

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Tobacco and Vapes Bill

May 2025



1. Background

1. The Tobacco and Vapes Bill¹ (the Bill) was introduced into the House of Commons and had its first reading on 5 November 2024. It is sponsored by the Department of Health and Social Care.
2. The Explanatory Notes to the Bill provide the following overview:

"The Tobacco and Vapes Bill will be a landmark step in creating a smoke-free UK. It will:

A. create a smoke-free generation, gradually ending the sale of tobacco products across the country and breaking the cycle of addiction and disadvantage.

B. strengthen the existing powers to ban smoking in public places to reduce harms of passive smoking, particularly around children and vulnerable people.

C. ban vapes and nicotine products from being deliberately branded, promoted, and advertised to children to stop the next generation from becoming hooked on nicotine.

D. provide powers to introduce a licensing scheme for the retail sale of tobacco, vapes and nicotine products, extend the retail registration scheme in Scotland, and strengthen enforcement activity to support the implementation of the above measures.

E. the Bill sits alongside wider support across the health service to support smokers to quit.

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.

¹ Tobacco and Vapes Bill, as introduced

The Bill broadly seeks to align provisions across the UK, building on the existing legislative frameworks that apply.”²

3. The long title to the Bill states that it is a Bill to:

“Make provision about the supply of tobacco, vapes and other products, including provision prohibiting the sale of tobacco to people born on or after 1 January 2009 and provision about the licensing of retail sales and the registration of retailers; to enable product and information requirements to be imposed in connection with tobacco, vapes and other products; to control the advertising and promotion of tobacco, vapes and other products; and to make provision about smoke-free places, vape-free places and heated tobacco-free places.”³

4. The Bill is in eight parts, and runs to 171 clauses and 21 Schedules.

5. The Bill had its second reading in the House of Lords on 23 April 2025. At the time we agreed this report, the date for Committee stage in the House of Lords was yet to be announced.

The Welsh Government's Legislative Consent Memorandum

6. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales that has regard to devolved matters.

7. On 20 November 2024, Sarah Murphy MS, the Minister for Mental Health and Wellbeing (the Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.⁴

8. We published our report on the Memorandum (our first report) on 25 February 2025.⁵

9. Paragraphs 17 to 19 of our first report set out the provisions of the Bill which, at the time, the Welsh Government considered to require the Senedd's consent.

² Explanatory Notes to the Tobacco and Vapes Bill, page 3

³ Tobacco and Vapes Bill, as introduced, page 1

⁴ Welsh Government, Legislative Consent Memorandum: The Tobacco and Vapes Bill, November 2024

⁵ Legislation, Justice and Constitution Committee, Report on the Welsh Government's Legislative Consent Memorandum on the Tobacco and Vapes Bill, February 2025

10. Paragraphs 20 to 23 of our first report describe the delegated powers in the Bill which are conferred on the Secretary of State, the Treasury, and the Welsh Ministers to act in devolved areas.

11. Paragraphs 10 to 16 of our first report set out the Welsh Government's position on the Bill, as set out in the Memorandum.

12. Our first report contained two conclusions and 17 recommendations.

13. The Welsh Government responded to the report on 7 April 2025.⁶

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2)

14. On 4 April 2025, the Minister laid before the Senedd a Supplementary Legislative Consent Memorandum (Memorandum No. 2) in respect of the Bill.⁷

15. The Business Committee agreed that the Health and Social Care Committee and the Legislation, Justice and Constitution Committee should report on Memorandum No. 2 by 6 June 2025.⁸

16. Memorandum No. 2 relates to amendments tabled to the Bill for consideration at House of Commons Report stage on 18 March 2025.

17. At paragraphs 9 to 11 of Memorandum No. 2, the Minister provides an update on the Welsh Government's position since the publication of the Memorandum.

18. At paragraphs 12 to 26 of Memorandum No. 2, the Minister sets out details of the provisions tabled by the UK Government to the Bill for consideration at Commons Report Stage for which consent is required. At paragraph 12, the Minister states that the amendments:

"... address issues identified during the passage of the Bill and relate to provisions regarding: a. age verification in relation to tobacco and vaping products (clauses 1, 10, 46, 48); b. tobacco, vaping and nicotine product vending machines (clauses 3 and

⁶ Welsh Government response to the Legislation, Justice and Constitution Committee's Report on the Welsh Government's Legislative Consent Memorandum on the Tobacco and Vapes Bill, April 2025

⁷ Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 2), The Tobacco and Vapes Bill, April 2025

⁸ Business Committee, Timetable for consideration: Supplementary Legislative Consent Memorandum (Memorandum No. 2), The Tobacco and Vapes Bill, April 2025

12); c. the display of tobacco related devices in shops or online places (clauses 14 and 48)."

19. Regarding clause 1 of the Bill, which makes provision for age verification in relation to tobacco and vaping products, the Minister states in Memorandum No. 2 that amendments 47 to 49 remove the list of physical identification documents and instead give the Secretary of State a regulation-making power (subject to the negative procedure) to specify forms of permissible identification. The Minister states that the purpose is to accommodate digital methods of verification as well as the traditional paper methods.⁹

20. The Secretary of State's regulation-making power will be subject to the consent of the Welsh Ministers on matters within the legislative competence of the Senedd.¹⁰

21. At paragraph 16 of Memorandum No. 2, the Minister adds:

"As the new power allows for a wider range of forms of possible identification, including those that may be available for distance/ online transactions, the power to establish the permissible forms of identification will rest with the Secretary of State. This will ensure consistency in the regulatory regime for the public and for businesses by aiding their understanding of the permissible forms of identification available, and the steps required to verify a person's age. This will also support enforcement of the offences in England and Wales consistently and prevent divergence between defences in England and Wales."

22. With regards to clause 10, which makes provision for age verification in relation to vapes and nicotine products, the Minister states in Memorandum No. 2 that the "nature and purpose" of amendments 51 to 53 are the same as for the amendments to clause 1.¹¹ Amendments 51 to 53 therefore also provide a regulation-making power to the Secretary of State to specify forms of permissible identification; the exercise of which on matters within the Senedd's legislative competence will be subject to the consent of the Welsh Ministers.

23. Clause 46 in the Bill as introduced provided the Secretary of State and the Welsh Ministers (as appropriate) with a regulation-making power to amend the

⁹ Memorandum No. 2, paragraph 14

¹⁰ Memorandum No. 2, paragraph 15

¹¹ Memorandum No. 2, paragraph 18

definition of “identity document” in clauses 1 and 10. Due to the amendments to clauses 1 and 10, and the insertion of new regulation-making powers for the Secretary of State in those clauses, amendment 61 removes clause 46.

24. At paragraph 21 of Memorandum No. 2, the Minister states that the amendments to clause 48 are also consequential on the amendments to clauses 1 and 10.

25. Regarding clauses 3 and 12, which make provisions for tobacco, vaping and nicotine product vending machines, at paragraphs 22 and 23 of Memorandum No. 2, the Minister states:

“Clause 3 sets out that it is an offence if a person manages or controls premises where a tobacco vending machine is available for use. A tobacco vending machine is an automatic machine from which tobacco products, herbal smoking products or cigarette papers may be bought. The amendment revises the definition of “tobacco vending machine” to include the restricted products dispensed from a machine in connection with a sale. This extends the prohibitions on vending machines to include machines from which products are dispensed in connection with a sale. (...)

Clause 12 sets out that it is an offence if a person manages or controls premises where a vape or nicotine product vending machine is available for use. A vape or nicotine product vending machine is an automatic machine from which those products may be bought. The nature and purpose of the amendments to clause 12 are the same as for the amendments to clause 3”.

26. Clause 14 on introduction provided the Welsh Ministers with powers to regulate the retail displays 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. Amendment 57 extends the products covered by clause 14 to include tobacco-related devices.

27. Amendment 62 adds a definition of “tobacco related device” into clause 48, and is “consequential on the amendment to clause 14”¹².

¹² Memorandum No. 2, paragraph 26

28. With regards to the UK Government's views on the need for consent, the Minister states in Memorandum No. 2:

*"The UK Government has sought consent for the amendments listed above to clauses 1, 3, 10, 12, 14, 46 and 48, as they have been determined by the UK Government to engage the LCM process. The Welsh Government agree with the UK Government's assessment."*¹³

29. The Minister's reasons for making these provisions for Wales in the Bill are set out in Memorandum No. 2. At paragraph 29, the Minister states:

"The amendments made to the Bill in relation to the display of tobacco, herbal smoking products, vaping products, cigarette papers and nicotine products will ensure the Welsh Ministers regulation-making power in clause 14 extends to tobacco related devices (which would include things like heated tobacco devices and pipes and bongs that enable tobacco to be consumed) and ensure these devices are captured by the provisions in the Bill."

30. The Minister concludes:

*"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 to dealing with these products and will ensure a consistent and effective regulatory regime throughout the UK. I strongly support the policy proposals of the Bill and therefore, I recommend that the Senedd supports the proposals and gives its consent."*¹⁴

¹³ Memorandum No. 2, paragraph 27

¹⁴ Memorandum No. 2, paragraph 35

2. Committee consideration

31. We considered Memorandum No. 2 at our meeting on 12 May 2025.¹⁵

32. We considered and agreed our report at our meeting on 19 May 2025.¹⁶

Our view

Provisions requiring consent

33. We note the Welsh Government's assessment of the amendments to the provisions within the Bill that require the consent of the Senedd, as set out in Memorandum No. 2.

Conclusion 1. We continue to agree with the Welsh Government's assessment (as set out in the Memorandum and Memorandum No. 2) of the provisions within the Bill (and amendments to those provisions) which require the consent of the Senedd in accordance with Standing Order 29.

Delegated powers in the Bill

34. We note that the amendments to clauses 1 and 10 of the Bill create new regulation-making powers for the Secretary of State to act in devolved areas.

35. We acknowledge that the amendments to clauses 1 and 10 provide the Welsh Ministers with a consenting role should the regulations made under those clauses apply to matters within the legislative competence of the Senedd.

36. We also note that the amendment to remove clause 46 from the Bill – in consequence of the amendments to clauses 1 and 10 – remove a regulation-making power that would have been delegated to the Welsh Ministers.

37. We repeat a concern¹⁷ we raised in our first report – the fact that the Bill will enable the Secretary of State to act in devolved areas may reduce the flexibility of the Welsh Ministers and the Senedd to act to take account of Welsh circumstances and undermines the principle of devolution.

¹⁵ ~~Legislation, Justice and Constitution Committee~~, 12 May 2025

¹⁶ ~~Legislation, Justice and Constitution Committee~~, 19 May 2025

¹⁷ Report on the Welsh Government's Legislative Consent Memorandum on the Tobacco and Vapes Bill, paragraph 38

Matters of interest raised in our first report

38. Recommendation 6 in our first report asked the Minister to confirm whether and how the Welsh Government identified where a Welsh only approach was needed and, as a result, requested the specific regulation-making powers being taken in the Bill for the Welsh Ministers. In responding to recommendation 6 in our first report, we note the Minister's comments that:

"... the Welsh Government ensured the delegated nature of these matters, and the Welsh Government's Principles on UK Legislation were considered during the development of the Bill's powers to make subordinate legislation."¹⁸

39. We noted in our first report that the Minister was seeking further engagement with the UK Government on clauses 34, 45, 95, 100, 123, 150 and 151.¹⁹ Recommendations 4, 7, 8, 10, 11, 12, 13, 14 and 15 in our first report all related to these clauses.

40. Recommendation 7 in our first report asked the Minister to confirm whether there had been any disagreements over where responsibility for regulation-making powers in the Bill should lie, and whether any powers for the Welsh Ministers had been refused by the UK Government. We note the following comments from the Minister in response:

- As regards clause 45, the Minister is content that the Bill "has struck the correct balance between the need for a coherent, functional regulatory regime in relation to tobacco and nicotine products and powers for the Welsh Ministers to make regulations in relation to matters affecting Wales", and that she considered that "the powers should be held by the Secretary of State to ensure a consistent regulatory regime across the UK".
- As regards clauses 95 and 100, the Minister also considers it appropriate for the Secretary of State to hold the delegated powers "to ensure there is a consistent regulatory framework across the UK".

¹⁸ Welsh Government response to the Legislation, Justice and Constitution Committee's Report on the Welsh Government's Legislative Consent Memorandum on the Tobacco and Vapes Bill, response to recommendation 6

¹⁹ Report on the Welsh Government's Legislative Consent Memorandum on the Tobacco and Vapes Bill, paragraphs 40 and 42

- As regards clause 123, although the Welsh and UK Governments disagree on whether this provision affects the Senedd's legislative competence, they were "in agreement that the power should be held by the Secretary of State to ensure a consistent regulatory regime". Furthermore, while the Minister considers that the regulation-making power should be subject to a consenting role for the Welsh Ministers, "[i]n view of the unlikelihood of divergence on the implementation of this clause", the Minister is content that clause 123 "is in the best interests of Wales at this time".²⁰

41. The Minister's concerns with clauses 34, 150 and 151 centred around whether the requirements of these clauses aligned with the requirements of the *Public Health (Wales) Act 2017*. In responding to recommendation 4 in our first report, we note the Minister's comments that it is now her view that clause 34 is in alignment with the requirements established by the 2017 Act.²¹

42. As regards clauses 150 and 151, we note the following comments from the Minister's response to our first report:

"Welsh Government officials discussed clauses 150 and 151 (paragraphs 154 – 162 of the LCM) with the UK Government. These clauses deal with vape-free places and heated tobacco-free places and vehicles. I sought assurances that they would align with the requirements of the Public Health (Wales) Act 2017. There continues to be a disagreement between UK Government and Welsh Government on competence in relation to certain restrictions relating to hovercraft and aircraft in Wales. However, I am content that the Bill's drafting of clauses 150 and 151 are in the best interests of Wales at this time. The new vape and heated tobacco-free provisions in the Public Health (Wales) Act 2017 are inconsistent with the existing smoke-free powers relating to aircraft and hovercraft. However, the practical implications of this are considered to be minor. If there is an issue with these places (hovercraft and aircraft), and there are no suitable national measures in place, the Welsh

²⁰ Welsh Government response to the Legislation, Justice and Constitution Committee's Report on the Welsh Government's Legislative Consent Memorandum on the Tobacco and Vapes Bill, response to recommendation 7

²¹ Welsh Government response to the Legislation, Justice and Constitution Committee's Report on the Welsh Government's Legislative Consent Memorandum on the Tobacco and Vapes Bill, response to recommendation 4

Ministers can consider making their own measures in the Senedd. We continue to recommend Senedd consent is provided.”²²

43. Finally, we again wish to highlight correspondence from the Minister on 4 February 2025 in which she informed us of amendments that were made to the Bill during Commons Committee stage. In her letter, the Minister informed us that, at the request of the Welsh Government, two amendments had been tabled to the Bill regarding clauses 168 and 170.²³

44. Recommendation 17 in our first report asked the Minister to confirm that these amendments would be included in a supplementary legislative consent memorandum laid before the Senedd.

45. We note the Minister's response to that recommendation, that the amendments “are minor and technical in nature and thus a supplementary LCM is not necessary as the test at SO 29.2 is not met.”²⁴

46. We do not find the reasoning provided to us by the Minister to be convincing. For the purpose of Standing Order 29, a relevant provision is a provision that has regard to devolved matters. Whether that provision is minor and technical is not a determining factor in the assessment as to whether the Standing Order is engaged. Furthermore, at the same time that a response to our report was being prepared the Welsh Government was preparing Memorandum No. 2, in which information about the amendments to clauses 168 and 170 could have been included. That such information was not included in Memorandum No. 2 is very disappointing. The Senedd should be in no doubt as to the provisions in the Bill (as amended) to which it is being asked to give its consent.

²² Welsh Government response to the Legislation, Justice and Constitution Committee's Report on the Welsh Government's Legislative Consent Memorandum on the Tobacco and Vapes Bill, response to recommendation 14

²³ Letter from the Minister for Mental Health and Wellbeing, 4 February 2025

²⁴ Welsh Government response to the Legislation, Justice and Constitution Committee's Report on the Welsh Government's Legislative Consent Memorandum on the Tobacco and Vapes Bill, response to recommendation 17
