

## SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

### Tobacco and Vapes Bill

1. This legislative consent memorandum (LCM) is laid under Standing Order (“SO”) 29.2. SO29 prescribes that an LCM 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 which has regard to devolved matters.
2. The Tobacco and Vapes Bill (“the Bill”) was introduced in the UK Parliament, the House of Commons, on 5 November 2024. I laid an LCM on 20 November 2024.
3. The Bill completed Commons Report Stage on 26 March 2025. This Supplementary LCM covers UK Government amendments tabled during Commons Report Stage on 18 March 2025. The latest version of the Bill is available at: <https://bills.parliament.uk/bills/3879>

### Policy Objectives

4. The UK Government’s 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:
  - a. create a smoke-free generation, gradually ending the sale of tobacco products across the country and breaking the cycle of addiction and disadvantage by making it an offence to sell tobacco products to anyone born on or after 1 January 2009;
  - b. enable regulation to strengthen the existing ban on smoking in public places to reduce the harms of passive smoking, particularly around children, families and vulnerable people;
  - 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. strengthen enforcement activity to support implementation of the above measures and provide powers to introduce a licensing scheme for the retail sale of tobacco, herbal smoking products, cigarette papers, vapes and nicotine products in England, Wales and Northern Ireland and extend the retail registration scheme in Scotland.
  - e. the Bill sits alongside wider support across the health service to support smokers to quit.
5. The Bill modifies, amends, extends, and re-enacts several existing tobacco and vaping control measures to create a consistent legislative framework. These changes will help to ensure a consistent application of the law, close loopholes, improve readability and subsequent

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

### **Summary of the Bill**

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

### **Update on position since the publication of the first Legislative Consent Memorandum**

9. The Bill is currently at Lords Second Reading Stage. At Commons Committee Stage, the Committee heard oral evidence from stakeholders on 7 January including the Chief Medical Officer for Wales. Co-operation between the Welsh Government, DHSC, Scottish Government and Northern Ireland Executive on the Bill and its policy objectives continues to be strong and sustained.
10. During Commons Committee Stage, four government amendments (two in relation to Wales (amendments 15 and 16), one in relation to Northern Ireland (amendment 98) and one in relation to Scotland (amendment 1)) were tabled. All non-government amendments proposed to the Bill at Commons Committee stage were not accepted. Amendments 15 and 16 in relation to Wales did not meet the SO 29 test and therefore no Supplementary Legislative Consent Memorandum was required in respect of them.
11. During Commons Report Stage, 36 government amendments were tabled on 18 March 2025. Those amendments which meet the SO 29 test requiring an LCM to be laid are detailed below.

## **Provisions tabled by the UK Government to the Bill for consideration at Commons Report Stage for which consent is required**

12. The UK Government laid amendments during House of Commons Report Stage on 18 March 2025 which require consent of the Senedd under SO 29. They 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 12);
  - c. the display of tobacco related devices in shops or online places (clauses 14 and 48).

### **Age verification in relation to tobacco and vaping products etc**

#### **Clause 1 (Amendments 47, 48, 49): Age verification – tobacco products**

13. Clause 1 introduces a new age of sale restriction for tobacco products, herbal smoking products and cigarette papers. The clause provides that it is a defence for someone who is charged with the offence to prove they were shown what appeared to be an identity document (such as a passport or UK Driving Licence) belonging to the purchaser and that the date of birth shown on that document was before 1 January 2009, or that they otherwise took all reasonable steps to avoid committing the offence.
14. With respect to the first alternative defence, the amendments remove the list of physical identification documents. Instead the clause provides the Secretary of State with a power to set out the steps that a retailer may take to benefit from the defence. This will enable regulations to specify all forms of permissible identification through secondary legislation. The purpose is to accommodate digital methods of verification as well as the traditional paper methods.
15. The regulations will be subject to the negative resolution procedure. The Secretary of State's power will be subject to the consent of the Welsh Ministers on matters within the legislative competence of the Senedd.
16. 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.

Clause 10 (Amendments 51, 52, 53): Age verification – vapes and nicotine products

17. Clause 10 makes it an offence to sell a vaping or nicotine product to a person who is under the age of 18. The clause provides that it is a defence for someone who is charged with the offence under this clause to prove they were shown what appeared to be an identity document (such as a passport or UK Driving Licence) belonging to the purchaser and it confirmed that the customer was 18 or over, or that they otherwise took all reasonable steps to avoid committing the offence.
18. The nature and purpose of the amendments to clause 10 are the same as for the amendments to clause 1 (see above).

Clause 46 (Amendment 61): Age verification – tobacco products and vapes and nicotine products

19. Clause 46 provides the Secretary of State and the Welsh Ministers as appropriate with a power to make regulations to amend the definition of “identity document” in clauses 1 and 10.
20. The amendment removes clause 46. This is consequential to the amendments to clauses 1 and 10 as the lists of physical identification documents are removed. This is replaced with a power for the Secretary of State to specify the steps to take to verify age (see above).

Clause 48 (Amendment 63): Interpretation

21. Clause 48 provides the definitions for Part 1. The amendment removes the definition of “UK driving licence”. This amendment is consequential on the amendments to clauses 1 and 10 (see above).

**Tobacco, vaping and nicotine product vending machines**

Clause 3 (Amendment 50: Tobacco vending machines)

22. 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. An example would be a machine that dispenses a product following the input of a code that has been received on a sales receipt obtained elsewhere, such as a checkout or self-checkout machine.

Clause 12 (Amendments 54 and 55): Vape / nicotine product vending machines)

23. 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 (see above).

**The display of tobacco related devices in shops or online places**

Clause 14 (Amendment 57): Retail displays – tobacco related devices

24. Clause 14 provides 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, in Wales.
25. The amendment extends the products covered by clause 14 to include tobacco related devices. This will enable the restrictions introduced by the regulations in clause 14 to include the display of these devices in shops or online places. Examples of these devices may include things like heated tobacco devices and pipes and bongs that enable tobacco to be consumed.

Clause 48 (Amendment 62): Interpretation – tobacco related devices

26. Clause 48 provides the definitions for Part 1. The amendment adds a definition of “tobacco related device”. This is consequential on the amendment to clause 14.

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

27. 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.
28. Clauses 1, 3, 10, 12, 14, 46 and 48 were all identified to engage the LCM process in the LCM laid on 20 November 2024 (see paragraphs 179 to 181). We refer to the explanations of those clauses in the LCM. Clause 46 has now been removed by the amendments. Clauses 1, 3, 10, 12, 14 and 48, as updated with the amendments listed above continue to make relevant provision in relation to Wales that has regard to devolved matters. The purpose of the clauses continue to be the protection of public health in Wales.

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

29. The amendments laid by the UK Government will strengthen the Bill in an appropriate way that addresses policy issues or potential loopholes, ensuring the public health aims of the provisions will be achieved. In relation to the amendments to the vending machine offences, these clarify that the ban on tobacco, vaping and nicotine product vending machines also extends to machines which dispense products only (but the sale happens separately) to ensure these types of machines are captured by the provisions in the Bill. The amendments in relation to the forms of age verification allows regulations to specify steps that a seller may take to benefit from the defences in clauses 1(2) and 10(2) of the Bill. The Bill currently focusses on paper identification documents. The purpose of the new power is to accommodate digital methods of verification as well as methods involving paper documents. 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 reasoning set out in the previous LCM on this Bill as to why it is appropriate for UK legislation to make provision for Wales in this Bill still stands but I restate my arguments here for ease of reference.
31. The Bill will provide legislative changes across the United Kingdom, offering an opportunity to achieve a smokefree generation and to protect children from vaping and other nicotine products. These are key policy objectives of the Welsh Government and will save thousands of lives, reduce pressure on the Welsh NHS and save the UK economy billions of pounds. The response to the UK-wide consultation overwhelmingly backed the measures.
32. Given the nature of the regulation and enforcement of tobacco, vapes, herbal tobacco and nicotine products, and the product, advertising and sponsorship requirements, a collaborative approach between the four nations of the UK is considered to be the most efficient and effective way to proceed for Wales and the UK. The starting point for the regulatory regime for these products should be that it is, as far as possible, identical across the UK or at least Great Britain. Further, as far as possible, that it should be introduced at the same time. Otherwise, products that are acceptable in one part of the UK may be able to enter another part of the UK where they might not meet regulations.
33. The Bill enables policy objectives to be achieved in a manner that also provides coherence and consistency throughout the UK. This approach achieves a single regulation regime across the whole of the UK as a way of ensuring a coherent and operable system across the whole of the UK

regarding these products. A similar approach is currently being pursued in relation to the introduction of the ban on single-use vapes from 1 June 2025, given the recognised benefits to aligning the introduction of the requirements for business, consumers as well as enforcement.

### **Financial implications**

34. The amendments do not introduce any additional financial obligations for the Welsh Government.

### **Conclusion**

35. 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.

**Sarah Murphy MS**  
**Minister for Mental Health and Wellbeing**  
**April 2025**