

## 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 for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Tobacco and Vapes Bill (“the Bill”) was introduced in the House of Commons on 20 March 2024. The Bill can be found at: <https://bills.parliament.uk/bills/3703>

#### 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:
  - make it an offence to sell tobacco products to anyone born on or after 1 January 2009;
  - bring in measures to reduce the appeal and availability of vapes to children;
  - strengthen enforcement activity to support implementation of the above measures.
4. To close regulatory loopholes and protect against future harms of nicotine addiction, the Bill provides powers to extend the scope of certain measures to other nicotine products, such as nicotine pouches. The Bill will also re-enact several existing measures around tobacco and nicotine vapes and amends the definition of tobacco across existing legislation to ensure consistent application of the law, to improve readability and subsequent enforcement. The Bill makes provision 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 6 parts. Part 1 of the Bill extends to England and Wales, 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 as this concerns requirements and standards that will apply to the whole of the UK. Part 6 provides general provisions to do with the Bill and extends to the whole of the UK.
7. The key provisions of the Bill, insofar as they extend to Wales, cover the areas of tobacco, vaping and other nicotine products, and enforcement. In addition to

new provisions, the Bill also seeks to re-enact and consolidate existing tobacco and vaping product legislation.

## Tobacco

The Bill will:

- a. 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; this will phase out the sale of tobacco products for future generations; 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; 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 (proxy purchasing) 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. repeal and re-state the existing offences around the sale of tobacco from vending machines, and the sale of unpackaged cigarettes, (sections 3 and 3A Children and Young Persons (Protection from Tobacco) Act 1991);
- e. 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;
- f. repeal and re-state, with some modification, the existing provisions around tobacco retail packaging and flavour (section 94 Children and Families Act 2014).

## Vaping and other nicotine products

In order to reduce the appeal and availability of vapes (also known as electronic cigarettes, e-cigarettes, electronic nicotine delivery system (ENDS), or vaporisers) to children and young people, the Bill will:

- a. provide regulation making powers to restrict the flavours and flavour descriptions of vapes, the packaging and product presentation of vapes and the point of sale displays of vapes across the UK;
- b. include regulation making powers to enable the regulation of vapes to extend to other nicotine products, such as nicotine pouches;
- c. extend existing restrictions on the sale of nicotine vapes to under 18-year-olds to non-nicotine vapes; extend the existing restrictions on the proxy purchasing of nicotine vapes to non-nicotine vapes; repeal and re-state the existing offences around the age of sale and proxy purchasing of nicotine vapes (sections 91 and 92 Children and Families Act 2014, Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015), to align with the new provisions;
- d. introduce a ban on the free distribution of vapes to under 18-year-olds;
- e. introduce powers for certain existing notification requirements for tobacco products, under Tobacco and Related Products Regulations 2016, to be extended, with or without modifications, to a wider range of products, including non-nicotine vapes and nicotine products such as nicotine pouches;
- f. 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 extend it to vaping products in line with the new provisions in the Bill.

## Enforcement

The intention of the enforcement measures is to enable enforcement authorities in England and Wales to effectively enforce the tobacco and vape measures in the Bill. To achieve this, the Bill:

- a. retains elements of the current enforcement approach, including punishment by way of criminal fines and powers for magistrates to make restricted premises orders and restricted sale orders for persistent offenders. The existing provisions on the powers to make restricted premises orders and restricted sales orders (sections 12A to 12D Children and Young Persons Act 1933) will be repealed and re-stated in the Bill to align with the new provisions;
- b. will permit enforcement authorities to issue a fixed penalty notice of £100 for breaches of: the age of sale legislation for tobacco products and vapes,

the proxy purchase restrictions for tobacco and vapes and the restrictions on the free distribution of vapes; the Bill includes regulation making powers to enable the fixed penalty amount to be increased; the existing provisions for fixed penalty notices for breaches of the proxy purchasing offences around tobacco and nicotine vapes (section 91 Children and Families Act 2014) will be repealed and re-stated in the Bill to align with the new provisions and to extend to non-nicotine vapes; this will provide a single fixed penalty regime across these offences to create a consistent approach for enforcement officers and businesses in England and Wales;

- c. Repeal and re-state existing provisions requiring enforcement authorities to prepare an annual programme of enforcement in relation to certain offences (section 5 Children and Young Persons (Protection from Tobacco) Act 1991). The provisions will be updated to align with the new provisions of the Bill.
8. The Bill, which also contains similar provision for Scotland and Northern Ireland, 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. 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. 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 the Welsh Government's ambition to be smokefree by 2030: <https://www.gov.wales/tobacco-control-strategy-wales>.
10. 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.
11. 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>.

12. The Deputy Minister for Mental Health and Wellbeing met and corresponded with the Parliamentary Under Secretary of State with responsibility for tobacco to discuss and agree inter-government working on the measures, the consultation, its outcome and the Bill's development.

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

13. The following is a summary of the provisions of the Bill that contain provision which is within the legislative competence of the Senedd 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**

14. Part 1 of the Bill deals with the sale and distribution of tobacco products and vaping and nicotine products and extends to England and Wales.
15. The relevant Clauses in this Part that require legislative consent are:
  - Clauses 1 to 4 and 6 - Tobacco etc
  - Clauses 7 to 11 - Vaping and nicotine products
  - Clauses 12 to 15 - Restricted premises orders
  - Clauses 16 and 17 - Restricted sale orders
  - Clause 18 – Offences by bodies
  - Clauses 19 and 21 – Enforcement functions
  - Clauses 22 and 23 - Power of ministers to take over enforcement
  - Clauses 24 to 26 – Fixed penalties
  - Clause 27 and Schedule 1 - Handing over tobacco etc to underage people in Wales
  - Clause 28 Schedules 2, 3 and 4, 29-32 - Consequential, transitional and transitory provision
  - Clause 33 - Crown application
  - Clauses 34 to 36 - Interpretation etc

### **Clauses 1 to 4 and 6 - Tobacco etc**

16. These clauses make restrictions around the sale by retail of tobacco products, herbal smoking products or cigarette papers.
17. Clause 1 introduces a new age of sale restriction for tobacco products, herbal smoking products and cigarette papers. The clause makes it an offence to sell these products to anyone who is born on or after 1 January 2009.

18. 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.
19. It is a defence for someone who is charged with the offence to prove they 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).
20. 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 limited 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).
21. Clause 3 re-enacts and consolidates (without changing the law) the existing positions in law. It will continue to be an offence to sell tobacco products from vending machines and to manage a premises where a tobacco vending machine is used for the sale of these products. 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).
22. 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. To not do 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).
23. 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 an age of sale notice in a prominent position 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).
24. 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 to 11 - Vaping and nicotine products**

25. These clauses restrict vaping and nicotine devices. A vaping product is defined in clause 33 as a vape or vaping substance and includes both nicotine and non-nicotine vaping products. This is a change from the existing age of sale provision which currently only includes nicotine vapes and this change will come into force six months after the Bill is passed.
26. Clause 7 restricts the age of sale of vaping products so they cannot be sold to children under the age of 18. This replaces the existing age of sale restriction for nicotine inhaling products (nicotine vapes) as set out in the Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015 and makes it an offence to sell a nicotine vape to children under the age of 18. The clause makes it an offence to sell a vaping 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 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).
27. Clause 8 prohibits the purchase of vaping products on behalf of someone who is under 18, also known as proxy purchasing. This clause replaces section 91 of the Children and Families Act 2014 (the 2014 Act). This clause makes it an offence for a person aged 18 or over to buy, or attempt to buy, a vaping product on behalf of someone who is under the age of 18. 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).
28. Clause 9 makes it an offence to give away a vaping product to someone who is under the age of 18. There are currently no restrictions on businesses freely distributing nicotine and non-nicotine vaping products to children under the age of 18. The free distribution of tobacco is banned for all ages. However, this provision only restricts the free distribution of vaping products to children, not adults.
29. This clause makes it an offence for someone to give away, in a business setting, a vaping product, or a coupon for a vaping product, to someone who is under the age of 18 or permits that to happen. For instance as part of a promotional campaign. A “coupon for a vaping product” is anything that can be redeemed for a vaping product. This 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 and anyone convicted with this offence could receive a fine of up to £2,500 (level 4 on the standard scale).
30. Clause 10 provides a regulation-making power for the Secretary of State and Welsh Ministers to extend the measures applying to vaping products in Part 1 of the Bill to include other nicotine products, for example nicotine pouches. Clause

34 provides what constitutes a “nicotine product”. The measures that can be extended to include nicotine products are clause 7 (Sale of vaping products to under 18s), clause 8 (Purchase of vaping products on behalf of under 18s) and clause 9 (Free distribution of vaping products to under 18s). Under current legislation, there are no restrictions on the age of sale or free distribution of other nicotine products. The power is subject to the affirmative resolution procedure.

31. Clause 11 provides the Secretary of State and Welsh Ministers with powers to regulate the display of vaping products and nicotine products and their prices, as well as the display of empty retail packaging, in retailers in England and Wales. Under current legislation, there are no restrictions on where vaping products and other nicotine products, as well as their prices, can be displayed in retail premises. The power is subject to the affirmative resolution procedure.
32. The power will enable the introduction of prohibitions, requirements, or limitations in relation to the display of vaping or nicotine products and their prices, as well as the display of empty retail packaging, in places that these products are sold. For example, the regulations might require products to be kept behind the counter. The power also facilitates the creation of offences for the failure to comply with the regulations and anyone convicted of this offence could be subject to imprisonment, a fine, or both.

### **Clauses 12 to 15 - Restricted premises orders**

33. Clause 12 provides that a persistent offenders of relevant offences can be punished by being prevented from selling certain products from premises (e.g. tobacco or vaping products). Relevant offences include those under clauses 1 (Sale of tobacco), 3 (Tobacco vending machines) and 7 (Sale of vaping products to under 18s) of this Bill, as well as the existing offences shown at subsection 8(b) up until the point they are repealed. This clause replaces, and is based on, section 12A of the Children and Young Persons Act 1933 as restricted premises orders were introduced for persistent breaches of the age of sale legislation for tobacco and nicotine products.
34. The clause provides that if a person convicted of a relevant offence is a persistent offender, the enforcement authority can apply to the magistrates’ court for a restricted premises order. A “persistent offender” is someone who on at least two other occasions within a two-year period has committed a relevant offence in relation to the premises.
35. A restricted premises order means that the retail business at the location where the offences took place is prohibited from selling any tobacco products, herbal smoking products, cigarette papers, vaping products and any nicotine products. This may last for a period of up to 12 months and the length of the order is determined by the court. 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.

36. Clause 13 sets out the criteria for which individuals ('interested persons') are allowed make representations to the court to try to prevent a restricted premises order being issued against a person. The clause also provides the requirements for granting a restricted premises order and situations where the interested person might challenge a restricted premises order.
37. Clause 14 makes it an offence to breach a restricted premises order as defined in clause 12. Anyone convicted of this offence could receive a fine where there is no maximum amount.
38. Clause 15 provides the Secretary of State and Welsh Ministers with the power to add to the list of "relevant offences" for which a restricted premises order can be issued. The Secretary of State can make the changes to apply to premises in England and Welsh Ministers can make the changes to apply to premises in Wales. This is a new power for the Secretary of the State, but Welsh Ministers were given this power in section 51 of the Public Health (Wales) Act 2017.
39. Any additional offences must relate to restrictions around tobacco products, herbal smoking products, cigarette papers, vaping products and nicotine products. Before making regulations under this clause the Ministers must consider who is likely to have an interest in the regulations and Ministers should consult those who they deem are necessary. The power is subject to the affirmative resolution procedure.

#### **Clauses 16 and 17 - Restricted sale orders**

40. Clause 16 provides that a persistent offenders of relevant offences can be punished by being prohibited from selling certain products (e.g. tobacco or vaping products). The relevant offences are breaches of clauses 1 (Sale of tobacco), 3 (Tobacco vending machines) and 7 (Sale of vaping products to under 18s). 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.
41. If a person convicted with a relevant offence is a persistent offender, the enforcement officer can apply to the magistrates' court for a restricted sale order. A "persistent offender" is anyone convicted of a relevant offence who has committed a relevant offence on at least two other occasions within two years of the most recent offence.
42. 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. This may last for a period of up to 12 months and the length of the order is determined by the court The order will apply to the named individual regardless of where they are employed.
43. Clause 17 makes it an offence to not comply with a restricted sale order where it has been issued. 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 18 – Offences by bodies**

44. Clause 18 makes a relevant person potentially liable for an offence committed by a body where the offence has been committed with their consent, connivance, or neglect. A relevant person could include a director or manager of a company or someone with partner status in a partnership. In such cases the relevant person would be liable in addition to the body (such as the company or partnership) they are working for. This applies to clause 14 (Breach of restricted premises order) or any other offence under Part 1 of the Bill or any regulations made under clause 11 (Displays of vaping and nicotine products).

### **Clauses 19 to 21 – Enforcement functions**

45. Clause 19 clause places a duty on local authorities to enforce the provisions in Part 1 of the Bill and any regulations made under clause 11 (Displays of vaping and nicotine products). It provides that the investigatory powers available to an enforcement authority are those in Schedule 5 (Investigatory powers) of the Consumer Rights Act 2015 (the 2015 Act).
46. Clause 21 provides requirements for enforcement authorities in Wales to consider yearly a programme of enforcement action for the investigation of complaints under clause 11 (Displays of vaping and nicotine products). When the offence of handing over tobacco etc to under age people in Wales (section 51A and 52 Public Health (Wales) Act 2017, as amended by the Bill), comes into force, those offences will also fall to be considered by the enforcement authorities. This is a means of ensuring that local authorities in Wales consider whether they are enforcing certain offences effectively.

### **Clauses 22 and 23 - Power of ministers to take over enforcement**

47. Clause 22 provides a power for the Secretary of State or Welsh Ministers, in their respective territories, to carry out the enforcement of a particular case or a particular type of case instead of the local enforcement authority. This could arise if a local enforcement authority is unable or unwilling to undertake enforcement of a certain case.
48. Clause 23 provides a power for the Secretary of State or Welsh Ministers in their respective territories 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 11 (Displays of vaping and nicotine products). This could arise if a local enforcement authority is unable or unwilling to undertake the legal proceedings of a certain case.

### **Clause 24 to 26 - Fixed penalties**

49. Clause 24 introduces fixed penalty notices (FPNs) for the enforcement of a wider range of offences than at present. This includes offences around the age of sale

legislation for tobacco and vaping products (clauses 1 and 7), the proxy purchasing of tobacco and vaping products (clauses 2 and 8) and the free distribution of vaping products to under 18s (clause 9). At present, a FPN can only be issued for the proxy purchasing offences in relation to tobacco and nicotine vapes (section 91 Children and Families Act 2014).

50. A FPN offers the person the opportunity to avoid prosecution for the offence if they make a specific payment within a specified period. In this Bill the amount of the fine will be £100 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 then the local enforcement authority can decide to initiate a prosecution against them for the offence.
51. Clause 25 provides that any proceeds from FPNs that are issued under this Bill must be used by the local weights and measures authority in connection with functions under or any regulations made under the Bill, the Tobacco Advertising and Promotion Act 2002, Part 1 of the Health Act 2006 (smoke-free premises) and the Tobacco and Related Products Regulations 2016.
52. Clause 26 provides the Secretary of State and Welsh Ministers with a power to change the amount of the FPN and the percentage discount for early payment. This could be used to respond to the enforcement picture in Wales if FPN's in the current amount are ineffective deterrent. It could also be used to reflect changing economic and social circumstances, such as changes in inflation. The power is subject to the affirmative resolution procedure.

### **Clause 27 and Schedule 1 - Handing over tobacco etc to underage people in Wales**

53. Clause 27 and Schedule 1 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 align the provisions with the new age of sale restrictions and to extend the offence to vaping and other nicotine products. The amendments outlined in the Bill are provided in both English and Welsh.

### **Clause 28 schedules 2, 3 and 4, 29 to 32 - Consequential, transitional and transitory provisions**

54. Clause 28 states the consequential amendments to do with Part 1. The amendments are set out in the schedules 2, 3 and 4 according to when they come into force.
55. Schedule 2 details any consequential amendments that will be made to existing pieces of legislation that will come into force two months after the Bill is passed.
56. Schedule 3 details any consequential amendments that will be made to existing pieces of legislation that will come into force six months after the Bill is passed.

57. Schedule 4 details any consequential amendments that will be made to existing pieces of legislation that will come into force on 1 January 2027.
58. Clause 29 provides the Secretary of State with the power to make regulations that are consequential on Part 1. This power enables existing legislation to be amended, repealed or revoked as a consequence of the provisions in Part 1 of this Bill. There is no consent mechanism for the Welsh Ministers regarding the use of this power. As this provision is limited to consequential provision it is considered appropriate that they sit with the Secretary of State alone.
59. Clause 30 will ensure that the requirements around the programme of enforcement for England and Wales (clauses 20 and 21 in the Bill) will apply on the passing of the Bill in relation to existing tobacco and vaping offences. Clauses 20 and 21 will apply to the new measures in the Bill as these come into force.
60. Clause 31 provides for the FPN regime (clause 24 fixed penalty notices) in this Bill to apply to existing offences to sell tobacco and vaping products, or purchase these products on behalf of, someone underage. This will continue to apply until the new offences covered by the Bill, that are within the FPN regime, come into force.
61. Clause 32 provides for transitional provisions.

### **Clause 33 - Crown application**

62. Clause 33 provides that Part 1 of the Bill and any regulations made under Part 1 bind the Crown.

### **Clauses 34 to 36 - Interpretation etc**

63. Clause 34 provides the definitions for this Part and the effect of this provision is self-explanatory.

### **Clause 35: Meaning of “nicotine product”**

64. Clause 35 provides the meaning of a “nicotine product” which is explained in clause 10 (Power to extend vaping provisions to nicotine products). The clause is self-explanatory.

### **Clause 36: Alignment of definitions in other legislation**

65. Clause 36 updates the definition for a “tobacco product” in the interpretation section of the Tobacco Advertising and Promotion Act 2002. The current definition of a “tobacco product” is ‘a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed.’ And the updated definition is ‘a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked, chewed or consumed in any other way’.

66. The effect of this clause is to ensure consistency between the new regime that is being introduced by this Bill and the existing legislative regime. The updated definition is clearer and ensures all tobacco products, however they are consumed, are captured.

#### **Part 4: Product requirements**

67. The measures outlined in Part 4 extend to the whole of the UK as they concern requirements for tobacco, vaping and nicotine products. This will apply uniform standards for products that will flow around the UK.

68. The relevant clauses in this Part, that require legislative consent, are:

- Clauses 58 to 60 - Tobacco product requirements
- Clauses 61 to 63 – Vaping and nicotine product requirements
- Clauses 64 to 68 - Supplementary
- Clauses 69 and 70 - Interpretation

69. Before making regulations under Part 4 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 67.

70. Clauses 58 to 60 re-enact the regulation making powers to make provision about the retail packaging and flavour of tobacco products in section 94 of the Children and Families Act 2014 (the 2014 Act). The re-enacted powers allows them to be exercised without having to satisfy the test in section 94(1). 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.

71. This Part permits regulations to be made in relation to products intended for consumption in the “travel retail sector”. This means retail outlets in the UK at which tobacco products may be purchased only by people travelling on journeys to destinations outside the UK. This Part permits regulations to be made about the “production” of products. This means the manufacture of the product, or the putting of a name, trademark or other distinguishing mark on the product by a person, the effect of which is to hold the person out as being the manufacturer of the product. This Part also permits regulations to be made about the “supply” of products in the course of a business. This includes offering or agreeing to supply them, or exposing or possessing them for supply, of products.

72. Any regulations made under Part 4 of the Bill are subject to the affirmative resolution procedure.

73. Clause 69 (Interpretation of Part 4) and 70 (Meaning of “nicotine product”) provides definitions for Part 4, including the meaning of “packaging” which in relation to a product means the external packaging of the product (including any

wrapper), the internal packaging of that product, or any other material attached to or included with the product or anything within in the internal or external packaging. “Retail packaging” in relation to a product, means the packaging in which it is, or intended to be, presented for sale by retail.

### **Clauses 58 to 60 - Tobacco product requirements**

74. Clause 58 provides powers for the Secretary of State to make regulations about the retail packaging of tobacco products. This re-enacts with some modifications the existing power to make provision about the retail packaging of tobacco products set out in section 94(6) of the Children and Families Act 2014 (the 2014 Act). The power in this clause could be used to regulate various aspects of retail packaging, including the appearance of such packaging as well as the information provided on it and its shape and texture.
75. If the regulations provide for offences for the failure to comply with requirements in the regulations under clause 58, the regulations must specify that prosecutions could be dealt with by summary procedure or on indictment with the maximum potential penalties that are specified in this clause.
76. Clause 59 provides powers for the Secretary of State to make regulations about the flavour of tobacco products. This re-enacts the existing power to make provision about tobacco flavours in section 94(8) of the 2014 Act with some modifications. The regulations may impose prohibitions, requirements, and limitations in relation to the production and importation of flavoured tobacco products that are expected to be consumed in the UK, be sold in the retail travel sector or supplied in the course of business. As the regulations relate to the production, importation, and supply of products, any individual or organisation involved in the supply chain would be required to adhere to the regulations. Regulations made under this power may create offences which must be triable as a summary complaint or on indictment with the maximum penalties as set out in clause 58 (Tobacco retail packaging).
77. Clause 60 provides powers for the Secretary of State to introduce other requirements on tobacco products. This relates to the products themselves, rather than regulations for the packaging as provided in clause 58. This is re-enacting, with some modification, the power to make provision about the requirements for tobacco products set out in section 94(8) of the Children and Families Act 2014 (the 2014 Act).
78. The power could be used to make provision about the tobacco product itself, rather than the packaging, for instance the regulations which may be made under this power may specify the colour of the products or what is permitted to be printed on the body of the product (such as text, for example). Regulations made under this power may create offences which must be triable as a summary complaint or on indictment with the maximum penalties as set out in clause 58 (Tobacco retail packaging).

## **Clauses 61 to 63 - Vaping and nicotine product requirements**

79. Clause 61 provides the Secretary of State with a power to regulate the retail packaging of vaping products or nicotine products. Retail packaging means the packaging in which the product is, or intended to be, presented for sale by retail. “Packaging” means the external packaging, including the wrapper, the internal packaging and any other material attached or included in the product. The power in this clause could be used to regulate various aspects of 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. The power to make regulations conferred by this clause is intended to align with the power to make regulations conferred by clause 58 in respect of the retail packaging of tobacco products. Regulations made under this power may create offences which must be triable as a summary complaint or on indictment with the maximum penalties as set out in clause 58 (Tobacco retail packaging).
80. Clause 62 provides the Secretary of State with a power to make regulations about the substances that may be included in the vaping or nicotine products (as well as the amount of any given substance). The Secretary of State can also regulate the flavour of vaping products or nicotine products. Regulations made under this power may, for example, prohibit certain ingredients (such as vitamins, colourings or prohibited additives) being used in vaping and nicotine products, including additives which impart a particular flavour (taste and smell) for vaping products. Regulations made under this power may create offences which must be triable as a summary complaint or on indictment with the maximum penalties as set out in clause 58 (Tobacco retail packaging).
81. Clause 63 provides the Secretary of State with a power to make other regulations about other product requirements for vaping products and nicotine products. These requirements will relate to the product itself, rather than the packaging, for instance the regulations which may be made under this power may specify the permitted colour of the products or what is permitted to be printed on the body of the product (such as images, for example). The power to make regulations conferred by this clause is intended to align with the power to make regulations conferred by clause 60 in respect of other product requirements of tobacco products. Regulations made under this power may create offences which must be triable as a summary complaint or on indictment with the maximum penalties as set out in clause 58 (Tobacco retail packaging).

## **Clauses 64 to 68 – Supplementary**

82. Clause 64 provides the Secretary of State with a power to make provision about enforcement. This includes provision conferring functions on the relevant enforcement authorities and provision enabling the relevant national authority (the Secretary of State, Welsh Ministers, Scottish Ministers or the Department of Health in Northern Ireland) to take over enforcement (of a particular description or case) from a relevant enforcement authority.

83. There is also provision for the Secretary of State to apply various enforcement provisions set out in the Consumer Protection Act 1987, with or without modification. This will provide enforcement authorities with enforcement powers such as the power of forfeiture or the power to obtain information.
84. Clause 65 means that when regulations are made under Part 4 on tobacco, vaping and nicotine product requirements the requirements imposed under the regulations could be applied to the Crown. The measures in Part 1 of the Bill explicitly apply to the Crown.
85. Clause 66 refers to the general power under section 76(1)(a). This power attaches to any regulation making power in the Bill. Section 76(1)(a) makes clear that the power includes a power to make consequential provision among other things. The clause makes clear that the consequential provision made by regulations under Part 4 may amend, repeal or revoke any legislation (whenever passed or made).
86. Clause 67 requires the Secretary of State to obtain the consent of the Welsh Ministers, the Scottish Ministers and the Executive Office in Northern Ireland in certain circumstances before making regulations under Part 4. This applies where the regulations contain provision which would be within the legislative competence of the Senedd, the Scottish Parliament and the Northern Ireland Assembly.
87. Clause 68 omits section 94 of the Children and Families Act 2014 (the 2014 Act) relating to the existing law on the retail packaging of tobacco. These are replaced by clauses 58 (Tobacco retail packaging), 59 (Flavour of tobacco products) and 60 (Other tobacco product requirements) in this Bill.

### **Clauses 69 and 70 – Interpretation**

88. Clause 69 provides definitions for relevant terms used in Part 4 of the Bill.
89. Clause 70 provides the same definition for a “nicotine product” as clause 35 and which has been outlined in the explanation of clause 10 (Power to extend vaping provisions to other nicotine products).

### **Part 6: General**

90. Part 6 (clauses 75 to 81) provide general clauses that apply to the Bill. The relevant clauses in this Part, that contain provision requiring legislative consent, are clauses 76 to 81.
91. Clause 75 provides that the Bill or regulations made under it apply to the Parliamentary estate.
92. Clause 76 attaches to all regulation making powers under the Bill. This clause provides that where regulations are made under the Bill, the regulations may make consequential, supplementary, incidental, transitional, or saving provision. This also allows regulations to introduce different provision for different purposes

and different provision for different parts of the UK. This does not apply to the commencement and transitional provisions set out at clauses 79 and 80,

93. Clause 77 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. The clause does not apply to the regulations made under clauses 79 (Commencement) and 80 (Transitional provision).
94. Clause 78 provides for the extent of this Bill. Parts 1, 4, 5 and 6 apply to Wales.
95. Clause 79 provides the commencement dates for the various clauses and Parts in this Bill. The Commencement section of the Explanatory Notes provides a detailed summary and explanation of these commencement dates. The key commencement provisions are:
  - The Act comes into force 2 months after the date it is passed, subject to the following;
  - Sections 7 (sale of vaping products to under 18s), 8 (purchase of vaping products on behalf of under 18s), 28(2) and Schedule 3 (consequential amendments set out in Schedule 3), come into force 6 months after the Act is passed;
  - Sections 1 to 6 (the main tobacco provisions), 28(3) and schedule 4 (consequential amendments set out in schedule 4), , come into force on 1 January 2027; clauses 37, 38, 41, 48 also come into force, relating to Scotland;
96. Clause 79(5) provides the Welsh Ministers with a power to order the dates on which clause 27 and schedule 1 come into force (Handing over tobacco etc to underage people in Wales). This is not subject to any procedure.
97. Clause 80(1) provides that the Welsh Ministers may by regulations make transitional or saving provision in relation to the coming into force of clause 27 or Schedule 1 (Handing over tobacco etc to underage people in Wales). This is not subject to any procedure.
98. Clause 80(4) provides the Secretary of State with a power to make the transitional or saving provision in connection with the coming into force of any provision of the Act. As this provision is concerned only with bringing the provisions into operation, it is considered appropriate that this power sits with the Secretary of State alone.
99. Clause 81 provides that this Bill can be cited as the Tobacco and Vapes Act 2024 once passed.

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

100. The Bill includes regulation making powers to make subordinate legislation:
  - for the Welsh Ministers;

- for the Secretary of State with a consent mechanism for the Welsh Ministers;
- for the Secretary of State with no consent provision

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

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

101. The UK Government has sought consent for the entirety of the Bill with the exception of clauses 5, 20, Parts 2, 3 and 71 to 75.

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

102. Tobacco is the single leading cause of preventable ill health, death and disability in this country, leading to 80,000 deaths in the UK each year and 1 in 4 of all UK cancer deaths. Smoking is a major cause of heart disease, stroke and heart failure and increases the risk of dementia in the elderly. It is a risk factor for poor maternal and infant outcomes, it significantly increases the chance of stillbirth and can trigger asthma in children. The Welsh Government's ambition is for Wales to be smokefree by 2030: <https://www.gov.wales/tobacco-control-strategy-wales>.

103. Vapes (also known as electronic cigarettes, 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 and carries risk of future harm and addiction. The number of children using vapes has tripled in the past 3 years and 20.5% of children had tried vaping in March to April 2023: <https://ash.org.uk/resources/view/use-of-e-cigarettes-among-adults-in-great-britain-2021>.

104. 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.

105. The Welsh Government considers it would be appropriate for this UK Bill to make provision in relation to Wales rather than utilising a Senedd Bill. This is in line with the Welsh Government's principles on UK Bills.

106. 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. Given the current restraints on the Senedd's legislative timetable, this enables the policy objectives to be achieved in a timely fashion.

107. Given the nature of the regulation and enforcement of tobacco, vapes and nicotine products, and the product 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 should be that it is, as far as possible, identical across the UK or at least Great Britain. Further, 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 whether they might not meet regulations. This also avoids the possibility of having four different sets of regulations across the UK.
108. The Bill provides an approach that supports the Welsh Government's stated policy objectives on smoking and vapes. The consent provisions for Part 4 have been drafted in a manner in which consent can be provided to the Secretary of State's powers for matters within Welsh devolved competence. This approach also suitably recognises the devolution settlement.
109. 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.
110. Where it is considered a Wales only approach is correct, as the provisions are for the protection of health and the health service, and extend to Wales, the Bill provides the Welsh Ministers with regulation making powers to deal with these elements. For example, the regulation of point of sale displays for vapes and other nicotine products gives powers for Welsh Ministers to make regulations.
111. For these reasons it is appropriate for the UK Bill as drafted to be used to make these provisions. The Welsh Government is supportive of the Bill as drafted.
112. Separately to the provisions in the Bill, the Welsh Government, UK Government and Scottish Government intend to introduce legislation to ban the sale and supply of disposable vapes, due to their environmental effects: <https://www.gov.wales/written-statement-update-proposals-introduce-legislation-ban-supply-wet-wipes-containing-plastics>. 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. 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**

113. The DHSC has published an Impact Assessment which provides an economic assessment of all elements of this policy: <https://bills.parliament.uk/bills/3703/publications>

114. 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 £21 billion. This includes a £17 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 £2.3 billion and £1.3 billion respectively.
115. In relation to vaping, 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.
116. 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.
117. 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**

118. 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 which can only be done in a UK Bill. Therefore, I recommend that the Senedd supports the proposals and gives its consent for the Bill.

**Eluned Morgan MS**  
**Cabinet Secretary for Health and Social Care**  
**9 May 2024**