restrictions on displays in the course of business of tobacco products in Wales under the Tobacco Advertising and Promotion Act 2002 and regulations made under it, which will be repealed. Subsection (6) of this clause confirms that before making regulations under this clause Welsh Ministers must consult any persons they consider appropriate. The power under clause 14 sets out that the regulations may provide for the creation of offences for the failure to comply with the regulations and anyone convicted of an offence could be subject to imprisonment for a term not exceeding 2 years, a fine, or both. Regulations under this clause are subject to the affirmative resolution procedure.

#### **Clause 15 – Free distribution and discounts**

36. Clause 15 makes it an offence to give away, any product or a coupon (defined as anything (whether in physical or electronic form), which can be redeemed for a product or service or for cash or any other benefit) to a member of the public where the purpose or effect is to promote a relevant product. It is currently prohibited under section 9 of Tobacco Advertising and Promotion Act 2002 (TAPA) to give away (in the course of a business) any product or coupon where

the purpose or effect of which is to promote a tobacco product. This clause replaces section 9 of TAPA and extends the scope as there are currently no restrictions on businesses freely distributing nicotine and non-nicotine vaping products, cigarette papers, and herbal smoking products. This clause also makes it an offence to sell a relevant product or coupon at a substantial discount. There is a regulation making power in TAPA to extend the ban on free distribution of tobacco products to cover selling a product at a substantial discount. This has been re-enacted as a ban on the face of the Bill rather than a regulation making powers as there is no intention to permit selling a product or coupon at a substantial discount to circumvent the restriction on free distribution.

37. The clause provides that there is a defence available if the person charged can prove it was done in accordance with arrangements made by a public authority. If this defence is satisfied then they are not guilty of the offence. An example of this could be where a government body funds a smoking cessation programme that utilises vapes as a cessation tool and provides them for free. Anyone convicted of an offence under this clause may be subject to imprisonment for a term not exceeding 2 years, a fine, or both.

#### **Clauses 19 – 21 and Schedules 3 and 4 – Retail licensing: Wales**

38. Clauses 19 – 22 and Schedules 3 and 4 establish the prohibition of retail sales of tobacco products etc (tobacco products, herbal smoking products, cigarette papers, vaping or nicotine products) in Wales without a licence.
39. Clause 19 provides Welsh Ministers with the power to make regulations regarding the granting of personal and premises licences. Clause 19(1) prohibits the sale, exposure for sale, or possession for the purpose of sale (by the individual or another person) of tobacco products etc by an individual in Wales, except under the authority of and in accordance with a personal licence. Welsh Ministers may, by regulations, create exceptions to this prohibition. Clause 19(2) prohibits a person from using or permitting the use of premises in Wales, to store relevant products for the purpose of their sale (by the person or another person), expose those products for sale, or supply these products to retail customers except under the authority of and in accordance with a premises licence. The Welsh Ministers may, by regulations, create exceptions to the above prohibition. The licensing authority responsible for granting of personal and premises licences in Wales will be the relevant county or county borough council. Before exercising the power to make regulations under this clause, the Welsh Ministers must consult persons they consider appropriate. The Welsh Ministers must by regulations make provision for and in connection with the grant of personal and premises licences. Further detail on what such regulations in Wales may include are set out in schedule 3. Any regulations made under clause 19 are subject to the affirmative resolution procedure.
40. Schedule 3 details the provision for a retail licensing scheme that may be made under the regulatory powers provided to Welsh Ministers in clause 19(4) to provide clarity about the intended purpose of the regulation making powers. This schedule is for Wales only.

41. The regulations may make provisions regarding the granting of a licence in Wales, including provisions which mean a licensing authority could not grant a licence to a premises in a particular area (for example, proximity to a school), or limiting the number of licences within a particular area. Provisions may also require a licensing authority to inspect a premises to ensure it meets regulations before the granting of a licence. The regulations may allow a licensing authority to charge a fee on application as well as any renewal of a licence. The maximum amount of any fee is to be set in, or determined in accordance with, regulations and will be able to account for the cost of exercising functions in connection with the licensing scheme including administrative and enforcement costs of the scheme. The regulations may require the licensing authority to pay a proportion of the fees collected to any other person with functions under the licensing scheme (clauses 19-21 or the regulations), to ensure fees collected can be used for enforcement of the scheme in a situation where the licensing authority is different from the enforcement authority.
42. The regulations may also make provisions regarding the conditions of the licence, namely the requirements that licence holders will need to meet to maintain a licence for the sale of the relevant products. This could include, for example requiring that retailers adhere to specific tobacco and vape regulations (such as age of sale regulations) or displaying a licence within a retail premise. The regulations may also make provisions regarding the duration of the licence and for the publication of licence information by the licensing authority. Publishing a list of licensed retailers may support enforcement of the licensing scheme.
43. The regulations will establish the reviews and appeals process for decisions made on granting a licence. They must specify when a person may request a review of a decision taken under the regulations and give a person the right of appeal to a magistrates' court against a decision taken on a review. This will enable an independent decision. There may be a time limit for requesting reviews or initiating appeals.
44. The regulations may require a licensing authority to have regard to guidance published by Welsh Ministers when carrying out its functions under the licensing regulations. Guidance will support the implementation of the regulations by licensing authorities.
45. Clause 20 sets out offences in connection with licences in Wales which is that anyone who breaches the prohibitions set out in clause 19(1) or(2) commits an offence. The clause also makes it an offence if a person provides false or misleading information to a licensing authority in, or in connection with, an application for the grant of a personal or premises licence; or in carrying out of any other obligation imposed by or under licensing regulations. It is only an offence if the information is false or misleading in a material respect, and the person knows, or ought to reasonably know this about the information.
46. A person convicted of an offence under clause 20(1) or (2) may receive a fine where there is no maximum amount. As an alternative to a criminal prosecution, for local weights and measures authorities in Wales (e.g. Local Authority Trading

Standards in Wales) may issue a fixed penalty notice for these offences under the provisions in clause 37 (Fixed penalty notices). Upon conviction of the offence under clause 20(1) a court may make an order as to what happens to the relevant products to which the offence(s) relate. This may include forfeiture and destruction of the relevant products and their containers.

47. Clause 21 introduces financial penalties which may be imposed for the breach of conditions attached to a personal or premises licence in Wales, provided the breach is not a criminal offence under clause 20. These financial penalties are civil penalties and can be issued by a local weights and measures authority (e.g. Local Authority Trading Standards in Wales). The clause sets the maximum amount of the financial penalty at £2,500 and provides Welsh Ministers with the power to change this maximum amount to account for inflation and so that the financial penalty amount remains proportionate. Any regulations made under clause 21 are subject to the negative resolution procedure as the scope of the power is narrow. Further details on financial penalties for breach of licence conditions in Wales are set out in schedule 4.
48. Schedule 4 details the financial penalties for breach of retail licence conditions in Wales and the procedure for local weights and measures authorities when imposing financial penalties for breach of licence conditions (clause 21). Before imposing a financial penalty, a local weights and measures authority must issue a written notice of intent and allow for a period of representation, to give the person the opportunity to challenge the proposed financial penalty. If, after the period for representation, the local authority decides to impose the financial penalty, they must give a final written notice. Both the notice of intent, the final notice can be withdrawn or amended to reduce the penalty amount at any time by written notice.
49. A person has the right to appeal to the magistrates' court against the decision to impose a financial penalty or the amount of the penalty. This will enable an independent decision. Schedule 4 establishes the appeals procedure to be followed. If a person fails to pay the whole or part of the financial penalty within the given period, the unpaid amount may be recovered as if it were payable under a county court order. Any proceeds received from financial penalties must be returned to the Welsh Consolidated Fund, prior to which administrative costs to investigate matters and issue the penalty may have been deducted by the local weights and measures authority.
50. Clause 22 deals with the amendment of the Public Health (Wales) Act 2017 to repeal the provisions in Part 3, Chapter 2, which if brought into force enabled the establishment of a register of retailers of tobacco and nicotine products in Wales etc. The effect is to repeal existing provisions for a retailer register in Wales once the licensing scheme provisions in this Bill come into force by order of the Welsh Ministers.

#### **Clauses 23 to 27 - Restricted premises orders**

51. Clause 23 provides that a "persistent offender" is a person who, on conviction of a relevant offence, has committed a relevant offence in relation to the same

premises on at least two other occasions within a two-year period ending with the latest conviction. Relevant offences include those under clauses 1 (Sale of tobacco etc), 3 (Tobacco vending machines), 10 (Sale of vaping or nicotine products to under 18s) and 12 (Vaping and nicotine product vending machines) of this Bill, as well as the existing offences shown at subsection 8(b) of this clause until the point they are repealed. This clause replaces, and is based on, section 12A of the Children and Young Persons Act 1933 where restricted premises orders were introduced for persistent breaches of the age of sale restrictions for tobacco and nicotine products.

52. A restricted premises order means that sales at the location where the offences took place are prohibited in relation to one or more of the relevant products (tobacco products, herbal smoking products, cigarette papers, vaping and nicotine products and any nicotine products). The length of the order is determined by the court and may last up to a period of 12 months. This means that no sales of any of these products may take place from that business premises, but it does not affect other businesses within the same group or chain. A restricted premises order is a local land charge, which means it will bind a buyer of the premises.
53. Clause 24 sets out the criteria for which individuals ('interested persons' who occupy or have an interest in the premises, for instance the manager or owner) are allowed make representations to the court to try to prevent a restricted premises order being made. The clause provides when an enforcement authority has applied for a restricted premises order, they must make reasonable enquires and give notice of the application to anyone appearing to them to be an interested person. An interested person can make their case as to why the order should not be made, and they may apply to the court to alter or discharge the order.
54. Clause 25 provides the right to appeal to the Crown Court against an order made by a magistrates' court under clauses 23 or 24.
55. Clause 26 makes it an offence to breach a restricted premises order as defined in clause 23. A breach of a restricted premises order includes the sale of any product that is prohibited by order, and applies if someone knowingly, or should reasonably know, that the sale is prohibited. Someone who is charged with the offence may have a defence if they can prove they took all reasonable steps to avoid committing the offence. Anyone convicted of this offence could receive a fine where there is no maximum amount.
56. Clause 27 provides the Welsh Ministers with the power to add to the list of "relevant offences" for which a restricted premises order can be issued, replacing an existing power in section 51 of the Public Health (Wales) Act 2017 to specify a "tobacco or nicotine offence" and extending this to include offences relating to herbal smoking products and vaping. Before making regulations under this clause the Welsh Ministers must consider who is likely to have an interest in the regulations and should consult those who they deem are appropriate. The power is subject to the affirmative resolution procedure.

## **Clauses 28 to 30 - Restricted sale orders**

57. Clause 28 provides that a persistent offender (who has committed a relevant offence on at least two other occasions within two years) can be prohibited from selling certain products (e.g. tobacco, herbal smoking, vaping or nicotine products as well as cigarette papers). Restricted sales orders can be imposed for persistent breaches of clauses 1 (Sale of tobacco etc), 3 (Tobacco vending machines), 10 (Sale of vaping products to under 18s) and 12 (Vaping and nicotine product vending machines) of this Bill as well as the existing offences shown at subsection 5(b) of this clause up until the point they are repealed. This clause replaces and is based on section 12B of the Children and Young Persons Act 1933 where restricted sale orders were introduced for repeated breaches of the age of sale legislation for tobacco and nicotine products. If a person convicted of a relevant offence is a persistent offender, the person who brought the proceedings for the offence can apply to the magistrates' court for a restricted sale order.
58. A restricted sale order prohibits a named person within a business from selling any tobacco products, herbal smoking products, cigarette papers, vaping products, or any relevant nicotine product or from having any management role in any premises relating to sales of those products including the keeping of any machine for relevant products. The order will apply to the named individual regardless of where they are employed. The length of the order is determined by the court and may last for a period of up to 12 months.
59. Clause 29 provides the right to appeal to the Crown Court against an order made by a magistrates' court under clause 28 (Restricted sale orders).
60. Clause 30 makes it an offence to fail to comply with a restricted sale order where it has been made. The clause also provides the circumstances in which a defence will apply. Anyone convicted of this offence could receive a fine where there is no maximum amount.

## **Clause 31 – Offences by bodies**

61. Clause 31 makes a “relevant person” (a director or manager of a company or someone with partner status in a partnership or a person exercising function of management in an unincorporated association), or person purporting to act in the capacity of a relevant person, liable for an offence committed by a body where the offence has been committed with their consent, connivance, or neglect. In such cases the relevant person also commits the offence and would be liable in addition to the body (such as the company or partnership) they are working for to have proceedings brought against them. This applies to offences under clause 26 or any other offence under Part 1 of the Bill or any regulations made under clause 14 for Wales.

## **Clauses 32 and 34 – Enforcement functions**

62. Clause 32 clause places a duty on local weights and measures authorities to enforce the provisions in Part 1 of the Bill and any regulations made under

clause 14 (Displays of products or prices in Wales). It provides that the investigatory powers available to an enforcement authority are those in Schedule 5 (Investigatory powers) of the Consumer Rights Act 2015.

63. Clause 34 sets out a requirement for enforcement authorities in Wales to consider a so-called 'programme of enforcement' and the potential design of the programme on a yearly basis. This is a means of ensuring that local authorities in Wales consider whether they are enforcing certain offences effectively. I am seeking assurances from the UK Government that these requirements will align with the requirements of the Public Health (Wales) Act 2017.

### **Clauses 35 (2) and 36 (2) - Power of ministers to take over enforcement and proceedings**

64. Clause 35(2) provides a power for the Welsh Ministers to carry out the enforcement duty imposed by clause 32 instead of the local enforcement authority in relation to certain cases as they may direct. The effect of this is that a national enforcement authority will undertake the investigation and enforcement, rather than the local enforcement authority. This could arise if a local enforcement authority is unable or unwilling to undertake enforcement of a certain case. Clause 35(1) provides an equivalent power to the Secretary of State in relation to England.
65. Clause 36(2) provides a power for the Welsh Ministers to take over the legal proceedings relating to any offence that has been committed under Part 1 of the Bill or regulations made under clause 14 (Displays of products or prices in Wales). Clause 35(1) provides an equivalent power to the Secretary of State in relation to England. This could arise if a local enforcement authority is unable or unwilling to undertake the legal proceedings of a certain case.

### **Clause 37 to 39 - Fixed penalties**

66. Clause 37 introduces fixed penalty notices (FPNs) for the enforcement of the age of sale legislation restrictions in Wales for tobacco products, herbal smoking products, and cigarette papers (clauses 1), and vaping and nicotine products (clause 10), proxy purchasing of tobacco etc. (clause 2) and vaping or nicotine products (clause 11), tobacco age of sale notice at point of sale requirements in Wales (clause 6), regulations relating to the display of products or prices in Wales (clause 14), the free distribution and discount of tobacco etc., vaping and nicotine products (clause 15), and any offences in connection with licensing in Wales (clause 20). Section 91 of the Children and Families Act 2014 introduced FPNs for the proxy purchasing of tobacco and vaping products; and this will be replaced by the FPN regime in the Bill.
67. A FPN offers the person the opportunity to avoid prosecution for the offence if they make a payment of the fine within a specified period. The amount of the fine will be level 4 on the standard scale (currently set at £2,500) for offences in connection with licensing in Wales (clause 20). For all other offences the fine will be £200. The amount specified is that if paid within 28 days and will be reduced by 50% if paid within 14 days. No legal proceedings can be initiated before the



end of the 28-day period. If the person who has received the FPN fails to make the payment, the local enforcement authority can decide to initiate proceedings against them for the offence and that 28-day period is to be disregarded for the purposes of calculating the limitation period for the magistrates' court in relation to an offence to which section 127(1) of the Magistrates' Court Act 1980 applies. A FPN can be withdrawn by the local enforcement authority at any point before a payment is made.

68. Clause 38(1) and (2) provide that proceeds received from FPNs for offences in connection with licensing in Wales (clause 20) must be paid to the Welsh Consolidated Fund, prior to which enforcement costs of investigating the offence and issuing the FPN may be deducted by the local weights and measures authority. Clause 38(4) provides that any proceeds from FPNs for other offences must be used by the local weights and measures authority in Wales in connection with their functions for enforcing any measures in this Bill, or any regulations made under this Bill, as well as measures in Part 3 of the Public Health (Wales) Act 2017 and the Tobacco and Related Products Regulations 2016. Clause 38(5) defines fixed penalty notice and relevant Consolidated Fund for the purposes of this clause.
69. Clause 39(2) provides Welsh Ministers) with a power to change the amount of the FPN and the percentage discount for early payment. This power excludes the ability to change amount of the FPN for offences in connection with licensing in Wales (clause 20). For all other offences, clause 39(3) provides the maximum amount the FPN amount can be changed to is equivalent to level 3 on the standard scale of fines for summary offences (currently £1,000). This is included in the Bill to ensure there is flexibility for new regimes to adapt the penalty amount and the discounted amount to reflect changing economic and social circumstances, such as changes in inflation and to ensure fine amounts are proportionate. The power is subject to the affirmative resolution procedure.

#### **Clause 40 and Schedule 5 - Handing over tobacco etc to underage people in Wales**

70. Clause 40 and Schedule 5 introduce amendments to the offence in Chapter 4, Part 3, the Public Health (Wales) Act 2017 (handing over tobacco etc to underage people in Wales). The amendments are to update and align the provisions with the new age of sale restrictions for tobacco products, cigarette papers and nicotine products and to include within scope vaping and herbal smoking products. They also provide a power for the Welsh Ministers to extend, by regulations, the products to which the tobacco provisions of that Chapter applies to include devices which enable a tobacco product to be consumed and items forming part of such a device. Regulations made under this power will be subject to the affirmative procedure.

## **Clause 41, schedules 6 and 7, clauses 42 to 44 - Consequential, transitional and transitory provisions**

71. Clause 41 states the consequential amendments to do with Part 1. The amendments are set out in the schedules 6 and 7 according to when they come into force.
72. Schedule 6 details any consequential amendments that will be made to existing pieces of legislation that will come into force 6 months after the Bill is passed. Consequential amendments in the schedule will ensure other legislation relating to restrictions and regulations of tobacco are in line with the provisions of the Bill.
73. Schedule 7 details any consequential amendments that will be made to existing pieces of legislation that will come into force on 1 January 2027, to ensure measures in the Bill coming into force on that date can operate as intended.
74. Clause 42 ensures that the requirements around the programme of enforcement for England and Wales (clauses 33 and 34 in the Bill) will apply on the passing of the Bill to existing tobacco control measures and age of sale notice requirements up until the new measures in the Bill come into force on 1 January 2027.
75. Clause 43 provides for the FPN regime (clause 37, fixed penalty notices) in this Bill to apply to existing offences to sell tobacco products to, or purchase these products on behalf of, someone underage (under 18) from six months after Royal Assent. From 1 January 2027, when the new age of sale restrictions for tobacco products, herbal smoking products and cigarette papers come into force, FPNs will apply to enforce these new restrictions.
76. Clause 44 provides for transitional provisions.

## **Clauses 45 and 46 – Powers to adjust scope**

77. Clause 45 provides the Secretary of State with a regulation making power to amend any provision of Part 1 which applies to tobacco products by extending the scope to include any device that enables a tobacco product to be consumed (such as a heated tobacco device or pipe), or an item which is intended to form part of such a device. Before making regulations under this section, the Secretary of State must consult persons they consider appropriate and obtain consent from the Welsh Ministers if the regulations contain provisions that fall within the legislative competence of Senedd Cymru. These Regulations are subject to the affirmative resolution procedure.
78. Clause 46 provides the Secretary of State and the Welsh Ministers as appropriate with a power to make regulations to amend the definition of “identity document” in clause 1 and clause 10. This enables the list of identity documents that can be used by retailers to verify a customer’s age to be updated if new forms of identification are developed or others cease to be used. These Regulations are subject to the affirmative resolution procedure.

## **Clause 47 - Crown application**

79. Clause 47 provides that Part 1 of the Bill and any regulations made under Part 1 bind the Crown. This means that the new age of sale restrictions apply in relation to all bodies and persons acting as servants of the Crown such as government departments, prisons run by His Majesty's prison service, and to members of the armed forces, although the Crown itself may not be criminally liable.

## **Clauses 48 and 49 - Interpretation etc**

80. Clause 48 provides the definitions for Part 1.

81. Clause 49 provides the meaning of a "nicotine product".

## **Part 2 deals with the sale and distribution in Scotland. Part 3 deals with the sale and distribution in Northern Ireland.**

## **Part 4: Snus etc: Seizure and detention powers**

82. The measures outlined in Part 4 extend to the whole of the UK as they concern requirements for the seizure and detention of relevant oral tobacco products. This will apply uniform standards for products imported into the UK.

83. The relevant clause in this Part, that require legislative consent, are:

- Clause 89 – Power of officer of Revenue and Customs to seize and detain snus etc

84. Clause 89 enables customs officials to seize and detain imported relevant oral tobacco products in order to enable an enforcement authority to take over. However, the imported relevant oral tobacco products may not be detained for a period of more than 48 hours. The Commissioners for His Majesty's Revenue and Customs are responsible for dealing with the relevant oral tobacco products during the period of detention. This Clause will not prevent the importation of snus for personal use.

## **Part 5: Product requirements and information requirements etc**

85. The measures in Part 5 extend to the whole of the UK. The Part contains a suite of regulation making powers to enable requirements to be set in relation to product standards, including packaging, features of products, content and flavouring. The provisions also enable the establishment of a registration scheme, for information to be provided to support registration and to check for compliance with product standards and for testing of products for quality and safety.

86. In this Part "relevant products" means tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products.

87. The relevant clauses in this Part, that meet the test in SO 29 are:

- Clauses 90 to 93 - Product requirements etc
- Clause 94 – Non – Complaint images
- Clauses 95 - 98 - Registration and information requirements
- Clauses 99 and 100 – Quality control and safety
- Clauses 101 and 102 - Matters dealt with by 2016 Regulations
- Clauses 103 to 109 - Supplementary and miscellaneous
- Clauses 110 and 111 – Consultation and consent
- Clauses 112 and 113 - Interpretation

88. Before making regulations under Part 5, the Secretary of State must obtain the consent of the Welsh Ministers, Scottish Ministers and the Executive Office in Northern Ireland if the regulations contain provision which would be within the legislative competence of the Senedd, the Scottish Parliament or the Assembly, as outlined in clause 111 (Consent to regulations under Part 5). Any regulations made under Part 5 of the Bill are subject to the affirmative resolution procedure. Before exercising any of the powers in this part there is a duty to consult.
89. Clauses 90 and 91 re-enact with modifications, the regulation making powers to make provision about the retail packaging and product features of tobacco products in section 94 of the Children and Families Act 2014 (the 2014 Act). The Bill repeals section 94 of the Children and Families Act 2014 as the provisions are restated in this Bill. The Standardised Packaging of Tobacco Products (SPoT) Regulations 2015 were made using the powers in section 94. As the Bill re-enacts those powers, section 17(2)(b) of the Interpretation Act 1978 means that the SPoT Regulations will remain in force.
90. Under the Tobacco and Related Product Regulations (TRPR) 2016 producers of tobacco products, herbal smoking products and nicotine vapes are required to notify the Secretary of State before these products are introduced to the UK market. Clause 95 (Registration) allows for the establishment of a registration scheme that would replace the current notification system in TRPR expanded to cover all restricted products. These new regulation-making powers will help to improve the safety of products that are on the market and improve customer confidence, whilst enabling improvement of the enforcement of restrictions surrounding non-compliant products. The requirements to notify tobacco products, herbal smoking products and nicotine vaping products will remain in place until the new registration scheme is established.
91. Clause 112 (Interpretation of Part 5) and 113 (Meaning of “nicotine product”) provide definitions for Part 5, including the meaning of “packaging” and “retail packaging”.

### **Clauses 90 to 93 - Product requirements etc.**

92. Clause 90 provides powers for the Secretary of State to make regulations about the packaging of “relevant products”. The power could be used to regulate retail packaging, including the appearance of such packaging as well as the information provided on it and its shape and texture. A refill container containing a vaping liquid can be treated as packaging for these purposes.

93. Clause 91 provides the Secretary of State with a power to make regulations about the features of “relevant products”. This re-enacts the existing power to make provision about product features for tobacco in section 94(8) of the 2014 Act with some modifications. These requirements relate to the product itself, rather than the packaging, for instance the colour of the products or what can be printed on the body of the product (such as images, for example), the appearance of the products and its shape. Clause 112 provides the definition of “production” and makes it clear that regulations can cover production outside the UK.
94. Clause 92 provides the Secretary of State with a power to make regulations about the substances that may be included in (as well as the amount of any given substance) and the flavour of “relevant products”. Regulations made under this power could be used to restrict the flavour of any accessories intended to be used to give flavour to any of these products. For example, regulations may prohibit certain ingredients (such as vitamins, colourings or prohibited additives) being used in these products, including additives which impart a particular flavour (taste and smell).
95. Clause 93 provides the Secretary of State with a power to make regulations about the nature and amount of substances and emissions that may be released by “relevant products”. The power includes making provisions about how the nature and amount of substances or emissions are determined.

#### **Clauses 94 – Non- compliant images**

96. Clause 94 provides the Secretary of State with regulation making powers to prohibit a person from publishing a “non-compliant” image of “relevant products”. This means that if, for example, regulations were made to restrict the packaging of a vape, then it would be an offence to publish an image of a vape in packaging that did not adhere to those packaging restrictions. Clause 94 extends to all products and to images from which it is possible to tell that a product (or its packaging) is in breach of regulations. This means that an online retailer would not be able to have images on their website with non-compliant packaging or products on show. For example, displaying an image of a vape packaging without the mandated warning signage. Under TRPR, the publication of non-compliant images of tobacco products is banned reflecting the current requirements on packaging of tobacco products.

#### **Clauses 95 – 98 - Registration and information requirements**

97. Clause 95 provides the Secretary of State with a power to establish a register of “relevant products”. Currently tobacco, herbal smoking products and nicotine vapes are required to be notified before being placed on the UK market. Regulations could specify, for example: who can keep the register, who is eligible to register a product, the content of the register, publication of the register, and fees to maintain the register. Additionally, regulations may state when a products registration expires, renews, may be cancelled or suspended. Powers may also specify requirements for, including for example, images of a product or its packaging. Regulations may also require reasons for an ingredient

being included, copies of images of the product and information relevant to any suspected risks to human health or safety, among other things.

98. Under the Regulations, it could be made an offence to supply a product that has not been registered in the same way as it is currently an offence to supply a product that has not been notified. The power also provides the Secretary of State with the ability to set the level of fees payable for registration. The fees may be set at a level to cover the cost of carrying out any functions under Part 5 or regulations made under Part 5. For example, the cost of monitoring, producing annual reports and running events to aid compliance.
99. Clause 96 provides the Secretary of State with a power to require a producer or importer of a “relevant product” to provide information that is related to the product or its producer, for example sales data or market research data. The regulations made under this power may make provision about when and how the information must be provided and about the publication of information provided under the regulations.
100. Clause 97 provides the Secretary of State with a power to require a producer of a “relevant product” to carry out a study and submit the results in relation to the product or an ingredient in the product. The regulations may make provisions about how a study is to be carried out, questions to address and content and structure of a report. Regulations may also make provision about the detailed requirements of the study.
101. Clause 98 provides the Secretary of State with a power to require a producer of a “relevant product” to nominate an individual to be responsible for information that has to be provided in accordance with regulations made under clauses 95, 96 and 97. The aim of having a dedicated person responsible is to ensure information is provided to strengthen compliance and enforcement of product standards and ultimately help improve consumer safety and trust. Regulations made under this clause may make provisions about who is eligible to be nominated as the responsible person and require the person to have a connection to the UK.

### **Clause 99 - Quality control and safety**

102. Clause 99 provides the Secretary of State with a power to introduce regulations that require a person to test products to determine whether a product complies with requirements imposed in regulations made under this Part of the Bill. Regulations made under this power may include provision about the requirements for testing, such as how and when the tests should be carried out and who may carry out the tests and any associated fees that should be paid.
103. Clause 100 concerns product safety. It provides the Secretary of State with a power, for the purpose of minimising risks to human health and safety, to require producers or importers to have a process in place for collecting information on the effect of their product on human health and safety. The clause also allows for regulations to be made conferring a power on the Secretary of State to require a product to be recalled from the market or to prohibit or limit the supply of a

product in circumstances set out in the regulations. For instance, if there is serious risk to public health. This allows the Secretary of State to set out circumstances under which products could be banned or recalled.

### **Clauses 101 – 102 - Matters dealt with by 2016 Regulations**

104. Clause 101 provides the Secretary of State with powers to make provision in regulations that is similar or corresponds to any remaining provision in the TRPR 2016. This will ensure that any gaps are covered which may exist in the powers taken under Part 5 relative to provision made in the TRPR 2016. TRPR was made under the power in section 2(2) of the European Communities Act 1972 to implement Directive 2014/40/EU. The power also enables the TRPR 2016 regulations to be amended so as to apply any provision in those regulations to “related products” to which the 2016 Regulations do not currently apply.
105. Clause 102 allows for regulations to revoke parts of the TRPR 2016 Regulations without replacing them and makes clear that any power to make regulations under Part 5 that corresponds with the provisions under TRPR should be interpreted as being made under this Part in line with section 14 of the Interpretation Act 1978 (Implied power to amend).

### **Clauses 103 to 109 – Supplementary and miscellaneous**

106. Clause 103 provides for the creation of offences for the failure to comply with any regulations made under Part 5 and sets out the maximum penalties that could be imposed for failure to comply.
107. Clause 104 provides for provisions about enforcement to be included in regulations made under Part 5 and may give the function of enforcement of the regulations to relevant enforcement authorities (a local weights and measures authority in Wales). The regulations may make the same provisions as are made in this Bill under clauses 35 and 36, thereby allowing the relevant national authority (the Welsh Ministers in Wales) to take over enforcement, or legal proceedings relating to any offence committed under the regulations, from a relevant enforcement authority. Regulations may provide enforcement authorities with appropriate powers to carry out enforcement activities such as powers to obtain information, seize or forfeit goods suspected of being non-compliant. This may be done by applying provisions in the Consumer Protection Act 1987 or making separate provision corresponding or similar to the provisions of that Act.
108. Clause 105 provides for legislative sub-delegation. This allows the regulations to confer discretions. For example, this could allow the Secretary of State to appoint a person to make a decision or determination for the purposes of the regulations. This is considered appropriate given the nature of some of the matters dealt with by the regulations. For example, under clause 99 (Testing), regulations may provide for tests to be required to be carried out on certain products. It may be appropriate for detailed technical specifications for tests to be set out in guidance rather than in the legislation.

109. Clause 106 provides that when regulations are made under Part 5, the requirements imposed under the regulations will apply to the Crown (that is all public servants of the Crown, such as government departments, prisons run by His Majesty's prison service, and to members of the armed forces). Clause 107 provides that consequential provision made by regulations under Part 5 may amend, repeal or revoke any legislation (whenever passed or made).
110. Clause 108 omits section 94 of the Children and Families Act 2014 (the 2014 Act) relating to the existing law on the retail packaging and product features of tobacco as these have been replaced and updated by this Bill and are therefore no longer needed. The Standardised Packaging of Tobacco Products Regulations 2015 were made under the powers in Section 94. These will remain in force.
111. Clause 109 brings non-compliance with the requirements of the TRPR within scope of the enforcement regime set up under Part 3 of the Digital Markets, Competition and Consumers Act 2024 by adding The Tobacco and Related Products Regulations 2016 to the list of secondary legislation in Schedule 15 of that Act. The effect of this amendment is to enable local weights and measures authorities (which includes devolved Welsh authorities) to use the court-based enforcement powers within this Act to enforce the provisions of TRPR. A similar amendment has been made at clause 41(1), schedule 6, paragraph 29, but allows the same authorities to use the powers enforce the provisions of the Bill when it becomes law.

### **Clauses 110 and 111 – Consultation and consent**

112. Clause 110 sets out the duty to consult and is self-explanatory.
113. Clause 111 establishes that regulations made under Part 5 may relate to matters which are within the legislative competence of the devolved governments. Provision is therefore made in clause 111 requiring the Secretary of State to obtain consent from the Welsh Ministers, the Scottish Ministers and the Executive Office of Northern Ireland if provisions of the regulations fall within the legislative competence of the devolved legislatures.

### **Clauses 112 and 113 – Interpretation**

114. Clause 112 provides definitions for relevant terms used in Part 5 of the Bill.
115. Clause 113 provides the meaning of “nicotine product” for Part 5.

### **Part 6: Advertising and sponsorship**

116. The Tobacco Advertising and Promotion Act (2002) (the “2002 Act”) introduced measures to limit the marketing and promotion of tobacco products and to reduce exposure to tobacco advertising and promotional activities. The 2002 Act prohibited the advertising of tobacco products to the public, with an exemption for specialist tobacconists. It also prohibited sponsorship agreements which promote tobacco products. This Bill repeals and replaces the 2002 Act.



Clauses in Part 6 of the Bill make similar provision relating to advertising, sponsorship and brandsharing as the 2002 Act and include herbal smoking products, cigarette papers, vaping and nicotine products, for the whole of the UK.

117. The existing restrictions on advertising of nicotine vapes as set out in TRPR) will be replaced by the provisions in Part 5 of this Bill. The effect of these provisions will be that any advertisement published for a relevant product, regardless of where it appears, will be banned. Provision made in the Bill will maintain the existing ban on tobacco advertising. The 2002 Act also bans the free distribution and display of tobacco products. Provision for retail displays are made in clauses 13 and 14 (Displays of products or prices in England, and in Wales). The ban on the free distribution and discount of tobacco products is extended in the Bill to include all relevant products (clause 15).

118. In this Part “relevant products” means tobacco product, herbal smoking product, cigarette paper, vaping product, or nicotine product.

119. The prohibitions on advertising, promotion, brandsharing and sponsorship in Part 6 are not intended to prevent the public at large, such as journalists etc from making incidental commentary on the relevant products, nor is intended that the representation of such products by those engaged in creative or artistic pursuits (actors, painters, producers etc) should be prohibited.

120. The relevant clauses in this Part that meet the test in SO 29 are:

- Clauses 114 - 119 – various advertising offences
- Clauses 120 to 122 – defence and exclusions from advertising offences
- Clauses 123 – Brandsharing
- Clause 124 and 125 – Sponsorship to tobacco, vaping and nicotine products;
- Clauses 126 and 127 – Audiovisual services and radio broadcasting
- Clause 128 – Offences by bodies
- Clause 129 to 131 – Enforcement
- Clause 132 - Alignment of definition in old advertising legislation pending replacement
- Clause 133 - Power to extend advertising provisions, and provisions regarding TV, radio and other broadcasters, to heated tobacco devices;
- Clause 134 - Crown application
- Clause 135 – Interpretation

### **Clauses 114- 119 – Advertising offences**

121. Clause 114 makes it an offence to publish a relevant product advertisement in the UK. This includes advertisements in the media, for instance, publishing an advert for a vaping product in a newspaper.

122. Clause 115 makes it an offence to design and make a relevant product advertisement which will be published in the UK. For instance, this could include a person at a design agency who is designing a nicotine pouch advertisement.
123. Clause 116 makes it an offence to print a relevant product advertisement knowing that this will be published in the UK.
124. Clause 117 makes it an offence to distribute a relevant product advertisement in the UK. This could include a company that hands out leaflets which contain vape advertisements.
125. Clause 118 makes it an offence to cause the publication, designing, printing or distribution of an advertisement for a relevant product knowing this will be published or distributed in the UK. For example, this would make it an offence for someone to commission an advertising agency to create a nicotine product advert on their behalf.
126. Clause 119 makes it an offence to provide an internet service in the course of a business by which an advertisement to promote a relevant product, is published or distributed in the UK. For example, an email marketing service would commit an offence if any of the emails contained an advertisement for any of the relevant products.

#### **Clauses 120- 122 – Advertising defences and exclusions**

127. Clause 120 sets out defences for a person charged with an offence under clauses 114 to 119 (114 (Publishing advertisements), 115 (Designing advertisements), 116 (Printing advertisements), 117 (Distributing advertisements), 118 (Causing publication, designing, printing or distribution) and 119 (Internet services). This includes if the advertisement is part of a communication made in the course of business of a relevant trade between those involved in the trade at a senior level or with decision making responsibility. Further, it is a defence if an individual specifically requests information about a relevant product, or if the advertisement is contained in a publication which is printed outside of the UK and whose market is not the UK (except for an in-flight magazine). A relevant trade is a trade in one of the relevant products.
128. Clause 121 provides that specialist tobacconists may continue to advertise tobacco products within the restrictions set out. This clause restates the existing law. A person does not commit an offence under clauses 114 to 118, if the advertisement is in a specialist tobacconist, is not visible from outside the specialist tobacconist and is not to advertise cigarettes or hand-rolling tobacco. Regulations by Welsh Ministers may set requirements for advertisements to display a health warning. The regulations are subject to the negative procedure.
129. A specialist tobacconist shop is defined in the clause.
130. Clause 122 provides that no offence is committed under this Part if a product or other material which is displayed is subject to the law relating to displays. For

Wales, the law on displays is set out at clause 14 of the Bill. The purpose of this provision is to avoid a display which is permitted being prohibited as an advertisement. For example, displaying a vape on a pedestal would not be considered an advertisement if vapes were subject to restrictions set out in legislation on their displays.

### **Clause 123 – Brandsharing**

131. Clause 123 provides the Secretary of State with the power to introduce regulations that prohibit brandsharing of relevant products. Brandsharing, or brandstretching as it is sometimes known, is a form of indirect advertising which promotes the use of a tobacco product, herbal smoking product, cigarette paper, vaping product or nicotine product by putting its branding on other products or services, or vice versa. Using a tobacco product logo on a T-shirt or a confectionary company using their branding on a vape are examples of brandsharing if the intent is to promote vapes.
132. The power also provides for the creation of offences for the failure to comply with the regulations and anyone convicted of an offence may be subject to imprisonment, a fine (where there is no maximum amount) or both.
133. The Secretary of State must obtain consent from the Scottish Ministers and the Department of Health in Northern Ireland before making regulations which contain provision which would be within the legislative competence of Scotland or Northern Ireland reflecting that regulation of advertising is in part devolved to Scotland and Northern Ireland.

### **Clauses 124 and 125 – Sponsorship**

134. Clause 124 makes it an offence for an individual to be involved with a sponsorship agreement where the purpose is to promote a tobacco product in the course of business. This maintains the current prohibition of tobacco sponsorship in the Tobacco Advertising and Promotion Act 2002 (TAPA). Anyone convicted of an offence under this provision may be subject to imprisonment (for a term not exceeding 2 years) or a fine, or both.
135. Clause 125 makes it an offence for an individual to be a party to a sponsorship agreement where the purpose is to promote a herbal smoking product, cigarette paper, vaping product, or nicotine product in the course of business. For example, this clause will prohibit sports teams from being sponsored by a vaping company.
136. Clause 125 will apply to any agreement entered into after this section comes into force two months after Royal Assent. Clause 124 will take effect from a date to be specified in regulations (clause 169(2)(b)). From the relevant date, it will be an offence if either party makes a contribution under the agreement and does anything whose purpose or effect is to promote one of these products. Agreements for vaping and nicotine products entered into before clause 125 comes into force can continue until regulations specify a date where any further actions under an existing agreement would be an offence.

137. Anyone convicted of an offence under this provision may be subject to imprisonment (for a term not exceeding 2 years), a fine where there is no maximum amount, or both.

### **Clauses 126, 127 and Schedule 10 - Audiovisual services and radio broadcasting**

138. Clause 126 provides an exemption from Part 6 for certain broadcasters. It outlines that Part 6 of this Bill does not apply to independent television or radio services, or to the British Broadcasting Corporation (BBC) or Sianel Pedwar Cymru, on-demand programme services, or non-UK on-demand programme services which are a Tier 1 service as defined in the Communications Act 2003. This is because advertising and sponsorship is prohibited on these services under regulations by the Office of Communications as set out in the Communications Act 2003.

139. Clause 127 is self-explanatory and introduces Schedule 16. Schedule 16 amends the Communications Act 2003 (the “2003 act”) so that it additionally applies to vaping products, herbal smoking products, cigarette papers, and nicotine products. The effect of this schedule is to ensure that the ban of advertising vapes on television, radio, and on-demand programme services implemented by the 2003 act is extended so that all those products mentioned are captured and fall under the advertising ban instated by the 2003 act. These bans therefore will continue to be governed by the existing provisions within the 2003 act rather than through the Bill itself, unlike other advertising measures.

140. A similar amendment to extend the scope of the products caught by the relevant provisions of the Communications Act 2003 can be made by clause 133.

### **Clause 128 - Offences by bodies**

141. Clause 128 makes a “relevant person” (a director or manager of a company or someone with partner status in a partnership) liable for an offence under Part 6 of the Bill committed by a body, where the offence has been committed with their consent, connivance, or neglect. In such cases the relevant person may be liable in addition to the body (such as the company or partnership) they are working for. This applies to offences in clauses in Part 6 as well as regulations made under that Part. The clause sets out definitions for a body and a relevant person.

### **Clauses 129 – 131 – Enforcement**

142. Clause 129 places a duty on relevant enforcement authorities to enforce the provisions in Part 6 of the Bill and regulations made under powers in Part 6. A relevant enforcement authority is a local weights and measures authority in England, Wales and Scotland (e.g. Local Authority Trading Standards), and a district council in Northern Ireland.

143. Clause 130 provides a power for the relevant national authority (the Secretary of State, the Welsh Ministers, the Scottish Ministers or the Department of Health

in Northern Ireland) to carry out the enforcement of a particular case or a particular type of case instead of the relevant local enforcement authority. The effect of this is that a national enforcement authority will undertake the investigation and enforcement, rather than the local enforcement authority as prescribed in clause 129 (Enforcement authorities). This could arise if a local enforcement authority is unable or unwilling to undertake enforcement of a certain case.

144. Clause 131 provides a power for the Secretary of State, the Welsh Ministers, or the Department of Health in Northern Ireland to take over the legal proceedings relating to any offence that has been committed under Part 6 of the Bill or regulations made under it. This will allow a national authority to undertake the legal proceedings in court instead of a local enforcement authority. This could arise if a local enforcement authority is unable or unwilling to undertake the legal proceedings of a certain case.

### **Clause 132 - Alignment of definition in old advertising legislation pending replacement**

145. Clause 132 amends the definition of 'tobacco products' in the Tobacco Advertising and Promotion Act 2002, section 1 (Interpretation), to align with the definition within this Bill.

### **Clause 133 - Power to extend advertising legislation**

146. Clause 133 provides the Secretary of State with powers to amend Part 6 and the Communications Act 2003 by extending the scope of the products captured to include any device that enables a tobacco product to be consumed (such as a heated tobacco device), or an item which is intended to form part of such a device. Before making regulations under this clause the Secretary of State must obtain consent from the Welsh Ministers, the Scottish Ministers and the Executive Office of Northern Ireland if provisions of the regulations fall within the legislative competence of the devolved legislatures. This power ensures that devices that are used to consume tobacco can be subjected to the same advertisement and promotion prohibitions as tobacco products and ensures that the legislation is future-proof and flexible.

### **Clause 134 - Crown application**

147. Clause 134 provides that Part 6 of the Bill and any regulations made under Part 6 bind the Crown. This means that the advertising and sponsorship restrictions apply in relation to all bodies and persons acting as servants of the Crown such as government departments, prisons run by His Majesty's prison service, and to members of the armed forces. The Crown itself will not be liable for an offence under this Part (this is not the case for persons in the service of the Crown such as civil servants or prison employees) but a court may make a declaration of unlawfulness in respect of an act (or omission) for which the Crown would otherwise have been criminally liable.

## **Clause 135 - Interpretation**

148. Clause 135 provides the definitions for Part 6 and is self-explanatory.

## **Part 7 – Smoke-free places, vape-free places and other free-from places**

149. Part 7 enables smoke-free, vape-free and heated-tobacco free-from places to be created in England, Scotland, Wales and Northern Ireland. Part 7 reflects the varied position currently in place in each nation in relation to smoke-free places and provides the Ministers of each country with regulation making powers to create additional free-from places.

150. In Wales, the Smoke-free Premises etc. (Wales) Regulations 2007 came into force and specified the meaning of ‘enclosed’ or ‘substantially enclosed’ premises, which for the purposes of the Health Act 2006 would be smoke-free if public places, including workplaces. Similar legislation was also introduced elsewhere in the UK in 2007. In 2021, Chapter 1 of Part 3 of the Public Health (Wales) Act 2017 (the “2017 Act”) and the Smoke-free Premises and Vehicles (Wales) Regulations 2020 came into force in Wales only and extended the smoke-free requirements to additional places including hospital grounds, school grounds, public playgrounds and outdoor day care and child-minding settings.

151. Section 13 of the 2017 Act provides the Welsh Ministers with a power to make regulations to designate additional smoke-free premises in Wales. These premises do not need to be enclosed or substantially enclosed (i.e. they may be open spaces). The Welsh Ministers can only designate additional smoke-free premises if they are satisfied that designating those premises as smoke-free is likely to contribute towards the promotion of the health of the people of Wales. Exemptions may be made, for example to allow the person in charge of the premises to designate areas in which smoking is to be permitted. The power in section 13 of the 2017 Act has not yet been used. Section 15 enables the Welsh Ministers to make regulations providing for vehicles to be smoke-free.

152. The smoke-free places restrictions in the 2017 Act did not apply to the Crown and the same approach has been adopted for this clause to provide a consistent legislative approach. This means these restrictions do not apply to all bodies and persons acting as servants of the Crown such as government departments, prisons run by His Majesty’s prison service, and to the armed forces. However, government bodies have the ability to bring forward similar restrictions other than under the 2017 Act and have previously done so in relation to smoking.

153. The relevant clauses in this Part that meet the test in SO 29 are:

- Clause 147 – 152 – Wales

## **Clauses 147- 152 - Wales**

154. Clause 147 amends the 2017 Act, so the Welsh Ministers have a duty to consult before making regulations under section 13 (additional smoke-free places) and section 15 (smoke-free vehicles).

155. Clause 148 amends section 15(3)(d) of the 2017 Act to enable the Welsh Ministers to identify in regulations made under section 15(1) in respect of exceptions to smoke-free vehicles, persons who may designate parts of a vehicle as not smoke-free.
156. Clause 149 amends the 2017 Act requirements around no-smoking signs to provide that a person who occupies or manages a no-smoking premises must ensure no-smoking signs are displayed in “or near” the premises, in accordance with requirements imposed by regulations which may, among other things, impose requirements about content, appearance, and how and where signs are to be displayed. This provides more flexibility than the current requirements. The regulations are subject to the negative resolution procedure. This clause also provides that regulations under the existing section 17(3) providing for a similar duty to be imposed in relation to additional smoke-free premises and vehicles may impose the same requirements around content, appearance, etc. of signs. These regulations are already subject to the Affirmative resolution procedure.
157. Clause 150 amends the 2017 Act to insert a new chapter relating to vaping, allowing the Welsh Ministers to make regulations designating places or vehicles in Wales as vape-free, but only when they are already smoke-free. These regulations are subject to the affirmative resolution procedure. The clause makes it an offence for a person to vape in a vape-free place or vehicle and places a duty on a person who manages or controls a vape-free place, or a driver of a vape-free vehicle or any other person specified for vehicles, to stop a person using a vape on their premises or in their vehicle, else they commit an offence.
158. The clause also places a duty on a person who occupies or has management responsibilities of a vape-free place or a person who manages a vape-free vehicle to put up no-vaping signs and ensure they are adequately displayed. Regulations may set out specific requirements that these signs must comply with, as well as create exceptions in relation to the duty to display no-vaping signs in accordance with requirements in the regulations for vehicles. These regulations are subject to the negative resolution procedure.
159. There are defences to the vape-free offences only in respect of performers using a non-nicotine vape during a performance, where its use was justified to preserve the artistic integrity of the performance.
160. Clause 151 amends the 2017 Act to insert a new chapter relating to heated tobacco. This allows the Welsh Ministers to make regulations designating places or vehicles in Wales to be made heated tobacco-free, but only where such places that are already smoke-free. These regulations are subject to the affirmative resolution procedure. The clause makes it an offence for a person to use a heated tobacco in a heated tobacco free place or vehicle. It also places a duty on a person who controls or is concerned with the management of a heated tobacco-free place, or the driver of a heated tobacco-free vehicle and any other person specified in regulations for vehicles, to stop a person using a heated tobacco device on their premise or in their vehicle.

161. The clause also provides that a person who occupies or is involved in the management of a heated tobacco-free place or with management responsibilities of a heated tobacco-free vehicle must put up no heated tobacco signs, and ensure they are adequately displayed. The Welsh Ministers may set out specific requirements that these signs must comply with in regulations, as well as create exceptions in relation to the duty to display signs in accordance with requirements in the regulations for vehicles. These regulations are subject to the negative resolution procedure.
162. I am seeking assurances from the UK Government that clauses 150 and 151 will align with the requirements of the Public Health (Wales) Act 2017.

### **Part 8: General**

163. Part 8 (clauses 159 to 171) provide general clauses that apply to the Bill and extend to the whole of the UK.
164. The relevant clauses in this Part that meet the test in SO 29 are:
- Clauses 160, 161, 163, 165 to 170 – General.
165. Clause 160 introduces Schedule 21 which makes further amendments as a consequence of this Bill and is self-explanatory.
166. Clause 161 gives the Secretary of State a regulation making power to make provision that is consequential on this Bill and may amend, repeal or revoke any legislation passed or made before, or in the same session as this Bill (including provision made by this Bill). Any regulations made to amend, repeal, or revoke primary legislation will be subject to the affirmative resolution procedure. Any other regulations under this section will be subject to the negative resolution procedure.
167. Clause 163 gives the Welsh Ministers a regulation making power to make provision that is consequential on Part 1 (sale and distribution), as well as on clauses 147 to 152 (Smoke-free places, vape-free places and other free-from places) and Schedule 19 (Amendments consequential on sections 147 to 152) of this Bill.
168. The clause provides that the use of the power by the Welsh Ministers can only be made if the provision would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd. Any regulations may amend, or repeal or revoke provision made by or under an Act passed before this Bill or in the same session of Parliament as this Bill or an Act or Measure of Senedd Cymru passed before this Bill. Any regulations that amend or repeal provisions made by an Act, or an Act or Measure of Senedd Cymru are subject to the affirmative resolution procedure. Any other regulations under this section will be subject to the negative resolution procedure, unless amending primary legislation, in which case they are subject to the affirmative procedure.
169. Clause 165 provides that where regulations are made under the Bill, which includes by the Welsh Ministers, the regulations may make consequential,



supplementary, incidental, transitional, or saving provision and allows regulations to make different provision for different purposes and different provision for different parts of the UK. This does not apply to regulations made under clauses 168 (Commencement: Parts 1 to 4), 169 (Commencement: Parts 5 to 8), and 170 (Transitional provision). The parliamentary procedure will be as per the relevant substantive power.

170. Clause 166 provides the procedure for making regulations under the Bill. Regulations made by the Secretary of State or Welsh Ministers under this Bill are to be made by statutory instrument. The clause defines the “the affirmative resolution procedure” and “the negative resolution procedure” in the context of this Bill.
171. Clause 167 provides for the extent of this Bill. A table on territorial extent of each clause in the Bill can be found at Annex A of the Explanatory Notes to the Bill <https://bills.parliament.uk/bills/3879/publications>. The extent of the different Parts of the Bill are as follows:
- a. Part 1 extends to England and Wales only.
  - b. Part 2 extends to Scotland only.
  - c. Part 3 extends to Northern Ireland only.
  - d. Parts 4, 5 and 6 and this Part of the Bill extend to England and Wales, Scotland and Northern Ireland.

Any amendment or repeal made by the Bill has the same extent as the provision that is amended or repealed.

172. Clause 168 provides the commencement dates for the various clauses of the Bill in Parts 1 to 4. To give businesses sufficient time to prepare for implementation of measures in the Bill, the commencement section of the Explanatory Notes provides a detailed summary and explanation of these commencement dates. Clause 168 sets out the key commencement provisions in Parts 1 to 4 in relation to Wales. These clauses come into force 6 months from the day on which the Bill is passed, with the exception of:
- Any provision, or amendment made by, Parts 1 to 3 where it confers a power to make regulations or relates to the exercise of the power. These are powers to make secondary legislation and the commencement of the powers does not require an implementation period and so come into force on the day on which the Bill is passed.
  - Measures which relate to the new age of sale of tobacco etc come into force on the 1 January 2027 when children born on or after 1 January 2009 turn 18.
  - Clause 19 (Prohibition of retail sales of tobacco products etc in Wales without a licence), 20 (Offences in connection with licences: Wales), 21 (Financial penalties for breach of licence conditions: Wales), 22 (Repeal of register of retailers of tobacco and nicotine products in Wales etc), Schedule 3 (Retail licensing scheme: Wales) and Schedule 4 (Financial penalties for breach of retail licence conditions: Wales) come into force on such a day as appointed by the Welsh Ministers by order. The order may appoint different days for different purposes. This power is exercisable by statutory instrument (clause 166(1)).

- Clause 40 and Schedule 5 (Handing over tobacco etc to underage people in Wales) which come into force on such a day as appointed by the Welsh Ministers by order.

173. Clause 169 sets out the key commencement provisions in Parts 5, 6, 7 and 8 in relation to Wales which are:

- Part 5 (Product and Information Requirements Etc) contains delegated powers and so comes into force on the day on which the Bill is passed.
- Part 6 (Advertising and Sponsorship), Clause 125 (Sponsorship: vaping and nicotine and other products), 132 (Alignment of definition of “tobacco product” in old legislation), 134 (Crown application) and 135 (Interpretation of Part 6) come into force at the end of the period of 2 months beginning with the day on which the Bill is passed. The remainder of the provisions in Part 6 come into force on such day as the Secretary of State may by regulations appoint.
- Part 7 (Smoke-free, vape-free places and other free-from places) come into force on such day as the appropriate national authority appoints. The Welsh Ministers may by order bring into force clauses 147 to 152, and Schedule 19. The order may appoint different days for different purposes. This power is exercisable by statutory instrument (clause 166(1)).
- Part 8 (General) comes into force on the day on which the Bill is passed, with the exception of clause 160 (Further consequential amendments) and Schedule 21 (Consequential amendments: general) which come into force on such a day as the Secretary of State may by regulations appoint.

174. Clause 170 provides powers to make transitional and saving provisions. Clause 170(1) confers a power on the Welsh Ministers to, by regulations, make transitional or saving provision in relation to the coming into force of clause 40 and Schedule 5, clauses 147 to 152, Schedule 19. This power is exercisable by statutory instrument (clause 166(1)). It includes a power to make different provision for different purposes.

### **Powers to make subordinate legislation**

175. In my description of the provisions of the Bill (above), I have identified where powers to make subordinate legislation may be found. Where the power is given to Welsh Ministers, I have also set out the Senedd procedure that applies to the power.

176. Clauses 45, 95 and 100 provides the Secretary of State with a power to make regulations with the consent of Welsh Ministers in areas which, in my view, relate to devolved matters.

177. Clause 123 provides the Secretary of State with a power to make regulations without needing to seek the consent of the Welsh Ministers in an area which, in my view, relates to devolved matters.

178. I will engage further with the UK Government in relation to clauses 45, 95, 100 and 123 to seek the necessary constitutional assurances to ensure these provisions align with our Cabinet Principles on UK Legislation.

### **UK Government view on the need for consent**

179. The UK Government has sought consent for the entirety of the Bill with the exception of clauses 5, 13, 16-18, 25, 29, 33, Parts 2, 3, and 4, clauses 95, 100, 109, 114-120, 123, 126, 127, 136-147, 153-159, 162 and 164 as these have been determined by the UK government not to require engage the LCM process.

180. The Welsh Government agree with the UK government's assessment in relation to clauses 5, 13, 16-18, 33, Parts 2 and 3, clauses 136-147, 153-159, 162 and 164.

181. However, there is a difference in position in relation to the need for consent for clauses 25, 29, Part 4 and clauses 95, 100, 109, 114-120, 123, 126 and 127. In my view, these clauses make provision in relation to Wales that have regard to the devolved matter of public health. As a result, in accordance with Standing Order 29, Senedd consent is required.

### **Reasons for making these provisions for Wales in the Tobacco and Vapes Bill**

182. In Wales, around 13% of people aged 16 and over smoke: <https://www.gov.wales/adult-lifestyle-national-survey-wales>. The Welsh Government's ambition is for Wales to be smokefree by 2030: <https://www.gov.wales/tobacco-control-strategy-wales>. Although smoking rates have fallen from 23% since 2010, we want to help more smokers to quit and stop young people from ever starting in the first place.

183. Smoking remains a major cause of mortality and ill health in Wales. Analysis undertaken by Public Health Wales found that over the period 2020-22, an estimated 3,845 deaths per year amongst those aged 35 and over in Wales were due to smoking: <https://phw.nhs.wales/news/over-10-percent-of-deaths-in-wales-due-to-smoking/>. This means that on average 10.7% of all deaths in Wales amongst those aged 35 and over in these years were attributable to smoking. In addition to being the leading cause of preventable illness and death, the analysis also showed that on average more than 17,000 hospital admissions each year in Wales were attributable to smoking, adding significant pressure to the healthcare system. Rates of smoking attributable hospital admissions were also twice as high for residents of the most deprived communities compared to those in the least deprived.

184. Smoking is also a risk factor for poor maternal and infant outcomes, it significantly increases the chance of stillbirth and can trigger asthma in children. Non-smokers are also exposed to second hand smoke, which can be particularly harmful to children and vulnerable people with conditions like asthma: <https://www.nhs.uk/live-well/quit-smoking/passive-smoking-protect-your-family-and-friends/>. The Bill therefore aims to protect future generations from the harms

of tobacco and other smoking products and supports our ambition to be smoke-free by 2030.

185. Vapes (also known as electronic cigarette, e-cigarettes, electronic nicotine delivery system (ENDS), or vaporisers) work by heating a solution of water, flavouring, propylene glycol (or vegetable glycerine) and, typically, nicotine to create a vapour that the user inhales. The act of using a vape is often referred to as 'vaping'. For some smokers, vapes can be an effective smoking cessation tool. However, vaping is never recommended for children, young people and non-smokers and carries risk of addiction. The long-term impacts of vape use are also unknown.
186. Although it is illegal to sell vapes to under 18s, children and young people as well as people who have never smoked are known to be using them. Data from the School Health Research Network Student Health and Wellbeing Survey and Public Health Wales shows that 7% of young people aged 11–16-year-olds use vapes weekly. This is an increase from 5.4% in 2021. For pupils in year 11, the figure is 15.9%, an increase from 13.6% in 2021. For pupils in year 11, the figure is 15.9% up from 13.6% in 2021 <https://phw.nhs.wales/news/new-vaping-regulations-welcomed-as-vape-use-rises-among-young-people/>.
187. The Bill will provide legislative changes across the United Kingdom. It will save tens of thousands of lives and save the NHS billions of pounds. The response to the UK-wide consultation overwhelmingly backed the measures.
188. I consider it would be appropriate for this UK Bill to make provision in relation to Wales. The Bill offers an opportunity to achieve a smokefree generation and to protect children from vaping and other nicotine products in Wales, as well as other parts of the UK. These are key policy objectives of the Welsh Government.
189. Given the nature of the regulation and enforcement of tobacco, vapes, herbal tobacco and nicotine products, and the product, advertising and sponsorship requirements, it is considered that a collaborative approach between the four nations is the most efficient and effective way to proceed for Wales and the UK. The starting point for the regulatory regime for these products should be that it is, as far as possible, identical across the UK or at least Great Britain. Further, as far as possible, that it should be introduced at the same time. Otherwise, products that are acceptable in one part of the UK may be able to enter another part of the UK where they might not meet regulations.
190. The Bill enables policy objectives to be achieved in a manner that also provides coherence and consistency throughout the UK. This approach achieves a single regulation regime across the whole of the UK as a way of ensuring a coherent and operable system across the whole of the UK regarding these products. A similar approach is currently being pursued in relation to the introduction of the ban on single-use vapes from 1 June 2025, given the recognised benefits to aligning the introduction of the requirements for business, consumers as well as enforcement.

191. The Bill provides the Welsh Ministers with regulation making powers where it has been identified that a Wales-only approach is appropriate. For example, the regulation of point of sale displays for vapes and other nicotine products as well as the introduction of vape-free and heated tobacco free places.
192. Separately to the provisions in the Bill, the Welsh Government, UK Government and other Devolved Governments intend to introduce legislation to ban the sale of single-use vapes, due to their environmental effects and links to youth vaping: <https://www.gov.wales/written-statement-single-use-vapes-regulations>
193. To discourage non-smokers and young people from taking up vaping and to raise revenue to help fund public services like the NHS, the UK government will also introduce a new excise duty on vaping products and place a duty on vapes. Increases in the price of tobacco has helped reduce the number of children smoking, so we know this type of policy is effective <https://www.gov.uk/government/publications/vaping-products-duty-technical-consultation>.
194. Registrations and approvals for the tax will start from 1 April 2026 and the tax is expected to 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.

## **Financial implications**

195. The measures in the Bill are enabling and as a result most of the proposals will not place direct costs on health and care organisations purely by their enactment. The DHSC has published an Impact Assessment which provides an economic assessment of all elements of this policy: <https://publications.parliament.uk/pa/bills/cbill/59-01/0121/impactassessment.pdf>.
196. Smoking places a significant cost on society which the measures in the Bill are designed to tackle, including future costs due to the effects of tobacco on individual's health and quality of life and the economy. The UK government estimates the costs of smoking to the UK to be around £25.8 billion. This includes a £21.7 billion loss to productivity per year through smoking related lost earnings, unemployment, and early death, as well as costs to the NHS and social care sector of £2.2 billion and £1.4 billion respectively.
197. In relation to vaping, the impact assessment includes full appraisals of the measures. It is estimated that there would be costs to vape manufacturers, retailers and wholesalers for all of the vaping regulations (restrictions on flavours, packaging requirements and regulations on point-of-sale displays). These would include costs to familiarise themselves with the new regulations as well as a reduction in profits. The main health benefits expected as a result of the vaping policies is a reduction in the number of children and young people that take up vaping. As there is currently limited evidence on the health impacts of vaping, particularly the long-term harms of vaping, it has not been possible to quantify the health benefits from a reduction in the number of children and young

people that take up vaping. However, evidence from Canada, suggests that for every young person not taking up vaping the health benefits to the individual could be over £14,000.

198. In relation to the impact of new smoke-free, vape-free, and heated tobacco-free policies and the licensing provisions, the financial impact will be dependent on the scope of the policy adopted in secondary legislation at which further impact assessment(s) will be completed to assess the costs and benefits of implementing the policy.
199. Local authority Trading Standards will be responsible for ensuring compliance with the new law on the legal age of sale for tobacco. Local authorities already check compliance with the current legal minimum age of sale for tobacco and therefore it expected there to be minimal additional costs as a result of the age of sale policy. In relation to the enforcement of the vapes measures, there may be new burdens on local Trading Standards in Wales to enforce the new requirements which will be assessed ahead of any future regulations.
200. Trading Standards have also been supported to tackle underage and illicit sales of tobacco products and vapes more generally through national level disruption and enforcement activity. The Welsh Government provided £145,250 in the 2023/24 financial year to support Trading Standards authorities in Wales with illegal vapes enforcement. As part of their role to tackle illegal products UK-wide, HMRC and Border Force's 'Stubbing out the problem: A new strategy to tackle illicit tobacco', is supported by over £100 million new funding from the UK Government over the next 5 years to boost UK wide enforcement capability.

## **Conclusion**

201. In my view it is appropriate to deal with these provisions in this UK Bill as there is a need for a UK wide approach on tobacco and vapes. I will seek further engagement with the UK Government in relation to clauses 45, 95, 100 and 123 and provide the Senedd with updates accordingly. I strongly support the policy proposals of the Bill and therefore, I recommend that the Senedd gives its consent to this Bill.

**Sarah Murphy MS**  
**Minister for Mental Health and Wellbeing**

**20 November 2024**