

EXPLANATORY MEMORANDUM TO
THE TOBACCO AND VAPES ACT 2026 (DISPLAY OF TOBACCO PRODUCTS)
(CONSEQUENTIAL AMENDMENTS) REGULATIONS 2026

2026 No. [XXXX]

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Declaration

- 2.1 Dame Diana Johnson, Minister of State for Public Health and Patient Safety at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Richard Boden, Deputy Director for Tobacco and Vapes Policy, at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 The Tobacco and Vapes Team at the Department of Health and Social Care can be contacted by email at the following address with any queries regarding the instrument: tobaccocontrol@dhsc.gov.uk. Alternatively, the department can be contacted by telephone: 0300 790 4007.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

- 4.1 This instrument makes consequential amendments to the Tobacco Advertising and Promotion Act 2002 (“the 2002 Act”), following the passage of the Tobacco and Vapes Act 2026 (“the 2026 Act”). The 2002 Act restricts the display of tobacco products in most shops selling these products in England, Wales and Northern Ireland. The 2002 Act included an exemption from display restrictions which allowed retailers to display tobacco products to a customer aged 18 or over, on their request. This instrument amends this exemption to align with the new age of sale offence introduced by the 2026 Act of selling to anyone born on or after 1 January 2009, to continue to ensure that only customers who can legally be sold tobacco products can be shown them.

Where does the legislation extend to, and apply?

- 4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.
- 4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales and Northern Ireland.

5. Policy Context

What is being done and why?

- 5.1 Retailers in England, Wales and Northern Ireland are prohibited from displaying tobacco products under the 2002 Act and regulations made under it, with some limited exemptions. This aims to reduce the visibility and appeal of these products and to contribute to reductions in smoking prevalence. Separate rules on display apply in Scotland.
- 5.2 The 2002 Act included an exemption that allowed retailers to display tobacco products to a customer aged 18 or over, when the customer requested to purchase a tobacco product or requested information about it. The 2002 Act also provided a linked defence for cases where a retailer mistakenly displayed tobacco products to someone under 18 years old. The defence could be applicable provided that the retailer believed the individual was 18 or over, and either that person had taken all reasonable steps to establish the individual's age or from the individual's appearance nobody could reasonably have suspected that the individual was aged under 18. This exemption and defence reflected the age of sale restrictions in force until 31 December 2026, under which it was an offence to sell tobacco products to anyone under 18 years old.
- 5.3 The 2026 Act introduced a new age of sale for tobacco products across the UK. From 1 January 2027, it will be an offence to sell tobacco products (as well as herbal smoking products and cigarette papers) to anyone born on or after 1 January 2009. In practice, this means that the age of sale will gradually rise.
- 5.4 This policy aims to create a 'smoke-free generation', reducing tobacco use in the UK population over time. It responds to the evidence that smoking is the number one preventable cause of death, disability and ill health. It kills up to two-thirds of its long-term users and causes around 75,000 deaths a year in the UK. It also substantially increases the risk of many major health conditions throughout people's lives and costs society billions of pounds through lost productivity and health and care costs.
- 5.5 This instrument amends the exemption and defence, to align the age at which customers can be shown tobacco products on request with the new age of sale. This aims to ensure that only customers who are old enough to be legally sold these products can be shown them.
- 5.6 Without this change, from 1 January 2027 onwards, there would have been a growing cohort of people who are aged 18 or over but born on or after 1 January 2009, who could have been shown tobacco products but could not be sold these products. This discrepancy could have created confusion for customers and retailers.

What was the previous policy, how is this different?

- 5.7 This instrument maintains the policy on requested displays, which provides for customers over the legal age of sale to request to see a tobacco product before buying these products, and permits retailers to show these to them without committing an offence. This aims to enable customers who can be legally sold tobacco products to make informed decisions about whether they wish to buy them, while preventing people who cannot be sold these products from seeing them on display.
- 5.8 Previously, the rules on display aligned with the age of sale of 18 years. The sole change made by this instrument is updating the age requirements for who can make a

request for these products to be displayed to them, in consequence of the new restrictions on selling to anyone born on or after 1 January 2009.

6. Legislative and Legal Context

How has the law changed?

- 6.1 Under section 7A of the 2002 Act it is an offence for a person to, in the course of business, display tobacco products, or cause them to be displayed in a place in England and Wales or Northern Ireland. The Tobacco Advertising and Promotion (Display) (England) Regulations 2010 define the meaning of “place” as far as premises in England, on which tobacco products are offered for sale, are concerned. Section 7B of the 2002 Act provides that no offence is committed under section 7A if the display is a requested display to an individual aged 18 or over (and defines the meaning of “a requested display”). It also provides a defence for cases where a person is charged with an offence under section 7A, where the display is a requested display to an individual aged under 18.
- 6.2 Regulation 2 of this instrument amends section 7B of the 2002 Act in consequence of the 2026 Act changing the required age at which an individual can legally be sold tobacco products from 18 years or over, to having been born before 1 January 2009. This regulation replaces references to an individual being “aged 18 or over” or “aged under 18” with references to an individual’s date of birth being either before, or on or after 1 January 2009, as appropriate.
- 6.3 Separately to this instrument, the UK Government, Welsh Government and Department of Health in Northern Ireland are making equivalent consequential amendments to regulations made under the 2002 Act. In England, these are: The Tobacco Advertising and Promotion (Display) (England) Regulations 2010 and The Tobacco Advertising and Promotion (Display of Prices) (England) Regulations 2010. In Wales, these are: The Tobacco Advertising and Promotion (Display) (Wales) Regulations 2012 and The Tobacco Advertising and Promotion (Display of Prices) (Wales) Regulations 2012. In Northern Ireland, these are: The Tobacco Advertising and Promotion (Display) Regulations (Northern Ireland) 2012 and The Tobacco Advertising and Promotion (Display of Prices) Regulations (Northern Ireland) 2012. These consequential amendments will come into force on the same day as this Instrument.

Why was this approach taken to change the law?

- 6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 From October to December 2023, the then government held an open consultation¹ on policy proposals for inclusion in the Tobacco and Vapes Bill. There were 27,921 responses, including 896 from organisations and 27,025 from individuals in both personal and professional capacities. This consultation included the changes to the age of sale for tobacco products; 63.2% of respondents agreed with the proposal, 32.2% disagreed and 4.6% said they didn’t know.

¹ <https://www.gov.uk/government/consultations/creating-a-smokefree-generation-and-tackling-youth-vaping>

- 7.2 We have not undertaken a separate consultation on these regulations, given that they make consequential amendments because of the new age of sale, which was already consulted on. The additional impact of these will be minimal.

Devolved Governments

- 7.3 This instrument amends primary legislation, which engages Senedd Standing Order 30A² and the statutory instrument consent motion procedure in Wales. Legislative consent is not required from the Northern Ireland Executive as part of the development of this instrument. The UK Government has worked with the Welsh Government and Northern Ireland Executive throughout the development of this instrument. The Welsh Government and Department of Health in Northern Ireland are making equivalent consequential amendments to regulations under the Tobacco Advertising and Promotion Act 2002 that apply to Wales and Northern Ireland, to achieve the same policy aim as this instrument.

8. Applicable Guidance

- 8.1 Guidance on the new age of sale for tobacco products has been published³. This includes guidance on the proposed change to requested display, with references to this still being subject to parliamentary approval. The guidance will be updated to reflect the final position following parliamentary scrutiny of this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument as the impact of the new age of sale for tobacco products was considered as part of the Impact Assessment for the 2026 Act⁴, and the additional impact of the measures in this instrument is expected to be small.

Impact on businesses, charities and voluntary bodies

- 9.2 The impact on business, charities or voluntary bodies is that retailers who sell tobacco products will need to familiarise themselves with the amended policy on requested displays. The costs for retailers to familiarise themselves with the wider changes to the age of sale have already been accounted for as part of the Impact Assessment for the 2026 Act; these are expected to include the requirements in this instrument. The total familiarisation costs to retailers for the new age of sale and proxy purchasing offences for tobacco products, herbal smoking products and cigarette papers were estimated to be £8.3m.
- 9.3 The legislation does impact small or micro businesses. Given that a large proportion of tobacco is sold in small businesses, it would not be possible to exempt small businesses from these regulations while still achieving the aims of the policy. The Impact Assessment for the 2026 Act estimated total familiarisation costs of the age of sale changes to small and microbusinesses in the UK to be £2.4 million. The cost to each individual small and micro retailer was estimated to be around £70.

² https://senedd.wales/media/n33df5ry/e-a4_publish.pdf

³ <https://www.gov.uk/guidance/selling-tobacco-herbal-smoking-products-and-cigarette-papers>

⁴ <https://assets.publishing.service.gov.uk/media/6985eeb7cfe7ccf77efbc74e/tobacco-and-vapes-bill-impact-assessment.pdf>

- 9.4 The impact on the public sector is that trading standards officers, who enforce the law on the display of tobacco products, will need to familiarise themselves with the amended policy on requested displays. The costs of this are expected to be minimal.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The approach to monitoring this legislation is through wider evaluation of the 2026 Act, given that this instrument solely makes amendments in consequence of the 2026 Act changing the age of sale for tobacco products. Section 165 of the 2026 Act creates a statutory requirement for the Secretary of State to carry out a review of its operation within 4-7 years of passage. We expect this review to capture any relevant findings as part of consideration of the operation of the age of sale provisions introduced by the Act.
- 10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Dame Diana Johnson, Minister of State for Public Health and Patient Safety, has made the following statement: “It is not considered necessary to include a review clause in this instrument as the annualised net impact on businesses is expected to be significantly less than £10m”.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 This instrument amends primary legislation: the Tobacco Advertising and Promotion Act 2002, to make amendments that are consequential on the 2026 Act. It uses the power in section 168 of the 2026 Act for the Secretary of State to make consequential provision.

12. European Convention on Human Rights

- 12.1 The Minister of State for Public Health and Patient Safety has made the following statement regarding Human Rights: “In my view the provisions of The Tobacco and Vapes Act 2026 (Display of Tobacco Products) (Consequential Amendments) Regulations 2026 are compatible with the Convention rights.”

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).