Welsh Parliament
Legislation Committee

The Welsh Government's Statutory Instrument Consent Memorandum on The Tobacco and Vapes Act 2026 (Display of Tobacco Products) (Consequential Amendments) Regulations 2026

October 2026

1. Background

Tobacco and Vapes Act 2026 (Display of Tobacco Products) (Consequential Amendments) Regulations 2026

1. The draft Tobacco and Vapes Act 2026 (Display of Tobacco Products) (Consequential Amendments) Regulations 2026 (the draft Regulations) were laid in draft before the UK Parliament on 14 September 2026.[1]

Summary of the Regulations

2. The draft Regulations make consequential amendments to the *Tobacco Advertising and Promotion Act 2002*, and specifically the provisions governing the display of tobacco products, following the introduction in the *Tobacco and Vapes Act 2026* of an age of sale requirement based on date of birth.

2. The statutory instrument consent memorandum

3. Standing Order 30A states that a member of the government must lay a statutory instrument consent memorandum in relation to any statutory instrument, or draft statutory instrument, laid before the UK Parliament by UK Ministers which makes provision in relation to Wales amending primary legislation within the legislative competence of the Senedd.

4. On 15 September 2026, Nerys Evans MS, the Deputy Minister for Public and Preventative Health (the Deputy Minister) laid a statutory instrument consent memorandum in respect of the draft Regulations (the SIC Memorandum) before the Senedd, in accordance with Standing Order 30A.[2] Alongside the SIC Memorandum she laid a copy of the draft Regulations and an explanatory memorandum produced by the UK Government.

[1] **The draft Tobacco and Vapes Act 2026 (Display of Tobacco Products) (Consequential Amendments) Regulations 2026**
[2] Welsh Government, **Statutory Instrument Consent Memorandum: The Tobacco and Vapes Act 2026 (Display of Tobacco Products) (Consequential Amendments) Regulations 2026**, September 2026

The Welsh Government's view

5. In the SIC Memorandum, the Deputy Minister states:

> *"The Regulations amend section 7B of the Tobacco Advertising and Promotion Act 2002 and are within the legislative competence of the Senedd (save for their application beyond Wales and extent beyond England and Wales). Although the amendments are minor, technical, and uncontentious in nature, the overarching purpose of the change in the age of sale requirement for tobacco products, so that it is based on date of birth, concerns the devolved matter of the protection of public health (which is not a matter reserved by Schedule 7A to the Government of Wales Act 2006).*
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> *The Regulations are made in exercise of powers in section 168(1) and (2) of the Tobacco and Vapes Act 2026. The objective of the Regulations is to replace references to an individual being "aged 18 or over" or "aged under 18" with references to their date of birth in consequence of the change in the age of sale requirement for tobacco products introduced by the Tobacco and Vapes Act 2026. The amendments are therefore minor, technical, and uncontentious in nature and are a necessary consequence of the introduction of the Tobacco and Vapes Act 2026.*
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> *It is my view that it is appropriate to make these amendments through the Regulations as they represent the most practicable and proportionate legislative vehicle to enable their application to Wales. The provision that the Regulations amend in the Tobacco Advertising and Promotion Act 2002 extends to England and Wales, Scotland and Northern Ireland (although does not apply in Scotland), the policy underpinning the change in the age of sale requirement for tobacco products is aligned across the respective governments and this method of amendment ensures the timely alignment of the consequential amendments which flow from the introduction of the Tobacco and Vapes Act 2026 across the relevant territories.*

> *Though the Regulations will not be made bilingually, I note the Tobacco Advertising and Promotion Act 2002 itself was not made bilingually."*[3]

3. Committee consideration

6. We considered the SIC Memorandum at our meeting on 28 September 2026[4]. This followed the receipt of correspondence from the Deputy Minister on 8 September[5] and 18 September[6]. We subsequently wrote to the Deputy Minister on 28 September.[7] The Deputy Minister responded on 12 October 2026.[8] We agreed our report on the SIC Memorandum on 19 October 2026.[9]

Interaction between the Senedd's statutory instrument consent process and political consent-seeking commitments between governments

7. We highlight in our letter dated 28 September that the Deputy Minister wrote to us on 8 September notifying us of her intention to consent to the UK Government "making and laying" the draft Regulations. The SIC Memorandum was then laid on 15 September. In accordance with Standing Order 30A, we have until 20 October to report to the Senedd.

8. However, the Deputy Minister's second letter, sent only 10 days later, informed the Committee that she had given her consent to the Secretary of State "making" the draft Regulations.

9. The Deputy Minister therefore appears to have provided consent for a UK Minister to exercise the relevant powers while the Senedd's statutory instrument consent process is still in its earliest stages.

10. In the SIC Memorandum, the Deputy Minister states:

[3] **Statutory Instrument Consent Memorandum: The Tobacco and Vapes Act 2026 (Display of Tobacco Products) (Consequential Amendments) Regulations 2026**, paragraphs 8 to 11
[4] **Legislation Committee, 28 September 2026**
[5] **Letter from the Deputy Minister for Public and Preventative Health**, 8 September 2026
[6] **Letter from the Deputy Minister for Public and Preventative Health**, 18 September 2026
[7] **Letter to the Deputy Minister for Public and Preventative Health**, 28 September 2026
[8] **Letter from the Deputy Minister for Public and Preventative Health**, 12 October 2026
[9] **Legislation Committee**, 19 October 2026

> *"There is a political commitment for the UK Government to seek the consent of the Welsh Government when making legislation that applies to Wales in an area of devolved competence. Dame Diana Johnson, the UK Minister of State for Public Health and Patient Safety at the Department of Health and Social Care, has written to seek the consent of the Welsh Ministers to the application of the Regulations to Wales. As the Regulations engage Standing Order 30A (consent in relation to statutory instruments made by UK Ministers), the agreement of the Senedd is also sought."*[10]

11. We asked the Deputy Minister to clarify the Welsh Government's understanding of how any political commitments between the Welsh and UK Governments relating to statutory instrument consent interact with the Senedd's clear instruction, expressed through Standing Order 30A, that its consent should be sought in relation to certain instruments. The Deputy Minister responded:

> *"The Welsh Government considers that two distinct processes arise in this case.*
>
> *Whilst there was no statutory requirement for the UK Government to request consent, the UK Secretary of State sought the agreement of Welsh Ministers before making Regulations in a devolved area. I gave my agreement to that approach and the content of the draft Regulations.*
>
> *Consistent with the commitments set out in the Inter-Institutional Relations Agreement, I wrote to the Committee on 18 September to notify it that I had agreed to the Secretary of State making the Regulations. The purpose of that correspondence was to ensure that the Committee was aware of the Welsh Government's position at the earliest practicable opportunity and was able to take that position into account during its scrutiny.*
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> *It was necessary to communicate the Welsh Ministers' agreement to the UK Government prior to regulations being laid, so that the UK Government was aware of the Welsh Government's position*

[10] **Statutory Instrument Consent Memorandum: The Tobacco and Vapes Act 2026 (Display of Tobacco Products) (Consequential Amendments) Regulations 2026**, paragraph 4

> *before proceeding. Neither the notification of Welsh Ministers' agreement, nor the agreement itself, replaced or pre-empted the separate Standing Order 30A process.*
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> *The second distinct process arises in accordance with Standing Order 30A, which requires a member of the Welsh Government to lay a statutory instrument consent memorandum in relation to any relevant statutory instrument laid before the UK Parliament by UK Ministers, normally no later than three days after it is laid before the UK Parliament.*
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> *The statutory instrument consent motion process, therefore, commenced once the Regulations had been laid before the UK Parliament on 14 September. The Welsh Government does not consider these to be alternative forms of the same consent, nor that one process displaces the other. Welsh Ministers' agreement relates to whether the UK Government should proceed to make Regulations in relation to Wales, while recognising that the Senedd must still have the opportunity to consider the instrument under Standing Order 30A. The Senedd's consideration under Standing Order 30A is a distinct parliamentary process which takes place once a qualifying instrument has been laid. To this extent, it is a reflection of the similar process taking place in the UK Parliament through the affirmative procedure.*
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> *The expectation is that the Senedd's consideration should take place before UK parliamentary scrutiny of the instrument has concluded. This would provide the Senedd with a meaningful opportunity to express a view on the instrument through the Standing Order 30A process and enable that view to be available to UK Ministers and both Houses of Parliament before the legislative process is complete."*[11]

12. In her letter to us, the Deputy Minister confirmed that the Senedd debate on the relevant statutory instrument consent motion is scheduled for 3 November, adding that dates for the UK Parliament debates have not yet been confirmed but Welsh Government officials have "reiterated to UK Government counterparts that the Senedd debate needs to take place before the UK

[11] **Letter from the Deputy Minister for Public and Preventative Health**, 12 October 2026, response to question 1

Parliament debates, in accordance with the Devolution Guidance Notes, so that both Houses can be fully informed of, and take account of, the Senedd's position on consent."[12]

Interaction with other subordinate legislation implementing the Tobacco and Vapes Act 2026

13. It appears that the draft Regulations are part of a package of subordinate legislation being made by Welsh or UK Ministers in relation to the implementation of the *Tobacco and Vapes Act 2026* (the 2026 Act) in Wales.

14. The Deputy Minister told us the provisions of the 2026 Act are being implemented on a phased basis and, in relation to Wales, implementation will involve "a combination of subordinate legislation made by the Secretary of State which applies in Wales and Wales-specific subordinate legislation made by the Welsh Ministers". The Deputy Minister added "The 2026 Act therefore generally determines whether individual instruments affecting Wales are to be made by the Welsh Ministers or the Secretary of State and, where relevant, whether the consent of the Welsh Ministers is required."[13]

15. In addition to regulations we were already aware of[14], in her letter the Deputy Minister confirms that The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2026 was made by the Secretary of State and did not require the consent of the Welsh Ministers.[15] The Deputy Minister also states that, in due course, she will make The Tobacco and Vapes Act 2026 (Age of Sale Notices and Consequential Amendments) (Wales) Regulations 2026, adding that the Secretary of State has made separate regulations applying in England.[16]

[12] **Letter from the Deputy Minister for Public and Preventative Health**, 12 October 2026, response to question 2
[13] **Letter from the Deputy Minister for Public and Preventative Health**, 12 October 2026, response to question 3
[14] **Letter from the Deputy Minister for Public and Preventative Health - The Tobacco and Vapes Act 2026 (Age Verification Defence to Underage Sales) (England and Wales) Regulations 2026**
[15] **The Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2026**
[16] **Letter from the Deputy Minister for Public and Preventative Health**, 12 October 2026, response to question 3

4. Our view

Statutory instrument consent

16. We agree with the Welsh Government's assessment of the provisions within the draft Regulations that require the consent of the Senedd.

Conclusion 1. The draft Regulations amend primary legislation within the legislative competence of the Senedd and we therefore agree with the Welsh Government's assessment that they require the Senedd's consent under Standing Order 30A.

Conclusion 2. We welcome the Deputy Minister's confirmation that a motion will be tabled under Standing Order 30A.10 to seek the Senedd's agreement to the inclusion of relevant provisions in the draft Regulations.

Interaction between the Senedd's statutory instrument consent process and political consent-seeking commitments between governments

17. We acknowledge the Deputy Minister's full response to our enquiry into how political commitments between the Welsh and UK Governments relating to statutory instrument consent interact with the requirements of Standing Order 30A. However, we do not agree with the premise of the response and therefore have concerns about the approach that has been adopted by the Deputy Minister on this occasion.

18. We note the Deputy Minister's view that it was necessary for the Welsh Government to communicate the Welsh Ministers' agreement to the UK Government prior to regulations being laid, so that the UK Government was aware of the Welsh Government's position before proceeding. We are unclear what requirement the Deputy Minister is fulfilling given she acknowledges that no statutory requirement to seek ministerial consent underpins the exercise of this delegated power.

19. We note that the UK Government's explanatory memorandum accompanying the draft Regulations acknowledges that the Senedd's Standing Order 30A process is engaged by the making of these regulations, and makes

no reference to the UK Government seeking (or receiving) consent from the Welsh Ministers under any other form of consent process. In our view, if the governments have established an agreement between themselves which is akin to a statutory consent mechanism, adequate time and processes are required to ensure that the parliamentary consent procedures can take place before non-statutory, informal intergovernmental consent agreements are actioned. At the very least, we question why the Deputy Minister did not caveat any non-statutory ministerial consent given to the UK Government to make it clear that her consent is subject to the will of the Senedd.

20. We note the Deputy Minister's view that "Neither the notification of Welsh Ministers' agreement, nor the agreement itself, replaced or pre-empted the separate Standing Order 30A process." We also note her statement that the Senedd's consideration of the SIC Memorandum ahead of the conclusion by the UK Parliament of the draft Regulations "would provide the Senedd with a meaningful opportunity to express a view on the instrument". We disagree, and question how the Senedd's scrutiny process can be 'meaningful' if the Welsh Government has already given the go-ahead to the UK Government to "make" the draft Regulations.

Recommendation 1. The Deputy Minister should confirm whether she consented to the UK Government making the draft Regulations ahead of the completion of the Senedd's Standing Order 30A process on the basis that such informal ministerial consent was subject to the decision of the Senedd.

Recommendation 2. The Deputy Minister should provide the Senedd with the terms of the agreement that underpins the Welsh Government consenting to the making of the draft Regulations.

Recommendation 3. The Deputy Minister should confirm what action she will take should the Senedd vote to withhold consent to the inclusion of the relevant provision in the draft Regulations, and whether the action will include her rescinding the ministerial consent already given to the UK Government.

Conclusion 3. Through Standing Order 30A, the Senedd has confirmed its clear expectation and instruction that its consent should be sought by the Welsh Government in relation to certain instruments which may be made by the UK Ministers via the UK Parliament. We have concerns with the approach adopted by the Deputy Minister on this occasion, and

> we do not wish to see it repeated. We consider that the actions of the Welsh Government in relation to the draft Regulations and the SIC Memorandum call into question the purpose of the process set out in Standing Order 30A, and we will be drawing this to the attention of the Llywydd and the Business Committee.

Interaction with other subordinate legislation implementing the Tobacco and Vapes Act 2026

21. We note the information provided by the Deputy Minister on the interaction of the draft Regulations and other subordinate legislation that will be used to implement the 2026 Act in Wales. We draw this information to the attention of the Senedd.