



Department
of Health &
Social Care

Tobacco and Vapes Bill

Delegated Powers Memorandum

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Memorandum from the Department of Health and Social Care to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Tobacco and Vapes Bill (“the Bill”). The Bill was introduced in the House of Commons on Tuesday 5th November 2024. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. Tobacco is a uniquely harmful product. It is universally accepted that tobacco drives bad health outcomes. It is the single most entirely preventable cause of ill health, disability, and death in the UK¹ causing around 80,000 deaths in the UK per year.^{2,3,4} In the UK, 11.9% of the population smoke, which equates to around 6 million people.

3. Vapes are less harmful than smoking. Vapes can be an effective tool in supporting adult smokers to stop.⁵ However, the health advice is clear that vapes and nicotine products should only ever be used as a smoking quit aid for adult smokers.

4. Selling nicotine vapes to under 18s is already illegal. However, in part due to the branding and advertising of vapes to children, youth vaping has doubled in the last five years and one in four children has tried vaping as of 2023.⁶

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.

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

C. DELEGATED POWERS

Number of powers in the Bill

7. The Bill includes the following 66 measures which contain new or amended delegated powers, of which 15 are Henry VIII powers. Although this number, and the associated percentage of Henry VIII powers, may at first seem large, it should be noted that, where a power is considered necessary, the same power will be

¹ [Health Profile for England 2021](#)

² [Smoking Profile - Data | Fingertips | Department of Health and Social Care](#)

³ [Smoking attributable deaths - ScotPHO](#)

⁴ [Ten year tobacco control strategy for Northern Ireland | Department of Health](#)

⁵ [Association of prevalence of electronic cigarette use with smoking cessation and cigarette consumption in England: a time-series analysis between 2006 and 2017 - Beard - 2020 - Addiction - Wiley Online Library](#)

⁶ [Smoking, Drinking and Drug Use among Young People in England, 2023 - NHS England Digital](#)

replicated multiple times in order to achieve consistency in provision for England, Wales, Scotland and Northern Ireland. Specifically regarding the number of Henry VIII powers, it has been considered preferable to place some important aspects of detail on the face of the Bill rather than in subordinate legislation, even when these might need to change in future; for example, the power to change the amount of the fixed penalty notice and the percentage discount for early payment (see clauses 37 and 39).

8. The approach we have taken in calculating the number of delegated powers is as follows. Where powers are supplementary to the main power (for example a power to create offences) or where they are secondary to a primary purpose and could not sensibly operate independently (for example where the primary exercise of power is to designate a space vape-free and the secondary exercise of power is to create requirements for the signage for a designated vape-free space), these supplementary powers or secondary exercise powers have not been counted separately to the main power. In determining whether a power should be counted separately we have taken into account whether or not it is a Henry VIII power, given the even higher need for transparency and clarity around the creation of such powers. The function of each main power and any supplementary powers is set out in the commentary on the individual clauses below.

Overarching rationales

9. Although each individual power is justified on its own merits within this memorandum, there are three broad overarching reasons related to the policy underpinning the Bill that means powers are required to enable adjustments in regulations. These are: emerging products and the fast moving and innovative nature of the policy area; the evolving health evidence; and the balance of risks on vaping. This can be seen particularly germane to provision in Part 5: product and information requirements etc. The three overarching broad reasons are:
- o Emerging Products: The tobacco and vaping market is a highly innovative and a fast moving industry, constantly developing new products often within very short periods of time. This means new products frequently come to market, which are not subject to the existing regulatory regime and so the government may wish to adjust the regulations to capture new products. For example, following the announcement in 2024 that single use vapes would be banned, vaping manufacturers have already pivoted away from single-use vapes and we are now seeing an increase in novel vaping products that often use attachable refill tanks so that the total amount of liquid goes over the 2ml limit currently stipulated in The Tobacco and Related Products Regulations 2016. Another example is the development of flavoured “cigarillo” products that closely resemble cigarettes, made by wrapping manufactured cigarettes in tobacco leaf so they can be classified as cigars, and thus currently do not fall subject to the characterising flavour bans and minimum pack size requirements brought in for cigarettes and hand rolled tobacco. This has allowed manufacturers to produce 10 packs of menthol flavoured cigarillos in branded packaging. Additionally, flavoured accessories that are provided separately to cigarettes, like flavoured sprays and crush balls, have been designed to add flavours, which are not covered by the ban on the sale on characterising flavour cigarettes and hand rolled tobacco.
 - o Evolving Evidence of Health Harms: These delegated powers also ensure that regulations remain responsive to emerging scientific evidence. There

has been a rapid advancement in our understanding of the harms of tobacco and vaping products over recent decades. For example, while it is well established that nicotine is highly addictive and that certain vape ingredients, such as propylene glycol and glycerine, can produce toxic compounds when overheated,⁷ research on the long-term health effects of inhaling coloured and flavoured vapours is still developing. The government has recently announced a landmark study to investigate the long-term effects of vaping on young people's health and well-being, which will improve our understanding. The Bill's delegated powers allow for adjustments based on such findings, as well as findings from other studies, ensuring that regulations remain aligned with the latest evidence.

- o Balance on vaping: while vaping can serve as an effective cessation aid for adults, it is never recommended for children. Vapes need to remain accessible to adult smokers because they are used as a quit aid among smokers trying to quit in England and Scotland.^{8,9} Selling nicotine vapes to under 18s is illegal. Yet, in part due to the branding and advertising of vapes to children, youth vaping has more than doubled in the past 5 years in England, with 25% of 11- to 15-year-olds having ever tried vaping as of 2023.¹⁰ Delegated powers (such as those in Part 5: product and information requirements etc and Part 7: smoke-free places, vape-free places and other free-from places) will allow the Secretary of State to take a holistic and balanced approach in England to ensure that vaping restrictions are applied appropriately to effectively reduce youth vaping, while not undermining smoking cessation for adults. However, the government will be able to course-correct if smoking cessation is adversely affected, or go further if youth vaping does not reduce.
10. The delegated powers support the Bill's aim to create a coherent and robust regulatory framework. Decisions taken on one aspect of tobacco and vapes regulation may affect the policy choices and appropriate levels of restriction in other areas. For example, there are interdependencies between restrictions on product packaging and product display, and between product contents and flavours and product registration and testing. If changes are made in one area to respond to emerging evidence, other measures can also be adapted accordingly. For example, using powers to set up the licensing scheme will allow for adaptation as smoking rates decline and the retail market changes. By providing the flexibility needed to address industry innovation, emerging health evidence, and interrelated technical regulatory framework considerations, the Bill ensures an agile and effective approach to tobacco, vape and nicotine product regulation. These delegated powers are essential to protecting public health and achieving the government's ambition to address the harms of tobacco, vaping and nicotine addiction.
11. Finally, powers to make consequential provision have been considered sensible given this Bill consolidates or amends provisions from across the statute book, some of which date back almost a century, and much of which in recent years has been enacted separately by devolved legislatures. Due to this complex legislative landscape, implementation will be complicated and will need to gradually take

⁷ [Propylene glycol, a component of electronic cigarette liquid, damages epithelial cells in human small airways | Respiratory Research](#)

⁸ [Monthly Tracking KPI - Graphs - Smoking in England](#)

⁹ [Top Line Findings - Graphs - Smoking in England](#)

¹⁰ NHS England, 2024 [Smoking, Drinking and Drug Use among Young People in England, 2023 - NHS England Digital](#)

place over a period of time, which has meant that the power to make consequential provision cannot always be limited to existing legislation.

Extension of the scope of existing powers in legislation

12. Much of the existing legislative framework is limited to restrictions on, or powers to, regulating tobacco products only. This Bill extends this scope to include herbal smoking products, cigarette papers, vaping products and nicotine products. While some of these products such as cigarette papers and herbal smoking products are in scope of the same age of sale restrictions as tobacco products in the [Children and Young Persons Act 1933](#), and the [Children and Young Persons \(Sale of Tobacco etc.\) Order 2007](#), they were not included in the scope of other tobacco restrictions, such as display restrictions ([Tobacco Advertising and Promotion Act 2002](#)). The Bill seeks to address such discrepancies and creates a more comprehensive regulatory regime through the inclusion of these products in the Bill and its regulation-making powers.

13. Furthermore, under the existing legislative framework there are very few restrictions on vaping and nicotine products. The long-term risks of vaping are unknown, and evidence suggests that, in adolescence, the brain is more sensitive to the effects of nicotine, so there could be additional risks for young people than for adults.¹¹ There is also a growing body of evidence which indicates vaping can increase the risk of respiratory illness amongst young people, including bronchitis, pneumonia or chronic cough.¹² Similarly, nicotine products are an emerging and growing market, and there is evidence that use of relatively innovative products, such as nicotine pouches, is increasing and is higher among certain groups, such as young adults and males.¹³

14. The government has sought to gather evidence on whether similar restrictions to those for tobacco products should be applied to vaping and nicotine products – particularly with the intention of protecting children from future harm and addiction. The Department of Health and Social Care published a [call for evidence](#) in April 2023 and a UK-wide [consultation](#) in October 2023. The consultation asked questions about restrictions on vapes, such as point of sale displays and vape packaging and presentation. Overall, there was public support for the introduction of measures that regulate vapes in a similar way to tobacco. Respondents were also in favour of regulating nicotine products, such as nicotine pouches, under a similar framework as nicotine vapes and cited as the reasoning for their position that nicotine products are increasingly marketed towards children, and that nicotine is a harmful and addictive substance. Based on the evidence from the consultation, as well as the evidence on health harms, this Bill will extend the scope of existing regulation-making powers to include herbal smoking products, cigarette papers, vaping products and nicotine products, whilst including appropriate new regulation-making powers to support provision on the face of the Bill. As part of the planned repeal of some of the current tobacco control legislation, some regulation-making powers will be repealed without being re-enacted.

15. The delegated powers in the Bill are as follows:

i. Part 1: Sale and distribution: England and Wales

¹¹ OHID. 2022. [Nicotine vaping in England: 2022 evidence update - GOV.UK \(www.gov.uk\)](#)

¹² Li et al., 2022, Mukerjee et al., 2024, Zavala-Arciniega et al., 2024

¹³ [Prevalence of Nicotine Pouch Use Among Youth and Adults in Great Britain—Analysis of Cross-Sectional, Nationally Representative Surveys | Nicotine & Tobacco Research | Oxford Academic](#)

- i. **Clause 1: Sale of tobacco etc:** This power will allow the Secretary of State to specify in regulations the steps to be taken to verify that a customer was born before 1 January 2009 as a defence to the age of sale offence in England and Wales.
- ii. **Clause 5: Age of sale notice at point of sale: England:** In relation to the age of sale of tobacco products, retailers in England need to display a notice that says, "It is illegal to sell tobacco products to anyone born on or after 1 January 2009". This power will allow the Secretary of State to introduce regulations that set requirements for the size or appearance of the age of sale notice. This power replaces an existing power on the statute book and modifies the power to enable regulations to specify requirements for the size or appearance of the sign and provides the specifications under which an offence may be committed if a sign is non-compliant.
- iii. **Clause 6: Age of sale notice at point of sale: Wales:** In relation to the age of sale of tobacco products, retailers in Wales need to display a notice 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". This power will allow Welsh Ministers to introduce regulations that set requirements for the size or appearance of the notice and provides the specifications under which an offence may be committed if a sign is non-compliant.
- iv. **Clause 10: Sale of vaping or nicotine products to under 18s:** This power will allow the Secretary of State to specify in regulations the steps to be taken to verify that a customer was 18 or over as a defence to the age of sale offence in England and Wales.
- v. **Clause 13: Displays of products or prices in England:** This power will allow the Secretary of State to regulate the display of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products and the display of their prices, as well as the display of empty retail packaging, in retailers in England. This clause also facilitates the creation of offences for the failure to comply with the regulations.
- vi. **Clause 14: Displays of products or prices in Wales:** This power will allow Welsh Ministers to regulate the display of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products and the display of their prices, as well as the display of empty retail packaging, in retailers in Wales. This clause also facilitates the creation of offences for the failure to comply with the regulations.
- vii. **Clause 16: Prohibition of retail sales of tobacco products etc in England without a licence:** This power will allow the Secretary of State to introduce by regulations a licensing scheme in England for the retail sale of tobacco products, herbal smoking products, cigarette papers, vaping and nicotine products.
- viii. **Clause 18: Financial penalties for breach of licence conditions: England:** This power will allow the Secretary of State to amend the maximum financial penalty for breach of licence conditions through regulations only for the purpose of reflecting changes in the value of money due to inflation. This is a Henry VIII power that is narrow in scope.
- ix. **Clause 19: Prohibition of retail sales of tobacco products etc in Wales without a licence:** This power will allow Welsh Ministers to introduce by regulations a licensing scheme in Wales for the retail sale of tobacco products, herbal smoking products, cigarette papers, vaping and nicotine products.
- x. **Clause 21: Financial penalties for breach of licence conditions: Wales:** This power will allow Welsh Ministers to amend the maximum financial penalty for breach of licence conditions through regulations only for the purpose of reflecting

changes in the value of money due to inflation. This is a Henry VIII power that is narrow in scope.

- xi. **Clause 27: Power to extend restricted premises orders in Wales:** This power will allow Welsh Ministers to extend the list of offences that may result in a retailer receiving a restricted premises order in Wales. This is a Henry VIII power.
- xii. **Clause 39: Power to change amount of fixed penalties:** This power will allow the Secretary of State and Welsh Ministers, in England and Wales respectively, to change the value of the Fixed Penalty Notices introduced for age of sale, proxy purchase, free distribution, tobacco age of sale notice, and display offences in the Bill. Any changes to the fine amount cannot exceed level 3 on the standard scale of fines for summary offences. This does not include the power to change the value of the FPN for offences in connection with licences, currently set at level 4 on the standard scale. It also permits the percentage discount for an early payment to be changed. This is a Henry VIII power.
- xiii. **Clause 45: Power to extend Part 1 to other products:** This power gives the Secretary of State the ability to extend provisions that apply to a tobacco product in Part 1 to devices that enable tobacco products to be consumed or an item that is intended to form part of such a device. This is a Henry VIII power that is narrow in scope.

ii. Part 2: Sale and distribution: Scotland

- xiv. **Clause 55: Power to make provision about warning statements:** In relation to the age of sale of tobacco products, retailers in Scotland must display a notice that says, "It is illegal to sell tobacco products to anyone born on or after 1 January 2009". This power will allow Scottish Ministers to introduce regulations that set requirements for the size or appearance of the sign. This power replaces an existing power for Scottish Ministers to set requirements about size, with modifications enabling provisions to be made about the overall appearance of the sign. This is the same power as for England, Wales and Northern Ireland.
- xv. **Clause 60: Age verification in relation to tobacco and vaping products etc:** This power will allow Scottish Ministers to prescribe in regulations the steps which should be taken to establish the customer's age as a defence to the age of sale offence in Scotland.
- xvi. **Clause 61: Displays of vaping and nicotine products:** This power will allow Scottish Ministers to make regulations to impose prohibitions, requirements, or limitations on retailers on the displays of herbal smoking products, vaping products and nicotine products and their prices, as well as empty retail packaging.
- xvii. **Clause 62: Free distribution and discount of products:** The Bill amends the Tobacco and Primary Medical Services (Scotland) Act 2010 to prohibit the free distribution of tobacco products, herbal smoking products, smoking related products, vaping products and nicotine products in Scotland. It is a defence if the person has acted in accordance with arrangements made by a public authority. New section 8B of the 2010 Act provides a power for Scottish Ministers to create further defences to an offence committed under these restrictions related to vaping or nicotine products. This is a Henry VIII power.
- xviii. **Clause 67: Power to extend 2010 Act to other products:** This clause inserts new section 34A into the Tobacco and Primary Medical Services (Scotland) Act 2010 (the 2010 Act). Section 34A(1) and 34A(3) provide powers to Scottish Ministers to amend provisions in Part 1 of the Act to extend these to other products. These are devices that enable tobacco products to be consumed or an item that

is intended to form part of such a device and to some or all smoking related products respectively. This is a Henry VIII power.

iii. Part 3: Sale and distribution: Northern Ireland

- xix. **Clause 68: Age of sale for tobacco products etc:** This power will allow the Department of Health in Northern Ireland (“Department of Health”) to specify in regulations the steps to be taken to verify that a customer was born before 1 January 2009 as a defence to the age of sale offence in Northern Ireland.
- xx. **Clause 72: Age of sale notice at point of sale:** In relation to the age of sale of tobacco products, retailers in Northern Ireland must display a notice that says, “It is illegal to sell tobacco products to anyone born on or after 1 January 2009”. This power will allow the Department of Health to introduce regulations that set requirements for the size or appearance of the sign. This power re-enacts an existing power for the Department of Health to set requirements about size, with modifications enabling provisions to be made about the overall appearance of the sign. This is the same power as for England, Wales and Scotland.
- xxi. **Clause 76: Sale of vaping or nicotine products to under 18s:** This power will allow the Department of Health to specify in regulations the steps to be taken to verify that a customer was 18 or over as a defence to the age of sale offence in Northern Ireland.
- xxii. **Clause 79: Displays of products and prices in Northern Ireland:** This power will allow the Department of Health to regulate the display of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products and their prices, as well as the display of empty retail packaging, in retailers in Northern Ireland. This is similar to the power conferred on the Secretary of State and Welsh Ministers in clauses 13 and 14 respectively (Displays of products or prices).
- xxiii. **Clause 84: Prohibition of retail sales of tobacco products etc without a licence:** This clause inserts new sections 4A, 4B and 4C, and new schedules 1 and 2 into the Tobacco Retailers Act (Northern Ireland) 2014. New section 4A provides a power to allow the Department of Health to introduce by regulations a licensing scheme in Northern Ireland for the retail sale of tobacco products, herbal smoking products, cigarette papers, vaping products and nicotine products. In addition to the power in new section 4A, the power in new section 4C will allow the Department of Health to amend the maximum financial penalty for breach of licence conditions through regulations only for the purpose of reflecting changes in the value of money due to inflation. This is a Henry VIII power that is narrow in scope. New schedule 2 inserted into the Tobacco Retailers Act (Northern Ireland) 2014 by clause 84(3) and Schedule 12 to the Bill also provides a power for the Department of Health to make regulations which make provision for what a council is to do with its financial penalty receipts.
- xxiv. **Clause 85: Power to extend legislation to other products:** This clause gives the Department of Health powers to amend any provisions that apply to a tobacco product in Part 2 of the Health and Personal Social Services (Northern Ireland) Order 1978 and in the Tobacco Retailers Act (Northern Ireland) 2014 to include devices that enable tobacco products to be consumed or an item that is intended to form part of such a device. These are Henry VIII powers.

iv. Part 5: Product and information requirements etc

- xxv. **Clause 89: Retail packaging:** This power will allow the Secretary of State to introduce regulations regarding the retail packaging of tobacco products, tobacco related devices, vaping products, nicotine products, cigarette papers and herbal smoking products, including in relation to the production, importation or supply of such products in the course of business.
- xxvi. **Clause 90: Features of products:** This power will allow the Secretary of State to make regulations about the features of tobacco products, tobacco related devices, herbal products, vaping products, cigarette papers, and nicotine products.
- xxvii. **Clause 91: Contents and flavour:** This power will allow the Secretary of State to make provision about substances in tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products or nicotine products and their flavours, including regulating other products which are intended to impart flavour to tobacco, herbal or nicotine products.
- xxviii. **Clause 92: Substances released into human body and emissions:** This power will allow the Secretary of State to make regulations about the nature and amount of substances or emissions that may be released by tobacco products, tobacco related devices, herbal smoking products, cigarette papers vaping products or nicotine products. The clause enables provision about how the nature and amount of emissions are to be determined, which allows for this to be done by a person authorised by the Secretary of State.
- xxix. **Clause 93: Non-compliant images:** This power will allow the Secretary of State to make regulations to prohibit a person from publishing a non-compliant image of the retail packaging of a tobacco product, a tobacco related device, a herbal smoking product, cigarette papers, a vaping product or a nicotine product. An image is non-compliant if it shows packaging or a product that does not comply with any requirements imposed in regulations made under clauses 89 (Retail packaging) and 90 (Features of products).
- xxx. **Clause 94: Registration:** This power will allow the Secretary of State to establish a register of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products or nicotine products. Regulations made under this power may impose prohibitions, or limitation in relation to the production, importation or supply of unregistered products.
- xxxi. **Clause 95: Information:** This power will allow the Secretary of State to make regulations to require a producer or importer of a tobacco product, tobacco related device, herbal smoking product, cigarette papers, vaping product or nicotine product to provide information about the product or its producer to a person specified in the regulations.
- xxxii. **Clause 96: Studies:** This power will allow the Secretary of State to make regulations to require a producer of a tobacco product, a tobacco related device, a herbal smoking product, cigarette papers, a vaping product or a nicotine product to carry out a study in relation to the product or an ingredient in it, and to submit the results from the study to a person specified in the regulations.
- xxxiii. **Clause 97: Responsible person:** This power will allow the Secretary of State to require a producer of a tobacco product, tobacco related device, herbal smoking product, cigarette papers, vaping product or nicotine product to nominate an individual to be responsible for information that has to be provided in accordance with regulations made under clauses 94 to 97 (Registration, Information, Studies). Regulations made under this clause may make provisions about who is eligible to be nominated as the responsible person and whether the person should have a particular connection to the UK.
- xxxiv. **Clause 98: Testing:** This power will allow the Secretary of State to make regulations that require a person to test products to determine whether the product

complies with requirements under regulations made under powers in this Part of the Bill.

- xxxv. **Clause 99: Product safety:** This power will allow Secretary of State to make provisions that require producers to have a process in place for collecting information about the safety of their product, and its effect on human health. It also allows for regulations to set out circumstances when the Secretary of State could recall products or ban their supply, for instance if there is a serious health risk.
- xxxvi. **Clause 100: Matters dealt with by 2016 Regulations:** This power will allow the Secretary of State to make provision that is similar to or corresponds to any provision in the Tobacco and Related Products Regulations (TRPR) 2016. It also allows for regulations to be made to extend any current provision in TRPR to a type of product that is not currently covered by TRPR provisions, such as nicotine products.
- xxxvii. **Clause 102 (supplementary): Offences:** This provision enables regulations made under Part 5 to include offences for failure to comply. As set out in this clause, anyone convicted of an offence could be subject to a maximum penalty of imprisonment (for a term not exceeding 2 years), a fine where there is no maximum amount, or both.
- xxxviii. **Clause 103 (supplementary): Enforcement:** This enables provision for enforcement in regulations under Part 5.
- xxxix. **Clause 104 (supplementary): Sub-delegation:** This allows for sub-delegation in regulations under Part 5.
 - xl. **Clause 105 (supplementary): Power to make provision binding the Crown:** This allows provisions made in regulations under Part 5 to bind the Crown.
 - xli. **Clause 106 (supplementary): Power to amend legislation:** This enables consequential provision that may be made in regulations made under Part 5 by virtue of clause 164(1)(a) to amend, repeal, revoke or otherwise modify any legislation (whenever passed or made). This means that the powers in Part 5 can be Henry VIII powers if amendments are needed which are consequential on provision made in the regulations.

v. Part 6: Advertising and Sponsorship

- xlii. **Clause 120: Specialist tobacconists:** This clause provides that specialist tobacconists may continue to advertise specialist products provided certain conditions are met and includes a power to set requirements for the advertisements to include a health warning or information. This clause re-enacts existing legislation.
- xliii. **Clause 122: Brandsharing:** This power will allow the Secretary of State to introduce regulations to prohibit or restrict brandsharing of tobacco products, herbal smoking products, cigarette papers, vaping products and nicotine products. Brandsharing, or brandstretching as it is sometimes known, is a form of indirect advertising which promotes the use of a service or product by putting its branding on other products or services, or vice versa. The power includes a power to create offences for the failure to comply with the regulations.
- xliv. **Clause 124: Sponsorship: vaping and nicotine and other products:** This power allows the Secretary of State to bring into force the prohibition on sponsorship that promotes these products.
- xlv. **Clause 132: Power to extend Part 6 and Communications Act 2003 to other products:** This power gives the Secretary of State the ability to extend provisions that apply to tobacco products in Part 6 and the Communications Act 2003 to

devices that enable tobacco products to be consumed or an item that is intended to form part of such a device. This is equivalent to clause 45 (Power to extend Part 1 to other products). This is a Henry VIII power.

vi. Part 7: Smoke-free places, Vape-free places and other free-from places

- xlvi. **Clause 135: Addition of smoke-free places in England:** This clause amends an existing power in Section 4 of the Health Act 2006 that provides the Secretary of State with the ability to designate additional smoke-free places. The effect of this clause is to amend the existing power to specify that public places, workplaces, and vehicles can be designated smoke-free and remove a condition requiring that there be a significant risk of exposure to significant quantities of smoke for a space to be so designated.
- xlvii. **Clause 136: Smoke-free premises: recasting of power to exempt performers:** This clause gives the Secretary of State the power to introduce regulations that may create defences to the offence of smoking in a smoke-free place and the offence of failing to prevent smoking in a smoke-free place. The effect of this is to create an exception for performers, enabling them to smoke when performing if it is justified in order to preserve the artistic integrity of the performance.
- xlviii. **Clause 137: No-smoking signs in England:** This clause provides powers for the Secretary of State to set requirements relating to signage.
- xlix. **Clause 138: Vape-free places in England:** This clause gives the Secretary of State the power to introduce regulations that prohibit the use of vapes in specific places or vehicles in England, as well as requirements in relation to signage. The places that can be made vape-free must already be smoke-free places. This clause also gives the Secretary of State powers to create defences that in effect would provide exemptions for performers to vape in an otherwise vape-free place during a performance, where it is justified in order to preserve the artistic integrity of the performance.
 - i. **Clause 139: Heated tobacco-free places in England:** This clause gives the Secretary of State the power to introduce regulations that prohibit the use of heated tobacco devices in specific places or vehicles in England, as well as requirements relating to signage. The places that can be made heated-tobacco free must already be smoke-free places. This clause also gives the Secretary of State powers to create defences that would in effect provide exemptions for performers to use heated tobacco devices in an otherwise heated tobacco-free place during a performance, where it is justified in order to preserve the artistic integrity of the performance.
 - ii. **Clause 141: No-smoking premises in Scotland:** This clause amends an existing power in section 4 of the Smoking, Health and Social Care (Scotland) Act 2005 that provides Scottish Ministers with the ability to designate smoke-free premises in Scotland. The amendments would expand the scope of this power by enabling wholly or substantially enclosed places, workplaces, public places or vehicles to be designated smoke-free, where previously all such spaces needed to be wholly or substantially enclosed.
 - iii. **Clause 142: No-smoking signs in Scotland:** This clause amends section 3 of the Smoking, Health and Social Care (Scotland) Act 2005 and enables Scottish Ministers to set requirements relating to signage.
 - iiii. **Clause 143: Vape-free premises in Scotland:** This clause provides Scottish Ministers the power to introduce regulations that prohibit the use of vapes in specific places or vehicles in Scotland. The places that can be included must

already be smoke-free places. This clause also enables Scottish Ministers to specify requirements relating to vape-free signage.

- liv. **Clause 144: Heated tobacco-free premises in Scotland:** This clause gives Scottish Ministers the power to introduce regulations that prohibit the use of heated tobacco devices in specific places or vehicles in Scotland. The places that can be included must already be smoke-free places. This clause also enables Scottish Ministers to specify requirements relating to heated tobacco-free signage.
- lv. **Clause 148: No-smoking signs in Wales:** This clause enables Welsh Ministers to set requirements relating to signage.
- lvi. **Clause 149: Vape-free places in Wales:** This clause gives Welsh Ministers the power to introduce regulations that prohibit the use of vapes in specific places or vehicles in Wales. The places that can be made vape-free must already be smoke-free places. This clause also enables Welsh Ministers to specify requirements relating to vape-free signage.
- lvii. **Clause 150: Heated tobacco-free places in Wales:** This clause gives Welsh Ministers the power to introduce regulations that prohibit the use of heated tobacco devices in specific places or vehicles in Wales. The places that can be made heated tobacco-free must already be smoke-free places. This clause also enables Welsh Ministers to specify requirements relating to heated tobacco-free signage.
- lviii. **Clause 152: Additional smoke-free places in Northern Ireland:** This clause amends an existing power in Article 5 of the Smoking (Northern Ireland) Order 2006 that provides the Department of Health with the power to designate additional smoke-free places in Northern Ireland. The effect of this amendment is to specify that workplaces, public places or vehicles can be designated smoke-free and remove a condition requiring that persons present there would be likely to be exposed to smoke for a space to be so designated.
- lix. **Clause 153: No-smoking signs in Northern Ireland:** This clause enables the Department of Health to set requirements relating to signage.
- lx. **Clause 154: Vape-free places in Northern Ireland:** This clause gives the Department of Health the power to introduce regulations that prohibit the use of vapes in specific places or vehicles in Northern Ireland. The places that can be included must already be smoke-free places. This clause also enables the Department of Health to specify requirements relating to vape-free signage.
- lxi. **Clause 155: Heated tobacco-free places in Northern Ireland:** This clause gives the Department of Health the power to introduce regulations that prohibit the use of heated tobacco devices in specific places or vehicles in Northern Ireland. The places that can be included must already be smoke-free places. This clause also enables the Department of Health to specify requirements relating to heated tobacco-free signage.
- lxii. **Clause 157: Power to prohibit vaping etc on ships:** This clause amends an existing power in section 85 of the Merchant Shipping Act 1995 so that safety regulations made under that Act to provide for vape-free and heated-tobacco free ships and hovercraft correspond with the provisions in the Health Act 2006.

vii. Part 8: General

- lxiii. **Clause 160: Power of Secretary of State to make consequential provision:** This clause contains a power for the Secretary of State to make any provision which is consequential on this Act. This is a Henry VIII power.
- lxiv. **Clause 161: Power of Scottish Ministers to make consequential provision:** This power will enable Scottish Ministers to make regulations which amend, repeal

or revoke primary and secondary legislation where such provisions are consequential on Part 2 (sale and distribution), clauses 142 to 146, and Schedule 18 (smoke-free places, vape-free places and other free-from places: Scotland) of this Bill. This is a Henry VIII power.

- lxv. **Clause 162: Power of Welsh Ministers to make consequential provision:** This power will enable Welsh Ministers to make regulations which amend, repeal or revoke primary and secondary legislation where such provisions are consequential on Part 1 (sale and distribution), clauses 146 to 151, and Schedule 19 (smoke-free places, vape-free places and other free-from places: Wales) of this Bill. This is a Henry VIII power.
- lxvi. **Clause 163: Power of Northern Ireland department to make consequential provision:** This power will enable the Department of Health in Northern Ireland to make regulations which amend, repeal or revoke primary and secondary legislation where such provisions are consequential on Part 3 (sale and distribution), sections 152 to 156, and Schedule 20 (smoke-free places, vape-free places and other free-from places: Northern Ireland) of this Bill. This is a Henry VIII power.
- lxvii. **Clause 164: Regulations: general:** This clause provides that under the powers of this Act, the subsequent regulations may include consequential, supplementary, incidental, transitional or saving provision for different purposes or different parts of the UK.
- lxviii. **Clause 167 Commencement: Parts 1 to 4:** This clause contains a standard power for commencement on Parts 1 to 4 in connection with bringing into force provisions of the Bill.
- lxix. **Clause 168: Commencement: Part 5 to 8:** This clause contains a standard power for commencement on Parts 5 to 8 in connection with bringing into force provisions of the Bill.
- lxx. **Clause 169: Transitional provision:** This clause contains a standard power for transitional or saving provision in connection with bringing into force provisions of the Bill.

Part 1: Sale and Distribution: England and Wales

Sale of tobacco etc

Clause 1: Sale of tobacco etc

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative

Context and Purpose

1. Clause 1 (sale of tobacco etc) makes it an offence to sell tobacco products, herbal smoking products and cigarette papers to anyone born on or after 1 January 2009.
2. This power will allow the Secretary of State to specify in regulations the steps which may be taken to verify that a customer was born before 1 January 2009 as a defence to the age of sale offence in England and Wales.

3. The purpose of the power is to allow such steps to include checking physical identity documents (such as a driving licence, passport or a Proof of Age Standards Scheme card) and the use of digital methods of age verification that meet government standards.
4. The Department for Science, Innovation and Technology (DSIT) is working to enable the widespread use of trusted digital verification services across the economy. These services can be used to prove things about a person, like identity, age or address without presenting physical documents and therefore have application when purchasing age-restricted products. Digital verification services can make transactions quicker and more secure for those that choose to use them.
5. The Office for Digital Identities and Attributes (OfDIA), which sits within DSIT, is creating a framework of standards and governance (the UK Digital Identity and Attributes Trust Framework), underpinned by legislation in the Data (Use and Access) Bill, currently in Parliament. This framework provides a potential opportunity for companies providing age verification services to be certified, to prove they are delivering age verification solutions that meet government standards.
6. The Home Office has announced plans to bring forward a statutory instrument to amend the mandatory conditions set out in [The Licensing Act 2003 \(Mandatory Licensing Conditions\) Order 2010](#) to allow the use of digital identities, that are certified against the trust framework, as proof of age in the sale of alcohol alongside traditional identification documents with a holographic mark or ultraviolet feature. The government will also launch a GOV.UK Wallet in 2025, which will allow people to prove their age from their phone using digital versions of government-issued documents, such as a digital driving licence.
7. Specifying the steps that retailers can take as a defence will support retailers and Trading Standards by providing a clear example of what it means to take all reasonable steps when verifying a customer's age and that they are using government approved forms of physical and digital ID. It will also support customers in knowing the steps they can take to prove their age when buying tobacco, herbal smoking products and cigarette papers.
8. This power will be subject to a requirement to obtain consent of Welsh Ministers if the regulations contain provision which is within the competence of the Senedd Cymru.

Justification for taking the power

9. Whilst it would be possible to set out the physical identity documents that retailers should check to satisfy a defence in primary legislation, placing technical and detailed steps to verify a customer's age using digital methods of age verification on the face of the legislation would not be an appropriate level of detail for primary legislation. The end-to-end process for verifying a customer's age using digital verification services is more complex than simply checking a physical identity document. For example, retailers may need to perform a cryptographic check, such as scanning a QR (Quick-Response) code or NFC (Near Field Communication) tag, to confirm the digital verification service provider is registered and certified against the UK trust framework, and that it is a valid proof of age.

10. Taking a regulation-making power also future-proofs the defence by providing flexibility to allow for advances in digital age verification services and processes and will allow changes in the list of permissible physical identity document that are accepted to satisfy the defence, if new forms of identification are developed or others cease to exist.

11. The power is narrow in scope as it only relates to the steps that retailers can take to verify that the customer was born before 1 January 2009 to satisfy the defence.

Justification for the procedure

12. Regulations made under this power will be subject to the negative procedure. The power allows steps to be specified that retailers can take to verify a customer's age to satisfy the defence. It will still be a defence on the face of the Bill to have otherwise taken all reasonable steps to avoid committing the offence. The negative procedure therefore affords an appropriate level of parliamentary scrutiny for procedural regulations specifying the steps retailers may take when verifying a customer's age to satisfy the defence established by the primary legislation. The detail of the steps will be technical, procedural and non-contentious, as they will likely be already carried out by many retailers who follow good practice guidance. Use of the affirmative procedure would be an inappropriate use of parliamentary time relative to the nature of the power and the limited potential impact on retailers.

Clause 5: Age of sale notice at point of sale: England

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative

Context and Purpose

13. Currently section 4 of the [Children and Young Persons \(Protection from Tobacco\) Act 1991](#) ("the 1991 Act") requires tobacco retailers in England to display a notice in a prominent position at the point of sale stating that "It is illegal to sell tobacco products to anyone under the age of 18". Regulations made under section 4(3) of the 1991 Act set the minimum dimensions of notices and the size of the text of the statement on the notice for England.

14. Clause 5 in the Bill will make it an offence for tobacco retailers to fail to display an age of sale notice at any premises at which they sell tobacco products. The notice is required to say, "It is illegal to sell tobacco products to anyone born on or after 1 January 2009". This reflects the new age of sale criminal offence which the Bill introduces.

15. Subsection (4) of this clause provides a power that will enable the Secretary of State to impose requirements for the size and appearance of the statement that is displayed on the notice and the size and appearance of any other aspect of the notice, such as colour. This is a re-enactment with some modification of the regulation

making power under section 4 of 1991 Act, with the age of sale updated from 18 to 1 January 2009 to reflect Clause 1 of the Bill.

Justification for taking the power

16. Placing detailed requirements regarding the size and appearance of these notices on the face of the legislation would not be an appropriate level of detail for primary legislation. It would also not provide the flexibility to amend these requirements based on how effective the measures initially adopted prove to be. This power is preceded by section 4 of the 1991 Act.

17. The power is narrow in scope relating only to setting requirements for the size and appearance of the notice and statement on it.

Justification for the procedure

18. Regulations made under this power will be subject to the negative procedure. The requirement for retailers to display a notice to align with the new age of sale restrictions is on the face of the Bill. Although not displaying a notice which complies with requirements prescribed in regulations under subsection (4) would form an aspect of the criminal offence provided by subsection (6), the negative procedure affords an appropriate level of parliamentary scrutiny for regulations specifying the details of the size and appearance of the sign. Use of the affirmative procedure would be an inappropriate use of parliamentary time relative to the potential impact on business of provision made by these regulations. This is also consistent with the procedure for the power, which this power replaces, in section 4(3) of the 1991 Act.

Clause 6: Age of sale notice at point of sale: Wales

Power conferred on: Welsh Ministers

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative

Context and Purpose

19. Currently section 4 of the [Children and Young Persons \(Protection from Tobacco\) Act 1991](#) (“the 1991 Act”) requires tobacco retailers in Wales to display a notice in a prominent position at the point of sale stating that “It is illegal to sell tobacco products to anyone under the age of 18”. Regulations made under section 4(3) of the 1991 Act set the minimum dimensions of notices and the size of the text of the statement on the notice for Wales.

20. Subsection (4) of this clause provides a power that will enable Welsh Ministers to impose requirements for the size and appearance of the statement that is displayed on the notice and any other aspect of the notice.

Justification for taking the power

21. The justification for taking the power is set out in clause 5 (Age of sale notice at point of sale: England).

Justification for the procedure

22. The justification for the procedure is set out in clause 5.

Sale of vaping and nicotine products etc

Clause 10: Sale of vaping or nicotine products to under 18s

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative

Context and Purpose

23. Section 92 of the [Children and Families Act 2014](#) introduced regulation-making powers for the Secretary of State to make it an offence to sell nicotine products to under 18s. Clause 10 (Sales of vaping or nicotine products to under 18s) puts on the face of the primary legislation the offence of selling a vaping product or nicotine product to someone aged under 18.

24. This power will allow the Secretary of State to specify in regulations the steps which may be taken to verify that a customer was 18 or over as a defence to the age of sale offence in England and Wales.

25. The purpose of the power is to allow such steps to include checking physical identity documents (such as a driving licence, passport or a Proof of Age Standards Scheme card) and the use of digital methods of age verification that meet government standards. Further context and rationale is the same as that for Clause 1 (Sale of tobacco etc).

26. This power will be subject to a requirement to obtain consent of Welsh Ministers if the regulations contain provision which is within the competence of the Senedd Cymru.

Justification for taking the power

27. The justification for taking the power is the same as that set out in Clause 1 (Sale of tobacco etc).

Justification for the procedure

28. The justification for the procedure is the same as that set out in Clause 1 (Sale of tobacco etc).

Displays of products or prices

Clause 13: Displays of products or prices in England

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

29. Section 7A of the [Tobacco Advertising and Promotion Act 2002](#) prohibited displays of tobacco products in a place in the course of business with a regulation making power under section 7A(2) to define 'place,' and a power under section 7B to create exceptions to the ban. Under section 7C of the 2002 Act, regulations could make provision imposing requirements in relation to the display, in the course of business, of prices of tobacco products in a place in England, Wales, or Northern Ireland.

30. The 2002 Act is replaced by provisions in the Bill and extended so that it applies to tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products, and nicotine products. The broad rationale for this is set out in the introductory paragraphs to this memorandum.

31. It has been demonstrated through the prohibition of tobacco displays that restrictions on displays of products and prices were effective at reducing the uptake of young people smoking and helping to support adults who are trying to quit. The purpose of this power is to introduce restrictions on displays to continue to support adults to quit smoking but also reduce the uptake of young people using herbal smoking products, cigarette papers, vaping products and nicotine products. Therefore, this power will be exercised to regulate displays of said products and prices.

32. Regulations made under this power could include restrictions on the location of the products in a retailer. For instance, there could be limitations on displays in windows and whether products must be behind the counter.

33. The power will also allow for the introduction of offences for breaches of the display regulations.

Justification for taking the power

34. This power provides for a type of detailed regulation that would not be appropriate for inclusion in primary legislation and is conventionally set out in secondary legislation. For example, regulations on the display of tobacco products in premises in England ([The Tobacco Advertising and Promotion \(Display\) \(England\) Regulations 2010](#)) provide detailed requirements about how information on the type of tobacco product contained in storage units can be indicated. It also provides requirements for bulk tobacconists, as well as requirements for restocking.

35. A regulation-making power provides the flexibility for the Secretary of State to monitor and adjust display regulations following implementation. It will be necessary to gather evidence post implementation to ensure that regulations are effectively meeting their objectives, ensuring the regulations are not overly burdensome for retailers and do not have unintended consequences. This is considered especially

important should the regulations create a criminal offence for non-compliance in order to bolster enforcement.

36. A delegated power is therefore appropriate as it will enable the Secretary of State to assess the impact of display restrictions on retailers within the expanded scope over the coming years and modify display regulations in a proportionate manner relative to their societal impact. This allows for consideration of new evidence on the specifics of the measures, for instance which products are in and out of scope and to which any offences should apply.

37. This power will be subject to a requirement to consult any persons which the Secretary of State considers appropriate before making regulations.

Justification for the procedure

38. Regulations made under this power will be subject to the affirmative procedure. We consider the affirmative procedure to be the correct level of scrutiny for this power, as regulations restricting the display of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products will affect the public's purchasing behaviours and will require retailers to implement changes, with failure to do so potentially constituting a criminal offence (the maximum penalty for this is set out the face of the Bill, in line with DPRRC guidance). The affirmative procedure will enable a debate and vote in both Houses of Parliament so the impacts of the regulations can be subject to appropriate parliamentary scrutiny.

Clause 14: Displays of products or prices in Wales

Power conferred on: Welsh Ministers

Power exercised by: Regulations by Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

39. Section 7A of [Tobacco Advertising and Promotion Act 2002](#) prohibited displays of tobacco products in a place in the course of business with a regulation making power under section 7A(2) to define 'place,' and a power under section 7B to create exceptions to the ban. Under section 7C of the 2002 Act, regulations could make provision imposing requirements in relation to the display in the course of business of tobacco products and prices England, Wales, or Northern Ireland.

40. The context and rationale are set out above in relation to clause 13 (Displays of products or prices in England).

41. This clause replaces the existing provisions that solely applied to the display of tobacco products to also include tobacco related devices, herbal smoking products, cigarette papers, vaping products, nicotine products, and their prices.

42. Regulations made under this power could include restrictions on the location of the products in a retailer. For instance, there could be limitations on displays in windows and whether products must be behind the counter.

43. The power will also allow for the introduction of offences for breaches of the display regulations.

Justification for taking the power

44. The justification for taking the power is set out in clause 13.

45. This power will be subject to a requirement to consult any persons which Welsh Ministers consider it appropriate to consult before making regulations.

Justification for the procedure

46. The justification for the procedure is the same as is set out in clause 13, and the procedure for this clause will enable a debate in the Welsh Parliament (Senedd Cymru).

Retail licensing: England

Clause 16: Prohibition of retail sales of tobacco products etc in England without a licence

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

47. There is currently no requirement for retailers to hold a licence in order to sell tobacco products, herbal smoking products, cigarette papers, vaping products, or nicotine products in England. This clause provides a power for the Secretary of State to make regulations for the granting of personal and premises licences in England for the retail sale of these products. This clause prohibits the sale, exposure for sale, or possession for the purpose of sale of these products by an individual, without or not in accordance with a personal licence. Furthermore, it prohibits a person from using or permitting the use of premises in England to store relevant products for the purposes of their sale, expose relevant products for sale, or to supply these products to retail customers, without or not in accordance with a premises licence. The regulations under this power may create exceptions to the prohibitions.

48. Schedule 1 (Retail licensing scheme: England) provides more detail on the potential scope and content of the regulations, including details regarding the licensing authority, the granting of licences, licence fees, licence conditions, duration, renewal, variation, suspension and revocation of licences, publication of licence information, and the reviews and appeals process regarding decisions about licences. It also includes detail on the content of the regulations regarding guidance in relation to the licensing regime, which will support local authorities and enforcement authorities to implement the regulations.

49. The purpose of this power is to enable the Secretary of State to introduce a retail licensing scheme in England, to strengthen enforcement by enabling enforcement authorities to bring penalties against retailers found not to be operating within the requirements set by the Bill and future regulations, and who are therefore placing themselves at an unfair competitive advantage and risking public health. The power will also provide further control around how and where these products are sold, by enabling the attachment of further conditions to licence(s), for example conditions relating to the location of a retailer, therefore supporting public health, protecting the public from product harms, and ultimately serving the wider intentions of this Bill: to achieve a smoke-free UK and tackle youth vaping.

Justification for taking the power

50. The Bill establishes the framework for the retailer licensing regulations on the face of primary legislation while enabling the structure and detailed administrative arrangements of the licensing scheme to be established in regulations, where it is more suitable for such level of detail to be determined. In order to create a licensing scheme which can support the goals of this Bill (to create a smoke-free UK and tackle youth vaping (while ensuring vapes remain accessible to smokers as a quit tool)), it is critical that regulations are able to respond to emerging public health evidence on smoking and youth vaping.

51. This is particularly relevant to evidence regarding vaping, which is still developing and for which it is critical that any action to tackle youth vaping does not disproportionately limit smokers' access to vapes. For example, regulations will place conditions on vape retailers; if conditions are set with the goal of reducing youth vaping but go so far that they disproportionately limit smokers' access to vapes and risk increasing the smoking rate, a course-correction to these conditions would be needed. On the other hand, if new evidence of harms related to vapes or nicotine products emerges, regulations may need to adapt e.g. by introducing stricter requirements on how these products are sold. This is why providing a power to introduce regulations, with the flexibility to evaluate impact and adapt in light of emerging evidence, is most appropriate.

52. A similar approach was taken in section 180 of the [Health and Care Act 2022](#), which provides a power for the Secretary of State to introduce a licensing scheme for the carrying out of cosmetic procedures. The Health and Care Act 2022 establishes the framework for regulations relating to the licensing of the carrying out of cosmetic procedures on the face of primary legislation, while enabling the details of the scheme to be established in regulations in order to ensure the scheme can respond to and account for the emergence of new cosmetic procedures, with such details being subject to parliamentary scrutiny through the affirmative resolution procedure.

53. We acknowledge that the approach taken in this Bill is different to the approach taken in legislation for the licensing of the retail sale of alcohol under the Licensing Act 2003, which establishes licensing on the face of primary legislation. Our assessment is that the approach taken in the Licensing Act 2003 is not appropriate for this Bill. The objectives of the Licensing Act 2003 are: i. prevent crime and disorder, ii. public safety, iii. prevent public nuisance, and iv. the protection of children from harm. This is fundamentally different to what this Bill seeks to do on public health grounds, which is to create a smoke-free UK and tackle youth vaping while

ensuring vapes remain accessible to smokers as a quit tool; given the need for the future retailer licensing scheme to be able to respond to emerging evidence, particularly on vaping and nicotine products. As such, the approach taken for alcohol licensing is not appropriate.

54. The regulations may create exceptions to the prohibitions in order to appropriately account for all possible types of retail, including, for example, distance and online retail. This power will be subject to a requirement to consult any persons which the Secretary of State considers it appropriate to consult before making regulations.

55. Offences in connection with licences: England (clause 17) and financial penalties for breach of licence conditions: England (clause 18), as well as requirements for local authorities when imposing financial penalties (Schedule 2 (Financial penalties for breach of retail licence conditions: England)) in England are already provided for in the Bill. Setting these out on the face of primary legislation is appropriate and narrows the scope of this power.

56. Timing of introduction of the regulations will depend on the timing of the various complex commencement provisions in the Bill, which will need to be sequenced appropriately.

57. The clause contains a statutory duty to consult. Ministers are therefore legally required to gather evidence and seek input from stakeholders before making any regulatory changes. This ensures that any regulations will effectively support enforcement and balance the requirement to protect public health with the implementation considerations and impacts on businesses and local authorities. It ensures ministers cannot act unilaterally without being subject to public or parliamentary oversight.

Justification for the procedure

58. Regulations made under this power will be subject to the affirmative procedure. We consider the affirmative procedure to be the correct level of scrutiny for this power as regulations to introduce a licensing scheme, and the detail regarding the implementation of the scheme as outlined above, may impact on businesses selling tobacco products, herbal smoking products, cigarettes, vaping products, and nicotine products through the imposition of licensing conditions and fees, with failure to adhere to regulations potentially resulting in criminal or civil penalties or licence revocation. There is also potential impact on local authorities for the granting and administering of licences and enforcement of the regulations. Schedule 1 establishes the framework for the future regulations, including the framework for detailed and technical elements of the scheme which will impact businesses and local authorities such as the licensing fee and licence conditions. The affirmative procedure will enable a debate and vote by both Houses of Parliament so the impacts of the regulations can be subject to appropriate parliamentary scrutiny.

Clause 18: Financial penalties for breach of licence conditions: England

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative

Context and purpose

59. A licensing regime in England for the retail sale of tobacco products, herbal smoking products, cigarette papers, vaping products, and nicotine products will be set out in regulations provided by the powers in clause 16 (Prohibition of retail sales of tobacco products etc in England without a licence). The regulations made under clause 16 may make provision for the licensing authority to grant a personal or premises licence subject to certain conditions.

60. This clause provides a power for the Secretary of State to change the maximum amount of the financial penalties for breach of licence conditions, which is set at £2,500 on the face of the Bill. This power is narrow in scope as it only allows the maximum value to be changed to reflect inflation.

61. Schedule 2 (Financial penalties for breach of retail licence conditions: England) sets out the steps to be taken by local authorities when imposing financial penalties, which include issuing a notice of intent before deciding to issue a final notice, and the appeals process. The enforcement costs will be deducted by Local Authority Trading Standards from proceeds collected from financial penalties before being returned to the Consolidated Fund.

Justification for taking the power

62. This power allows for the maximum amount of the financial penalties to be changed to reflect inflation, so that the value remains proportionate. This is a narrow power with minor effect and it is appropriate and precedented for such an amendment to be made through secondary legislation, rather than using the greater Parliamentary resources of primary legislation (see, for example, section 252(7) of the Energy Act 2023 or section 18(6) of the Leasehold and Freehold Reform Act 2024). Without this power, the maximum value of the penalty would eventually cease to be appropriate or proportionate given inflation. The power is limited such that the value can only be increased to account for inflation and cannot be increased further, as this would risk the proportionality of the penalties.

Justification for the procedure

63. Regulations made under this power will be subject to the negative resolution procedure. Although this is a Henry VIII power and does not include a requirement to consult, it is very limited in scope as it only provides for the maximum amount of the financial penalties to be amended for the specific purpose of inflation, and this is stated on the face of the Bill. There is no discretion for determination of any sort of policy matter on exercising this power; it is a technical / procedural power.

Retail licensing: Wales

Clause 19: Prohibition of retail sales of tobacco products etc in Wales without a licence

Power conferred on: Welsh Ministers

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

64. This clause provides a power for the Welsh Ministers to make regulations for the granting of personal and premises licences in Wales for the retail sale of tobacco products, herbal smoking products, cigarette papers, vaping products, and nicotine products. This clause prohibits the sale, exposure for sale, or possession for the purpose of sale of these products by an individual, without, or not in accordance with, a personal licence. Furthermore, it prohibits a person from using or permitting the use of premises in Wales, to store relevant products for the purposes of their sale, expose relevant products for sale, or to supply these products to retail customers, without or not in accordance with a premises licence. The regulations under this power may create exceptions to the prohibitions.

65. Schedule 3 (Retail licensing scheme: Wales) provides more detail on the potential scope and content of the regulations, including details regarding the granting of licences, licence fees, licence conditions, duration, renewal, variation, suspension and revocation of licences, publication of licence information, the reviews and appeals process regarding decisions about licences, and guidance in relation to the licensing regime.

66. Further context and rationale is the same as that set out in relation to clause 16 (Prohibition of retail sales of tobacco products etc in England without a licence).

Justification for taking the power

67. The justification for taking the power is the same as that set out for clause 16.

68. This power will be subject to a requirement to consult any person that Welsh Ministers consider it appropriate to consult before making regulations.

Justification for the procedure

69. The justification for the procedure is the same as is set out for clause 16, and the procedure for this clause will enable a debate in Senedd Cymru (the Welsh Parliament).

Clause 21: Financial penalties for breach of licence conditions: Wales

Power conferred on: Welsh Ministers

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Negative

Context and purpose

70. A licensing regime in Wales for the retail sale of tobacco products, herbal smoking products, cigarette papers, vaping products, and nicotine products will be set out in regulations provided by the powers in clause 19 (Prohibition of retail sales of tobacco products etc in Wales without a licence). The regulations made under clause 19 may make provision for the licensing authority to grant a personal or premises licence subject to certain conditions.

71. This clause provides a power for Welsh Ministers to change the maximum amount of the financial penalties for breach of licence conditions, which is set at £2,500 on the face of the Bill. This power is narrow in scope as it only allows the maximum value to be changed to reflect inflation.

72. Schedule 4 (Financial penalties for breach of retail licence conditions: Wales) set out the steps to be taken by local authorities when imposing financial penalties, which include issuing a notice of intent before deciding to issue a final notice, and the appeals process. The enforcement costs will be deducted by Local Authority Trading Standards from proceeds collected from financial penalties before being returned to the Welsh Consolidated Fund.

Justification for taking the power

73. The justification for taking the power is the same as that set out for clause 18.

Justification for the procedure

74. The justification for this procedure is the same as that set out for clause 18.

Restricted premises orders

Clause 27: Power to extend restricted premises orders in Wales

Power conferred on: Welsh Ministers

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

75. Clause 23 (Restricted premises orders) provides that, where a person is a repeat offender of the offences specified, a restricted premises order can be made by a magistrates' court in respect of the premises in relation to which the offence was committed. This will prohibit the sale of a specified list of products from a business premises for a finite amount of time and breaching the restricted premises order is an offence.

76. Section 51 (Restricted premises orders: tobacco or nicotine offence) of the [Public Health \(Wales\) Act 2017](#) ("the 2017 Act") inserts provision into section 12D of the [Children and Young Persons Act 1933](#) to provide Welsh Ministers with the power to amend the primary legislation around restricted premises orders. This power enables Welsh Ministers to extend the list of offences that can lead to a restricted premises order in relation to premises in Wales.

77. Clause 27 (Power to extend restricted premises orders in Wales) re-enacts with modifications the power in section 51 of the 2017 Act. Therefore, the power in this clause allows Welsh Ministers to introduce new offences that may result in a restricted premises order in Wales.

Justification for taking the power

78. There is precedent for taking this power as it re-enacts with modifications an existing power in Welsh legislation and is included to ensure legislative coherence and consistency between the existing and new regime.

79. The power will help to ensure that any offences that are added to the list of relevant offences for restricted premises orders are considered in the context of the new age of sale restrictions and enforcement regime set out in this Bill. Given restricted premises orders prohibit the sale of relevant products from a premises, the offences likely to be added to the list of relevant offences for restricted premises orders are likely to be those in this Bill relevant to retail premises, such as display offences.

80. This is a narrow power, relating only to the suite of powers magistrates have in disposing of a matter rather than to the offences themselves. It is considered appropriate that the list of offences to which the restricted premises orders power in clause 23 (Restricted premises order) relates should be set out on the face of the primary legislation, but flexibility is required to add to that list should circumstances develop which make this desirable for the purposes of enforcement in relation to other offences under the Bill. This will ensure the enforcement regime remains coherent and robust. Consistent with the existing requirements in Welsh legislation, this clause requires Welsh Ministers to identify representatives of those who might have an interest in the regulations and consult these individuals before regulations are introduced, thereby helping to ensure that any changes will be effective and not disproportionate.

Justification for the procedure

81. Regulations under this power are subject to the affirmative procedure. The affirmative procedure is appropriate for two reasons. Firstly, adding to the offences which could result in a restricted premises order could impact businesses and enforcement authorities. Therefore, it is appropriate that a greater level of scrutiny is applied. Secondly, this is a Henry VIII power, as it allows for primary legislation to be amended by subordinate legislation and, in line with DPRRC guidance, the affirmative procedure is considered appropriate so that any change to primary legislation can be debated and approved in Welsh Parliament (Senedd Cymru).

Fixed penalties

Clause 39: Power to change amount of fixed penalties

Power conferred on: Secretary of State and Welsh Ministers

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

82. The Bill will introduce Fixed Penalty Notices (FPNs) (clause 37) for the offences in clauses 1 (Sale of tobacco etc), 2 (Purchase of tobacco etc on behalf of others), 5 (Age of sale notice at point of sale: England), 6 (Age of sale notice at point of sale: Wales), 10 (Sale of vaping or nicotine products to under 18s), 11 (Purchase of vaping or nicotine products on behalf of under 18s), 13 (Displays of products or prices in England), 14 (Displays of products or prices in Wales), 15 (Free distribution and discount of products), 17 (Offences in connection with retail licences: England) and 20 (offences in connection with retail licences: Wales) in the Bill. This is to ensure there is an effective enforcement regime for these offences in this Bill. Introducing FPNs will allow enforcement authorities to issue on-the-spot fines for breaches of this legislation and will complement existing sanctions. Enforcement authorities will still be able to use existing enforcement options which carry stricter sanctions, where appropriate.

83. This power will allow the Secretary of State in England and the Welsh Ministers in Wales to change the penalty amount of the FPN, which is £200 as stated on the face of the Bill, and to change the percentage discount for early payment.

84. This power is narrow in scope as it only allows the FPN amount to be changed to a maximum equivalent to a level 3 fine on the standard scale of fines for summary offences (currently set at £1,000).

85. FPNs for offences in connection with licensing, clause 17 (Offences in connection with licences: England) and 20 (Offences in connection with retail licences: Wales), are not included in the scope of this power, as their value is set at a level 4 fine on the standard scale (currently set at £2,500).

Justification for taking the power

86. Including this power will give flexibility to ensure the Secretary of State and Welsh Ministers can change the amount of the fine and the discounted amount in line with varying economic and social circumstances, such as changes in inflation. This will also allow the government to assess the impact of the existing fine level and adjust accordingly to ensure the value remains proportionate.

87. Setting the maximum limit equivalent to level 3 on the standard scale, rather than a set amount, allows the maximum value to also change with inflation without the need to further amend primary legislation in the future.

Justification for the procedure

88. Regulations made under this power will be subject to the affirmative procedure. The affirmative procedure is appropriate for two reasons. Firstly, the power enables the amendment of a penalty for the commission of a criminal offence, which will have an impact on industry and public behaviour and therefore will be of interest to parliamentarians. Secondly, this is a Henry VIII power that allows for primary legislation to be amended by subordinate legislation and, in line with DPRRC guidance, the affirmative procedure is considered appropriate so that any change to

primary legislation can be debated and approved in both Houses of Parliament and Senedd Cymru (Welsh Parliament).

Handing over tobacco etc to underage people in Wales

Clause 40: Handing over tobacco etc to underage people in Wales

Power conferred on: Welsh Ministers

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

89. Clause 40 (Handing over tobacco etc to underage people in Wales) introduces Schedule 5 which contains amendments to Chapter 4 (handing over tobacco, cigarettes and nicotine products to persons under 18) of Part 3 of the [Public Health \(Wales\) Act 2017](#) (“the 2017 Act”).

90. Paragraph 4 of Schedule 5 inserts a new section 54A (Power to extend this Chapter to other products) which contains a power for Welsh Ministers to extend any provision in Chapter 4 of the 2017 Act that applies to a tobacco product to apply to ‘a device of a specified description which enables tobacco to be consumed (for example, a heated tobacco device or pipe),’ and ‘an item which is intended to form part of such a device.’

91. The purpose of this power is to ensure that there is flexibility to cover new products as the market changes so that these products can be subject to the same regulatory framework in the future. The power is similar to the powers in clauses 45 (Power to extend Part 1 to other products), 67 (Power to extend 2010 Act to other products), 85 (Power to extend legislation to other products), and 132 (Power to extend Part 6 and Communications Act 2003 to other products).

Justification for taking the power

92. This power is narrow in scope as it only allows devices that enable a tobacco product to be consumed to be included in the restrictions around handing over of tobacco products in Wales (as outlined in Chapter 4 of the 2017 Act).

93. A delegated power is required as it provides the necessary flexibility to keep up with future developments to ensure the products in scope of the restrictions are appropriate to encompass devices which enable the consumption of tobacco products.

94. The tobacco and vaping industries are fast moving, constantly developing new products and bringing these to market which may be subject to different regulatory standards than other harmful products

Powers to adjust scope

Clause 45: Power to extend Part 1 to other products

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

95. This power will allow the Secretary of State to amend Part 1 of the Bill to extend any provision that applies to a tobacco product to also apply to ‘a device, other than a vape, which enables a tobacco product to be consumed (for example, a heated tobacco device or pipe),’ or ‘an item which is intended to form part of such a device.’

96. The purpose of this power is to ensure that if the market changes, the legislation is futureproofed as demonstrated in Clause 67 (Power to extend 2010 Act to other products), and clause 85 (Power to extend legislation to other products). The tobacco industry is highly innovative as seen through the creation of heated tobacco and the accompanying devices. Industry could respond to the wider measures in the Bill by introducing novel new tobacco devices that could encourage tobacco uptake. It is important that the measures in Part 1 can be extended to cover these products if necessary as otherwise there could be used as a loophole to encourage tobacco usage.

97. This power will be subject to a requirement to obtain consent of Welsh Ministers if the regulations contain provision which is within the competence of the Senedd Cymru.

Justification for taking the power

98. The aim of this power is to futureproof the legislation so that further measures can be taken if industry develop new tobacco devices in light of the restrictions in the Bill.

99. The power would bring a narrow range of products within the scope of the Bill as it only allows specified devices that enable a tobacco product to be consumed to be included in Part 1 of the legislation. The Bill currently restricts all tobacco products but not the devices used to consume these products.

100. The market is known to be highly innovative and very fast moving. Heated tobacco products first entered the market in 2016. Although their current usage in the UK is low, there is the potential for increase and for them to make up a larger proportion of the market. This power will allow the government to adapt to any new products that enter the market. If newer and alternative forms of tobacco devices begin to be more prominent following the other measures in the Bill, there are concerns that industry will use the devices to promote tobacco use. We want to ensure that these devices are included in the provisions of the Bill.

101. By providing a delegated power in this Bill, it ensures that we can act flexibly and do not have a prescriptive list of devices that are covered.

102. This power applies to Part 1, which includes provisions on free distribution, display and age of sale of products. This power will be subject to a requirement to consult any persons which the Secretary of State considers appropriate before making regulations. Consultation ensures that there will be appropriate engagement prior to any provisions being extended to include tobacco related devices. For example, we do not want a loophole where tobacco use is inadvertently promoted via free distribution of a certain device.

Justification for the procedure

103. Regulations made under this power will be subject to the affirmative procedure. The affirmative procedure will enable a debate and vote in both Houses of Parliament, so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny to ensure that the right balance has been struck between industry and public health. This is a Henry VIII power that allows for primary legislation to be amended by subordinate legislation and the affirmative procedure is considered to provide the appropriate level of parliamentary scrutiny.

Part 2: Sale and distribution: Scotland

Sale of Tobacco etc

Clause 54: Power to make provision about warning statements

Power conferred on: Scottish Ministers

Power exercised by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

Context and Purpose

104. Section 8 of the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) (“the 2010 Act”) requires tobacco businesses in Scotland to display a notice that reads “It is illegal to sell tobacco products to anyone under the age of 18”. The legislation introduced powers for Scottish Ministers to prescribe the dimensions of the notice and the size of the statement displayed on the notice.

105. Clause 49 (Age of sale for tobacco products etc) in the Bill changes what the notice is required to say to, “It is illegal to sell tobacco products to anyone born on or after 1 January 2009”.

106. This clause re-enacts with modifications the power in the 2010 Act and will enable Scottish Ministers to make provision as to the size or appearance of the statement that is displayed on the notice and any other aspect of the notice.

Justification for taking the power

107. The amendment to this power will make provision in respect of Scotland consistent with that provided in clauses 5 (Age of sale notice at point of sale: England), 6 (Age of sale notice at point of sale: Wales), and 72 (Age of sale notice

at point of sale) for England, Wales and Northern Ireland respectively. The power is similar to the existing approach in the 2010 Act whereby Scottish Ministers can set the size and dimensions for the notice, but is extended slightly to allow for the size, appearance of the statement and any other aspect of the notice to be set by regulations.

108. The justification for taking this power is the same as that outlined for the equivalent power for England, Wales and Northern Ireland in clauses 5, 6, and 72.

109. the power is narrow in scope, as its purpose is simply to allow Scottish Ministers to adjust the requirements if the sign is not having the appropriate impact or, conversely, is overly burdensome.

Justification for the procedure

110. The justification for the procedure is the same as the similar power that is outlined in clauses 5, 6, and 72.

Age Verification

Clause 60: Age verification in relation to tobacco and vaping products etc

Power conferred on: Scottish Ministers

Power exercised by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative

Context and Purpose

111. Currently under the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) (“the 2010 Act”) it is a defence for someone who is charged with an age of sale offence in Scotland that they believed the customer was over the age of sale and that they took reasonable steps to establish the customer’s age. It specifies that those reasonable steps must be that they were shown a prescribed document (a passport, a UK driving licence, a European Union photocard driving licence, or another prescribed document) and that it would have convinced a reasonable person as to the customer’s age.

112. Clause 60 amends section 4 and 4A of the 2010 Act by replacing this part of the existing defence and providing a power for Scottish Ministers to prescribe in regulations the steps which should be taken to establish the customer’s age as a defence to the offence.

113. The purpose of this new power is to allow other steps to be specified to establish a customer’s age to enable the use of both physical documents and digital methods of age verification, and future-proof the defence against changes in age verification methods. This is a similar power to the powers provided by clauses 1, 10, 68 and 76 in England, Wales and Northern Ireland and aligns with the UK government ambition to enable the widespread use of digital verification services. Further context relating to digital identities is provided in clause 1.

Justification for taking the power

114. The justification for taking the power is broadly the same as set out in clause 1 (Sale of tobacco etc). As noted above, sections 4 and 4A of the 2010 Act set out the steps which retailers must take in order to be able to rely on the defence to the age of sale offence. Scottish Ministers currently have powers in sections 4 and 4A of the 2010 Act to prescribe documents which can be shown to a sales person for the purpose of age verification. At the time those powers were taken it was recognised that the kinds of documents used may change over time and it was considered appropriate to take a power to accommodate such change without the need for primary legislation. This broader power will enable Ministers to respond to changes in technology and consumer behaviours which may move away from the showing of a document, while ensuring that it is clear to retailers precisely what steps must be followed in order to avoid committing an offence. This will ensure that age verification practices remain robust and fit for purpose.

Justification for the procedure

115. The justification for procedure is broadly the same as that set out in clause 1 (Sale of tobacco etc). It is noted that for Scotland, there is no general defence of “reasonable steps” to the offences in sections 4 and 4A of the 2010 Act. The existing steps which are currently set out in those sections will continue to be required to be taken in order to rely on the defence until such a time as new regulations are made under this power.

Displays of products or prices

Clause 61: Displays of vaping and nicotine products

Power conferred on: Scottish Ministers

Power exercised by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

116. This clause will insert a new section 3A into the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) (“the 2010 Act”) which contains a regulation-making power that will enable Scottish Ministers to impose prohibitions, requirements, or limitations on retailers regarding the display of herbal smoking products, vaping products or nicotine products and the display of their prices, as well as empty retail packaging. This could include the location of the products in a retailer, for instance there could be limitations on displays in windows or requirements that any displays of these products are kept behind the counter.

117. The October 2023 consultation considered the government’s plans to tackle youth vaping. The consultation asked questions about policies which have the potential to reduce the appeal, availability, and affordability of vaping to children, while ensuring that vaping products remain available as a useful smoking cessation tool for adult smokers, given the lesser harms posed to smokers from vaping. This

included regulating point of sale displays of vaping and nicotine products. Of the Scottish respondents the majority were supportive of keeping vapes behind a counter.

118. Unlike for tobacco, there are no restrictions on displays of vaping products, nicotine products or herbal smoking products in retail where these products are sold in Scotland. The rationale for the inclusion of this clause is similar to that outlined in clause 13 (Displays of products or prices in England) for England, and clause 14 (Displays of products or prices in Wales).

119. This power will also allow for the introduction of offences for breaches of the display regulations.

120. The power includes a requirement for Scottish Ministers to consult before regulations are made.

Justification for taking the power

121. This power allows for regulations to be made, setting out the detail of where, and in what circumstances, these products may be displayed. A similar approach was taken in Scotland for the display of tobacco products in the course of business which is prohibited under section 1 of the 2010 Act, save for certain exemptions. Regulations, which were made under powers in primary legislation, set out the detail of where, and in what circumstances, tobacco products can be displayed. The justification for this power is the same as for the power within clause 13 (Displays of products or prices in England) and clause 14 (Displays of products or prices in Wales), which enables similar regulations to be made for England and Wales respectively.

122. This power will be subject to a requirement to consult any persons who Scottish Ministers consider it appropriate to consult before making regulations. Consultation is considered appropriate here due to the potential impact that vaping policies have on smoking rates. It is therefore imperative that any potential intervention is consulted on to minimise the risk of unintended consequences. This power will also provide Scottish Ministers with the flexibility to monitor and adjust display regulations following their implementation, ensuring that the correct balance is struck between the objectives of the regulations and the impact on retailers.

Justification for the procedure

123. Regulations made under this power will be subject to the affirmative procedure. We consider the affirmative procedure to be the correct level of scrutiny for this power as regulations restricting the display of herbal smoking products, vaping products and nicotine products will affect the public's purchasing behaviours and will require retailers to implement changes. The affirmative procedure will enable a debate about the merits of any regulations and a vote in the Scottish Parliament so the impacts of the regulations can be subject to the appropriate parliamentary scrutiny.

Free distribution and discounts

Clause 62: Free distribution and discount of products

Power conferred on: Scottish Ministers

Power exercised by: Regulations by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

124. Clause 62 amends the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) and introduces two new sections, section 8A (Free distribution and discount of products) and section 8B (Free distribution of products: defences). Section 8A makes it an offence to give away a product or a coupon to a member of the public through retail or sell by retail a product or coupon at a substantial discount, where the purpose or effect is to promote a relevant product (tobacco product, herbal smoking products, smoking related products, vaping products or nicotine products).

125. Section 8B provides a power for Scottish Ministers to create further defences to the offence outlined in 8A, in addition to the defence at section 8B(1). The UK government is confident that the defence in the equivalent provision for England and Wales in clause 15 (see subsection (3)) captures all the circumstances where vaping products or nicotine products may legitimately, under the policy applicable to England and Wales, be given away for free and therefore do not require an equivalent power. However, health is a devolved area, and the Scottish Government has also consulted on the free distribution of vapes, and the current power to create offences in this respect (section 18 of the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, repealed by subsection (3) of this clause) includes a power to provide for defences of those offences. The offence under new section 8A is set out on the face of the legislation rather than by virtue of a power, but Scottish Ministers wish to retain flexibility to provide for further defences in line with their separate devolved policy in this area.

126. Section 8B(2) in clause 62 confers powers on Scottish Ministers to create by regulations additional defences to the offence in new section 8A (Free distribution and discount of products) and new section 8B(3) provides that such regulations may amend Part 1 of the Tobacco and Primary Medical Services (Scotland) Act 2010. It is therefore a Henry VIII power.

Justification for taking the power

127. The justification for taking the power is that the Scottish Government has also consulted on the free distribution of vapes and may develop its policy in respect of free distribution in such a way that additional defences are indicated. The responses to that consultation raised circumstances in which vapes may be distributed at no cost to people trying to stop smoking which may fall within the scope of the offence. In Scotland further consideration is being given as to whether those situations should be within scope of the offence. In England the Swap to Stop scheme encourages people to switch from smoking to vaping by providing free vape starter kits; there is no equivalent programme in Scotland, which may mean that the “in accordance with arrangements made by a public authority” defence might not go far enough. Health is a devolved matter and it is appropriate to make provision for the power to create additional defences to continue, so that Scottish Ministers may in due course develop

their policy, should they consider it appropriate in the light of their public consultation, to do so.

128. Although this is a Henry VIII power and relates to a criminal offence under clause 62, it is narrow in scope as it only provides for additional defences to be created for that specific offence, and only in relation to the giving away of a vaping product or nicotine product or a coupon for such.

Justification for the procedure

129. Regulations made under this power will be subject to the affirmative procedure. Given this power can be exercised to create defences to a criminal offence, it is important there is the appropriate level of parliamentary scrutiny. The affirmative procedure will enable a debate in the Scottish Parliament. Therefore, the regulations will be subject to the appropriate scrutiny to ensure they achieve a suitable balance between having proportionate defences whilst ensuring the measures have the desired impact.

Miscellaneous

Clause 67: Power to extend 2010 Act to other products

Power conferred on: Scottish Ministers

Power exercised by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

130. These powers will be inserted into the [Tobacco and Primary Medical Services \(Scotland\) Act 2010](#) (“the 2010 Act”) to allow Scottish Ministers to amend Part 1 of that Act.

131. This clause provides that any provision that applies to a tobacco product can be extended to ‘a device of a specified description which enables a tobacco product to be consumed other than being smoked (for example, a heated tobacco device), ‘an item which is intended to form part of such a device’, and some or all smoking related products (as defined in section 35(2) of the 2010 Act).

132. The purpose of these powers is to ensure that devices and smoking related products which enable the consumption of harmful tobacco products can be subject to the same regulatory framework, as demonstrated in clause 45 (Power to extend Part 1 to other products).

133. Whilst the heated tobacco itself is covered as a tobacco product, the ability to extend the Bill to include devices will ensure there are no gaps in the legislation.

134. There are similar powers that apply to Parts 1 to 6 of the Bill, at clauses 45 (Power to extend Part 1 to other products), 85 (Power to extend legislation to other

products), and 132 (Power to extend Part 6 and Communications Act 2003 to other products).

Justification for taking the power

135. The justification for taking this power has been explained in the equivalent power in clause 45 (Power to extend Part 1 to other products).

136. The purpose of the power is to ensure that legislation is futureproofed in the event that industry develop new tobacco devices in response to the restrictions imposed by the Bill. The tobacco industry is highly innovative and fast moving. If newer and alternative forms of tobacco devices begin to be more prominent and used by the industry to encourage tobacco use, the Scottish Government may want to make sure they are included in these provisions in the Bill. For example, heated tobacco products first entered the market in 2016. Although their current usage in the UK is low, there is the potential for increase. By providing a delegated power in this Bill, it ensures that we can act flexibly and do not have a prescriptive list of devices that are covered.

137. This power brings a narrow range of products into scope as it only allows devices that enable a tobacco product to be consumed and some or all smoking related products such as cigarette filters and pipes for smoking tobacco products to be included in Part 1 of the 2010 Act. The Bill currently restricts all tobacco products but not the devices used to consume these products.

138. This power applies to Part 1 of the 2010 Act, which includes provisions on free distribution, display and age of sale of products. This power will be subject to a requirement to consult any persons which Scottish Ministers considers appropriate before making regulations. Consultation ensures that there will be appropriate engagement prior to any provisions being extended to include tobacco related devices and/or extend the provisions to some or all smoking related products. For example, we do not want a gap in the legislation where tobacco use is inadvertently promoted via free distribution of a certain device.

139. Additionally, this clause ensures regulations are reflective of existing Devolved Government legislation. This differs from clauses pertaining to England, Wales and Northern Ireland, as Scotland has already made some provisions of the 2010 Act applicable to smoking related products.

Justification for the procedure

140. Regulations made under these powers will be subject to the affirmative procedure. The affirmative procedure will enable a debate and vote in the Scottish Parliament, so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny to ensure that the right balance has been struck between industry and public health. This is a Henry VIII power that allows for primary legislation to be amended by subordinate legislation and the affirmative procedure is considered to provide the appropriate level of parliamentary scrutiny.

Part 3: Sale and distribution: Northern Ireland

Sale of tobacco etc

Clause 68: Age of sale for tobacco products etc

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations made by Statutory Rule

Northern Ireland Assembly procedure: Negative

Context and Purpose

141. The age of sale restriction set out in Article 3 of the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#) makes it an offence to sell tobacco, or cigarette papers, or herbal smoking products to someone under the age of 18. Clause 68 (Age of sale for tobacco products etc) replaces the existing age of sale restrictions and makes it an offence to sell tobacco products, herbal smoking products and cigarette papers to anyone born on or after 1 January 2009.

142. This power will allow the Department of Health in Northern Ireland to specify in regulations the steps which may be taken to verify that a customer was born before 1 January 2009 as a defence to the age of sale offence in Northern Ireland. This is the same power as the power provided to the Secretary of State in clause 1 (Sale of tobacco etc.) for England and Wales.

143. The purpose of the power is to allow such steps to include checking physical identity documents (such as a driving licence, passport or a Proof of Age Standards Scheme card) and the use of digital methods of age verification.

Justification for taking the power

144. The justification for taking the power is the same as the justification for the power in clause 1 (Sale of tobacco etc).

Justification for the procedure

145. The justification for the procedure is the same as that set out in clause 1 (Sale of tobacco etc).

Clause 72: Age of sale notice at point of sale

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations made by Statutory Rule

Northern Ireland Assembly procedure: Negative

Context and Purpose

146. Currently Article 5 of [The Children and Young Persons \(Protection from Tobacco\) \(Northern Ireland\) Order 1991](#) (“the 1991 Order”) requires tobacco retailers

in Northern Ireland to display a notice in a prominent position at the point of sale stating that “It is illegal to sell tobacco products to anyone under the age of 18”. Regulations made under article 5(3) of the 1991 Order set the minimum dimensions of notices and the size of the text of the statement on the notice for Northern Ireland.

147. Clause 72 of Bill inserts equivalent but amended provision into the Health and Personal Social Services (Northern Ireland) Order 1978 (“the 1978 Order”) to make it an offence for tobacco retailers to fail to display an age of sale notice at any premises at which they sell tobacco products. The notice is required to say, “It is illegal to sell tobacco products to anyone born on or after 1 January 2009”. The Bill, in amending the 1978 Order, takes the opportunity to consolidate the legislation, and the 1991 Order will be revoked (see paragraph 2 of Schedule 15 (Part 3: Consequential amendments commencing on 1 January 2027)).

148. Paragraph (4) of new Article 4D of the 1978 Order as inserted by this clause introduces a power that will enable the Department of Health in Northern Ireland to impose requirements for the size and appearance of the statement that is displayed on the notice and the size and appearance of any other aspect of the notice, such as colour.

149. This aligns with the equivalent powers in clauses 5 (Age of sale notice at point of sale: England), 6 (Age of sale notice at point of sale: Wales), and 54 (Scotland: Power to make provision about warning statements).

Justification for taking the power

150. The justification for taking the power is the same as that outlined in clause 5 (Age of sale notice at point of sale: England), 6 (Age of sale notice at point of sale: Wales), and 54 (Scotland: Power to make provision about warning statements).

151. The power is narrow in scope relating only to setting requirements for the size and appearance of the notice and statement on it.

Justification for the procedure

152. The justification for the procedure is the same as set out for clause 5 (Age of sale notice at point of sale: England), 6 (Age of sale notice at point of sale: Wales), and 54 (Scotland: Power to make provision about warning statements). This is also consistent with the procedure for the power which this one replaces in article 5(3) of the 1991 Order.

Vaping and nicotine products

Clause 76: Sale of vaping or nicotine products to under 18s

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations made by Statutory Rule

Northern Ireland Assembly procedure: Negative

Context and Purpose

153. Section 1 of the [Health \(Miscellaneous Provisions \(Act\) \(Northern Ireland\) 2016](#) introduced regulation-making powers for the Department of Health in Northern Ireland to make it an offence to sell nicotine products to under 18s. Clause 76 (Sale of vaping or nicotine products to under 18s) replaces existing restrictions which apply to nicotine vapes with the new age of sale restrictions to include all vaping products and nicotine products.

154. This power will allow the Department of Health in Northern Ireland to specify in regulations the steps which may be taken to verify that a customer was 18 or over as a defence to the age of sale offence in Northern Ireland. This is the same power as the power provided to the Secretary of State in clause 10 for England and Wales.

155. The purpose of the power is to allow such steps to include checking physical identity documents (such as a driving licence, passport or a Proof of Age Standards Scheme card) and the use of digital methods of age verification.

Justification for taking the power

156. The justification for taking the power is the same as that set out in clause 1 (Sale of tobacco etc).

Justification for the procedure

157. The justification for the procedure is the same as that set out in clause 1 (Sale of tobacco etc).

Displays of products or prices

Clause 79: Displays of products and prices in Northern Ireland

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations made by Statutory Rule

Northern Ireland Assembly procedure: Draft Affirmative

Context and Purpose

158. [The Tobacco Advertising and Promotion \(Display\) Regulations \(Northern Ireland\) 2012](#) (“the 2012 regulations”) sets requirements for where tobacco displays are allowed and what tobacco products can be displayed in certain places. These Regulations were made under powers conferred by the [Tobacco Advertising and Promotion Act 2002](#).

159. The context and rationale for the inclusion of this clause is set out in clause 13 (Displays of products or prices in England).

160. The power will also allow for the introduction of offences for breaches of the display regulations.

Justification for taking the power

161. This power provides for a type of detailed regulation that would not be appropriate for inclusion in primary legislation and is conventionally set out in secondary legislation. For example, regulations on the display of tobacco products ([The Tobacco Advertising and Promotion \(Display\) Regulations \(Northern Ireland\) 2012](#)) provide detailed specifications for how tobacco products can be displayed.

162. The justification for taking this power is the same as the justification that was set out for the equivalent power in clause 13 (Displays of products or prices in England) for England.

163. This power will be subject to a requirement to consult any persons which the Department considers it appropriate to consult before making regulations.

Justification for the procedure

164. The justification for the procedure is the same as set out for clause 13. The affirmative procedure will enable a debate and vote by the Northern Ireland Assembly so the regulations can be subject to appropriate scrutiny.

Retail register and licensing

Clause 84: Prohibition of retail sales of tobacco products etc without a licence

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations made by Statutory Rule

Northern Ireland Assembly procedure: Affirmative for new Article 4A and Negative for new Article 4C

Context and Purpose

165. This clause inserts new sections 4A, 4B and 4C into the [Tobacco Retailers Act \(Northern Ireland\) 2014](#) for the purpose of enabling the Department of Health in Northern Ireland to introduce a licensing scheme for the retail sale of tobacco products, herbal smoking products, cigarette papers, vaping products, and nicotine products, by regulations. This will replace the existing retailer registration scheme in Northern Ireland once regulations are made.

166. Article 4A inserted into the [Tobacco Retailers Act \(Northern Ireland\) 2014](#) provides a power for the Department of Health in Northern Ireland to make regulations for the granting of personal and premises licences in Northern Ireland for the retail sale of tobacco products, herbal smoking products, cigarette papers, vaping and nicotine products, for the purposes of protecting public health. This is the same power as the powers provided for the Secretary of State in England (clause 16) and Welsh Ministers in Wales (clause 19). Further context and rationale are set out in relation to clause 16 (Prohibition of retail sales of tobacco products etc in England without a licence).

167. Schedule 11 (Retail licensing scheme in Northern Ireland) inserts a new schedule 1 into the [Tobacco Retailers Act \(Northern Ireland\) 2014](#), which provides

more detail on the potential scope and content of the regulations made under Article 4A, including details regarding the licensing authority, the granting of licences, licence fees, licence conditions, duration, renewal, variation, suspension and revocation of licences, publication of licence information, the reviews and appeals process regarding decisions about licences, and guidance in relation to the licensing regime.

168. The regulations made under Article 4A may make provision for the licensing authority (councils in Northern Ireland) to grant a personal or premises licence, subject to certain conditions. Article 4C provides a power for the Department of Health in Northern Ireland to change the maximum amount of the financial penalties for breach of licence conditions, which is set at £2,500. This power is narrow in scope as it only allows the maximum value to be changed to reflect inflation and is the same as the powers provided for the Secretary of State in England (clause 18) and the Welsh Ministers in Wales (clause 21).

169. Schedule 12 (Financial penalties for breach of retail licence conditions in Northern Ireland) inserts a new schedule 2 into the [Tobacco Retailers Act \(Northern Ireland\) 2014](#), which set out the steps to be taken by district councils when imposing financial penalties, which include issuing a notice of intent before deciding to issue a final notice, and the appeals process. Councils in Northern Ireland must use proceeds from financial penalties for the purpose of their functions under the 2014 Act. This aligns with the existing approach for use of proceeds from fixed penalty notices.

170. New schedule 2 inserted into the Tobacco Retailers Act (Northern Ireland) 2014 by clause 84(3) and Schedule 12 of the Bill also provides a power for the Department of Health in Northern Ireland to make regulations which make provision for what a council is to do with its financial penalty receipts, pending their being used for the purpose of councils' functions under the 2014 Act, or, if they are not used for those purposes, within a period of time specified in the regulations and beginning with their receipt. Regulations may make provision for accounting arrangements in respect of a council's financial penalty receipts, and the Department must consult before making such regulations. This is to ensure that all penalty receipts are accounted for and utilised, and maintains a consistent approach with the existing fixed penalty notice regime in Northern Ireland under the 2014 Act.

171. Schedule 13 (Licensing of retail sales of tobacco products etc: consequential amendments) inserts new schedule 3 into the [Tobacco Retailers Act \(Northern Ireland\) 2014](#). This schedule adds licensing offences to the list of offences for which a fixed penalty notice can be issued in Northern Ireland. The value of the fixed penalty notice for licensing offences in Northern Ireland is not established in the Bill as it is for England and Wales; this is because Northern Ireland have an existing statutory framework where the amount is set out in regulation (see section 12 of the Tobacco Retailers Act (Northern Ireland) 2014).

Justification for taking the power

172. The justification for taking the power provided in new Article 4A is the same as that set out for clause 16. This power will be subject to a requirement to consult any person that the Department of Health in Northern Ireland consider it appropriate to consult before making regulations.

173. The justification for taking the power provided in new Article 4C is the same as that set out for clause 18.

174. Regarding the power provided in new schedule 2 which is inserted into the Tobacco Retailers Act (Northern Ireland) 2014 by clause 84(3) and Schedule 12 of the Bill and relates to the use of financial penalty receipts. This is a minor power and it is preceded to deal with this issue in secondary legislation, which is more suitable for this level of detail. The approach taken mirrors the existing approach taken in the Tobacco Retailers Act (Northern Ireland) 2014 for the existing fixed penalty regime, therefore maintaining a consistent approach in the legislation (see section 13 of the Tobacco Retailers Act (Northern Ireland) 2014 (use of fixed penalty receipts)).

Justification for the procedure

175. The justification for taking the affirmative procedure for the power provided in new Article 4A is the same as that set out for clause 16 and will enable a debate and vote in the Northern Ireland Assembly.

176. The justification for taking the negative procedure for the power provided in new Article 4C is the same as that set out for clause 18.

177. Regarding the power provided in new schedule 2 which is inserted by clause 84(3) and Schedule 12 of the Bill and relates to the use of financial penalty receipts, the approach taken mirrors the existing approach taken in the Tobacco Retailers Act (Northern Ireland) 2014 for the existing fixed penalty regime, therefore maintaining a consistent approach in the legislation (see section 13 of the Tobacco Retailers Act (Northern Ireland) 2014 (use of fixed penalty receipts)).

Power to extend legislation

Clause 85: Power to extend legislation to other products

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations made by Statutory Rule

Northern Ireland Assembly procedure: Affirmative

Context and Purpose

178. This clause will amend the [Health and Personal Social Services \(Northern Ireland\) Order 1978](#) (“the 1978 Order”) to allow the Department of Health in Northern Ireland with powers to amend Part 2 of the 1978 Order and also the Tobacco Retailers Act (Northern Ireland) 2014 (“the 2014 Act”) to extend any provision that applies to a tobacco product to also apply to ‘a device, other than a vape, which enables a tobacco product to be consumed (for example, a heated tobacco device or pipe),’ or ‘an item which is intended to form part of such a device’.

179. The purpose of these powers is to ensure that devices which enable consumption of harmful tobacco products can be subject to the same regulatory framework, as demonstrated in clause 45 (Power to extend Part 1 to other products).

180. There are similar powers that apply to parts 1 to 6 of the Bill, at clauses 45 (Power to extend Part 1 to other products), 67 (Power to extend 2010 Act to other products), and 132 (Power to extend Part 6 and Communications Act 2003 to other products).

Justification for taking the power

181. The justification for taking this power has been explained in the equivalent power in clause 45 (Power to extend Part 1 to other products) and clause 67 (Power to extend 2010 Act to other products).

182. The aim of this power is to futureproof the legislation so that further measures can be taken if industry develop new tobacco devices in light of the restrictions in the Bill. The market is known to be highly innovative and very fast moving. This power will allow the Department to adapt to any new products that enter the market. If newer and alternative forms of tobacco devices begin to be more prominent and used by the industry to encourage tobacco use, we will want to make sure they are included in these provisions in the Bill. For example, heated tobacco products first entered the market in 2016. Although their current usage in the UK is low, there is the potential for increase. By providing a delegated power in this Bill, it ensures that we can act flexibly and do not have a prescriptive list of devices that are covered.

183. This power would bring a narrow range of products into scope as it only allows devices that enable a tobacco product to be consumed to be included in Part 2 of the 1978 Order or the 2014 Act. The Bill currently restricts all tobacco products but not the devices used to consume these products.

184. Additionally, a delegated power is appropriate as it ensures the ability to future proof the legislation if new evidence on the health harms of these devices emerges. Whilst the heated tobacco itself is covered as a tobacco product, the ability to extend the Bill to include devices will ensure there are no gaps in the legislation.

185. This power will be subject to a requirement to consult any persons which the Department considers appropriate before making regulations. These powers apply to Part 2 of the 1978 Order, which includes provisions on free distribution, display and age of sale of products and also the 2014 Act. Consultation ensures that there will be appropriate engagement prior to any provisions being extended to include tobacco related devices. For example, we do not want a gap in the legislation where tobacco use is inadvertently promoted via free distribution of a certain device.

186. This power will be subject to a requirement to consult any persons which the Department considers appropriate before making regulations.

Justification for the procedure

187. Regulations made under these powers will be subject to the affirmative procedure. The affirmative procedure will enable a debate and vote in the Northern

Ireland Assembly, so that the impacts of the regulations can be subject to the appropriate parliamentary scrutiny to ensure that the right balance has been struck between industry and public health. These are Henry VIII powers that allow for primary legislation to be amended by subordinate legislation and the affirmative procedure is considered to provide the appropriate level of parliamentary scrutiny.

Part 5: Product and information requirements etc

188. Part 5 contains a set of regulation making powers to enable provision relating to product features, labelling, packaging, flavours, product safety requirements, testing, registration, information and safety of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products. This set of powers will enable the introduction of an appropriate regulatory framework for these products.

189. Current provision for tobacco products, herbal smoking products and e-cigarettes (nicotine vapes) is primarily in [The Tobacco and Related Products Regulations 2016](#) (TRPR). TRPR implemented most of Directive 2014/40/EU (the 'EU Tobacco Products Directive') with remaining measures implemented by [The Standardised Packaging of Tobacco Products Regulations 2015](#) (SPoT).

190. TRPR sets product standards, requirements for labelling, notification and information requirements for tobacco products, herbal products for smoking and electronic cigarettes (nicotine vapes) and restrictions on advertisement of electronic cigarettes (e-cigarettes). Through these regulations, flavoured cigarettes as well as flavoured hand rolling tobacco and oral tobacco were banned. SPoT sets packaging and labelling requirements for tobacco products using regulation-making powers in section 94 of the [Children and Families Act 2014](#) ("the 2014 Act") to introduce restrictions and requirements on the packaging of tobacco products and the appearance of tobacco products themselves.

191. The powers in this Part of the Bill would allow the Secretary of State to regulate a wider scope of products than are currently regulated under TRPR and SPoT, including tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products. This approach is consistent with other parts of the Bill and as set out in earlier chapters. In all cases, the powers are limited to a defined set of products.

192. The range of products on the UK market have expanded since TRPR came into force in May 2016. The industry has developed and introduced new products to the market (such as nicotine pouches, nicotine strips and nicotine gum) to exploit the less restrictive regulation of these products which are not covered by TRPR.

193. Under the Windsor Framework Agreement, the requirements of the EU Tobacco Products Directive continue to apply in relation to Northern Ireland. If regulations are made under the powers in Part 5 of the Bill which cover matters which the Directive applies to, then appropriate provision will be made by the UK Government in respect of Northern Ireland to ensure that the UK government meets its obligations under the Windsor Framework.

194. There is a duty on the Secretary of State to consult any persons the Secretary of State considers it necessary to consult before making any regulations under the power in Part 5. See clause 109 (Consultation).

195. Under clause 102 (Offences) regulations made under this Part of the Bill may create offences for failure to comply with the requirements in the regulation. Clause 102(5) requires regulations to provide that any offences must be triable either way. The maximum penalty on conviction for any new offences is set out on the face of the Bill in clause 102(5).

196. Clause 110 (Consent to regulations under part 5) requires the Secretary of State to obtain consent from Welsh Ministers, Scottish Ministers or the Executive Office in Northern Ireland if any regulations made under powers in Part 5 contain provisions which would be within the legislative competence of the Senedd Cymru, the Scottish Parliament or the Northern Ireland Assembly respectively.

197. There are a set of justifications for taking delegated powers which apply across the suite of powers in Part 5. Further explanations are set out below for each individual clause, but, to summarise:

- a. The nature of the product requirements means that legislation will need to include an amount of detail that would be excessive for primary legislation, for example because different provision may need to be made for each type of product.
- b. Regulations made under these powers will need to include very technical information, for example on the physical characteristics and ingredients of each product, which is best provided in secondary legislation.
- c. Secondary legislation provides appropriate opportunities to consult on the requirements. Consultation is necessary to ensure that these requirements are workable, enforceable and have the desired effect.
- d. Delegated powers also provide the Secretary of State the flexibility to update and amend product requirements. This is needed to respond to market innovation, to ensure regulations can be adjusted to reflect new or changing products and prevent any gaps in the regulatory framework.
- e. Changes to product requirements may also be needed to respond to evolving scientific evidence on the harms of specific products or ingredients, and on the effectiveness of different product restrictions at achieving desired aims. For example, as set out on vaping in Part C, paragraph 10.

Product requirements etc

Clause 89: Retail packaging

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

198. Currently, section 94 (6) of the [Children and Families Act 2014](#) (“the 2014 Act”) gives the Secretary of State the power to make regulations which make provision about the retail packaging of tobacco products. Section 94(7) provides that such regulations may impose prohibitions, requirements or limitations relating to the production or supply of tobacco product packing for the promotion of health or welfare of persons under the age of 18.

199. Section 94(9) of the 2014 Act also provides the Secretary of State with the powers to create offences for breaches of regulations made under the section. [The Standardised Packaging of Tobacco Products Regulations 2015](#) were made under the power in section 94 of the 2014 Act and the regulations introduced restrictions on tobacco retail packaging. The scope of the existing power and regulations was limited to tobacco products.

200. Part 2 of [The Tobacco and Related Product Regulations 2016](#) (TRPR) set labelling requirements for tobacco products, such as requirements to include health warnings on packets, and Part 5 sets requirements for the packaging of herbal smoking products. Part 6 contains limited requirements relating to the labelling of vaping products that contain nicotine.

201. Regulations made under this power will enable the introduction of restrictions on retail packaging, as set out in the list in subsection (3), which includes matters such as markings on the packaging, the information on the packaging, the appearance as well as the size and shape.

202. Having the power to restrict retail packaging of these products (tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products, nicotine products), will help to create an environment that protects consumers from the harms of tobacco and prevents children becoming addicted to nicotine by reducing the appeal of this broader range of products. Evidence from the introduction of plain packaging for tobacco products shows how effective these measures can be in contributing to a significant decline in cigarette sales. These restrictions specifically helped to end the previous growth in cheap cigarette brands that appeal to younger and price conscious smokers.

Justification for taking the power

203. This power provides for a type of detailed and technical regulation that would not be appropriate for primary legislation and is conventionally set out in secondary legislation. For example, [The Standardised Packaging of Tobacco Products Regulations 2015](#), made under the powers in section 94 of the 2014 Act, demonstrate the type of provision which would be made under the power.

204. The packaging requirements and which products these apply to will need to be kept under review and amended as necessary and be able to bring in new requirements in light of emerging evidence on how packaging affects consumer choices. For example, evidence from Canada shows the benefit of including positive health messages inside packets. This has led to the Department consulting on mandating pack inserts in cigarettes packets and hand rolling tobacco (HRT) with the aim being to amend SPoT accordingly.

205. It is appropriate that a delegated power is utilised for packaging requirements, rather than primary legislation, due to the technical and detailed nature that is required. The industry is continually evolving new products onto the market, for example new styles of nicotine products, such as nicotine pouches, strips and teas. Given the varied nature of these products and products that will follow after them, it is likely that regulations will need to account for this variability in the regulations, for example by specifying different health warnings on the packaging.

206. The evidence base for the impacts of packaging on enticing children and young people is continually developing, and it is likely that new insights and information will be forthcoming in the future. This is particularly true for nicotine products which are new to the market and may have various packaging methods to which the Government will need to adapt.

207. There is a requirement to consult before making regulations under this power. Many of the products in scope of this power are economic substitutes and changes in use rates for one product can impact on the usage of other products. It is therefore appropriate to consult on anything that is likely to affect appeal in order to avoid unintended consequences, particularly on smoking rates. It is also necessary to further consult on the design of any potential packaging change, to ensure that any changes to packaging will work in practice and can be enacted smoothly by manufacturers and industry. Where packaging changes may require health messaging, such as pack inserts, it will be imperative to hold a technical consultation with industry to understand what will work.

208. The powers within this Part ensure that the Bill is futureproofed against new and emerging products, as well as their packaging.

Justification for the procedure

209. Regulations made under this power will be subject to the affirmative procedure. Section 94(6) of the 2014 Act was subject to the affirmative procedure and this power is in part replacing subsection (6) of section 94 of the 2014 Act. The regulations will have an impact on the design, development and production of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products packaging for manufacturers. The affirmative procedure will enable a debate and vote in both Houses of Parliament so the impacts of the regulations can be subject to appropriate parliamentary scrutiny.

Clause 90: Features of products

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

210. Section 94(8) of the [Children and Families Act 2014](#) (“the 2014 Act”) provides a power for the Secretary of State to make regulations about tobacco products for the promotion of health or welfare of persons under the age of 18. This allows the Secretary of State to impose prohibitions, requirements or limitations relating to features of the products (e.g. size and shape).

211. [The Standardised Packaging of Tobacco Products 2015](#) (SPoT) were made in part under the power in section 94 of the 2014 Act which restricted the appearance of tobacco products.

212. Regulation 36 of [The Tobacco and Related Products Regulations 2016](#) (TRPR) outlines requirements relating to the labelling and presentation of nicotine vapes (e-cigarettes) and refill containers. They set out what can be written on a unit or container pack of the e-cigarette or refill container. Such products may not, for example, suggest that a particular e-cigarette or refill container is less harmful than others, has revitalising, energising, healing, rejuvenating, natural or organic properties, and/or has other health or lifestyle benefits. Regulation 28 of TRPR imposes similar requirements in relation to herbal smoking products.

213. Regulations made under this power will enable the introduction of restrictions on features of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products. The regulations could include provision on markings on the product, the information on the product, the appearance as well as the size and shape of the product. This power sits alongside the power under clause 90 so that both the outer packaging and appearance of the product itself can be regulated, separating out what was one regulation making power in relation to tobacco products under the 2014 Act.

214. Regulations made under this power will help to reduce the appeal of these products and therefore help to create an environment that protects consumers from the harms of tobacco and prevents children becoming addicted to nicotine. For instance, producing vapes that are the shape of mobile phones, ice lollies, lipstick, and other confectionary products can increase the appeal of vaping products to children and young people, as reported in the responses to the 2023 [call for evidence](#) and the [Creating a smokefree generation and tackling youth vaping consultation](#).

Justification for taking the power

215. This power provides for detailed regulation on the size, shape, appearance and information of products that would not be appropriate for primary legislation and is conventionally set out in secondary legislation.

216. As with other product requirements, it is important that Ministers can update regulations on features to ensure they remain up to date and capture new products should they chose to do so. For example, industry has recently developed new refill containers that permanently attach to a vape device, which are not covered by existing limits on vape tank capacity.

217. There is a requirement to consult before making regulations under this power, ensuring that ministers are subject to public and parliamentary oversight before enacting regulations on these products.

218. The requirement to consult and the flexibility to adjust restrictions that is provided by delegated powers is important given the delicate balance that needs to be struck in relation to vapes and nicotine products to reduce their appeal to children and non-smokers, while ensuring their accessibility as a smoking cessation tool and the fact that the evidence on these products continues to evolve. Consulting and the ability to adjust regulations are important to avoid unintended consequences, given that restrictions on features could affect the price and visibility of products in scope, and that many of the products in scope of this power are economic substitutes (changes in use rates for one product can impact on the usage of other products).

Justification for the procedure

219. Regulations made under this power will be subject to the affirmative procedure. This corresponds to the procedure for regulations made under section 94, which this power in part re-enacts. The regulations may have an impact on the design, development and production of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products for manufacturers. The affirmative procedure will enable a debate and vote in both Houses of Parliament so the impacts of the regulations can be subject to appropriate parliamentary scrutiny.

Clause 91: Contents and flavour

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

220. Under [The Tobacco and Related Products Regulations 2016](#) it is an offence to produce or supply flavoured cigarettes or hand rolled tobacco in the UK. Section 94(8)(e) of the [Children and Families Act 2014](#) (“the 2014 Act”) also introduced powers for the Secretary of State to make regulations imposing prohibitions, requirements and limitations in relation to tobacco flavours, which include a power to make non-compliance with the regulations an offence.

221. Regulations made under this power will enable the Secretary of State to introduce provision about the type and amount of substances in tobacco, tobacco related devices, cigarette papers, herbal smoking, vaping and nicotine products as well as the flavour of these products. The regulations may also include provision about how the flavour of the product is to be determined, as well as any product intended to be used in connection with a relevant product with a view to imparting flavour, allowing flavour accessories to be in scope of the regulations.

222. The aim of regulating to restrict or prohibit flavour is to help to reduce the appeal of these products particularly to children. Evidence from the October 2023 [consultation](#) shows that many of the respondents thought vape flavours were appealing to children and this is supported by evidence that children are attracted to fruit and sweet flavours, which is likely to have contributed to the increase in youth

vaping. In addition, certain natural flavourings that have been seen to be hazardous in vapes, such as cinnamaldehyde¹⁴, which may increase the risk of respiratory infections in vape users, would be able to be banned.

223. There are currently no restriction on the amount of nicotine permitted in a nicotine product, like nicotine pouches, as well as the amount of other substances such as propylene glycol in vapes, which could be unsafe beyond a certain level.

Justification for taking the power

224. This power provides for a type of detailed regulation that would not be appropriate for primary legislation and is conventionally set out in secondary legislation. Different provision may need to be made for each type of product so that requirements in relation to contents and flavours appropriately apply to those products.

225. The vaping flavour market is complex, with over 800 flavourings notified to the Medicines and Healthcare products Regulatory Agency (MHRA), and around 7,000 different combinations of flavours available. Industry continues to develop new ingredients and flavour combinations without demonstrating their safety. Evidence on the harms of these substances continues to emerge, so the legislation needs to be able to be amended to keep up to date with scientific advances.

226. Flexibility to amend the regulations is required since new products are likely to come to the UK market and products will be adapted by industry over time. For example, the tobacco industry has introduced flavouring accessories such as sprays and crush balls, which are not captured by existing restrictions on flavoured cigarettes. In the Netherlands, the vaping industry have quickly brought new accessories to the Dutch market to adapt to restrictions in flavourings including the development of flavoured filters.

227. The clause contains a statutory duty to consult. Ministers are therefore legally required to gather evidence and seek input from stakeholders and before making any regulatory changes. This ensures that any regulations will effectively support enforcement and balance the requirement to protect public health with the practical necessity of not being overly burdensome on businesses and local authorities, and ensures that ministers cannot act unilaterally without being subject to public and parliamentary oversight.

Justification for the procedure

228. Regulations made under this power will be subject to the affirmative procedure. Regulations made under section 94 (8)(e) of the 2014 Act were subject to the affirmative procedure. It is appropriate to utilise the same procedure. The maximum penalty on conviction for any new offences is set out on the face of the Bill in clause 103(5).

¹⁴ [Nicotine vaping in England: 2022 evidence update main findings - GOV.UK](#)

229. The affirmative procedure will enable a debate and vote in both Houses of Parliament so the impacts of the regulations can be subject to appropriate parliamentary scrutiny.

Clause 92: Substances released into human body and emissions

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

230. Regulation 13 of [The Tobacco and Related Products Regulations 2016](#) (TRPR) specifies the maximum emission levels of cigarettes and regulation 31 of TRPR requires the emissions resulting from the use of an e-cigarette to be notified to the Medicines and Healthcare Products Regulatory Agency (MHRA). These measurements help to determine the amount and type of chemicals that a person smoking or vaping takes into their body. This is important because, although cigarette smokers are exposed to substantially higher levels of toxicants, both cigarettes and vapes produce a number of dangerous chemicals, such as acetaldehyde. More specifically, evidence has shown that the metal components that heat vape liquid may release harmful elemental metals, including nickel, chromium and lead, also found in tobacco smoke, which can then be transported into the aerosol and deposited into the user's body.

231. Regulations made under this power will enable the Secretary of State to introduce requirements or limits on the nature or amount of substances that may be released into the body of a person using a product or emissions that may be released by the relevant products. The regulations may also include provision about how the amount of emissions released is determined, and who makes this decision.

232. The evidence shows that emissions that are released by these products, including particulates from tobacco products and aerosols from vaping products can be harmful to health. Measures introduced under this power will enable limits to be set to reduce the harm to users of these products and those around them.

Justification for taking the power

233. This power provides for a type of detailed regulation that would not be appropriate for primary legislation and is conventionally set out in secondary legislation. Regulations made under this power are likely to be of a technical nature; detailed technical information will be required on the types and levels of chemicals that can be released from different products, and how this is to be determined.

234. Determining what is a safe level of substances released will require further research, for instance, how much nicotine is absorbed into the body via nicotine pouches. Therefore, these provisions are more appropriately set out in secondary legislation to allow for updates as scientific knowledge and evidence emerges.

235. The clause contains a statutory duty to consult. Ministers are therefore legally required to gather evidence and seek input from stakeholders and before making any regulatory changes. This ensures that any regulations will effectively support enforcement and balance the requirement to protect public health with the practical necessity of not being overly burdensome on businesses and local authorities and ensures that ministers cannot act unilaterally without being subject to public and parliamentary oversight.

Justification for the procedure

236. Regulations made under this power will be subject to the affirmative procedure. Provision made under this regulation-making power might require producers of these products to use different substances or to be redesigned in order to comply with limits on substances in products or emission levels. The affirmative procedure is therefore appropriate as it will enable a debate and vote in both Houses of Parliament, so that the impacts of the regulations can be subject to the correct level of parliamentary scrutiny and the relative impacts are considered accordingly.

Non-compliant images

Clause 93: Non-compliant images

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

237. Under regulations 12 and 48 of the [Tobacco and Regulatory Products Regulations 2016](#) (TRPR) it is an offence for a person to publish or cause to be published an image of the unit pack or container pack of a tobacco product unless the image complies with the labelling and packaging requirements that are set out in Part 2 of TRPR or regulations 4, 8 and 10 of [The Standardised Packaging of Tobacco Regulations 2015](#) (SPoT).

238. There is no corresponding restriction in relation to other products which reflects the current limited requirements that relate to the packaging of these products.

239. The rationale for taking a regulation making power to extend the scope of this restriction is that there are now powers to make provision about the packaging of all these products or their features. If provision is made under clause 89 (Retail packaging) or clause 90 (Features of products) then this power will enable provision so that images are not published where it is apparent the packaging or any requirements on products features have not been met.

240. Regulations made under this power could restrict an online retailer from having images on their website with pictures of products that have non-compliant packaging, for example pictures of cigarette packets that have the warning signs removed. This

will help to create a consistent regulatory environment between the restrictions in shops and online which will help to reduce the appeal of these products.

Justification for taking the power

241. This power is needed to enable restrictions on the display of non-compliant images to be set in line with any packaging or other requirements on a product's features set under regulations made under clause 89 or 90. If no restrictions are imposed under regulations made under clause 89 or 90 in respect of a particular type of product then no equivalent restriction would be imposed under this power. There may be requirements set for the packaging of nicotine products for example but not for cigarette papers, but that is to be determined, and is why the delegated power is needed.

242. The clause contains a statutory duty to consult. Ministers are therefore legally required to gather evidence and seek input from stakeholders and before making any regulatory changes. This ensures that any regulations will effectively support enforcement and balance the requirement to protect public health with the practical necessity of not being overly burdensome on businesses and local authorities and ensures that ministers cannot act unilaterally without being subject to public / parliamentary oversight.

Justification for the procedure:

243. Regulations made under this power will be subject to the affirmative procedure. The affirmative procedure will enable a debate and vote in both Houses of Parliament. The affirmative procedure is the appropriate procedure as it enables regulations to be subject to appropriate parliamentary scrutiny and consideration of the relative impacts.

Registration and information requirements

Clause 94: Registration

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

244. Tobacco products, nicotine containing vapes (e-cigarettes) and their refill containers are required to be notified and reported to the Secretary of State under provisions in [The Tobacco and Related Products Regulations 2016](#) (TRPR) if they are to be supplied on the UK market. The Medicines and Healthcare products Regulatory Agency (MHRA) publishes all notifications for vapes (e-cigarettes) and refill containers for Great Britain on an ECIG portal, and for Northern Ireland on the EU Common Entry Gateway (EU-CEG). Information that is notified includes tank size, nicotine content and ingredients.

245. Submissions for tobacco products to be sold in England, Scotland and Wales are made directly to the Department of Health and Social Care, while submissions for products to be sold in Northern Ireland continue to be made to the EU CEG, as they were before the UK left the European Union.

246. The purpose of this power is to enable regulations to establish a new register which could include tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products.

247. Regulations made under this power may state who keeps the register, the requirements to be part of the register, the content of the register, the information provided to the register, the publication of the register, the details regarding a product's registration, and the fees payable in respect of registration. Regulations may prohibit or limit the supply of products that are not registered. A fee may be charged to register or maintain a registration.

248. The intention of these regulation-making powers is to enable a proportionate level of checks to be undertaken before products enter and are sold on the market to ensure compliance with other regulations on product standards and to ensure consumer safety. They allow for appropriate follow up with producers and suppliers if issues are identified and updates to the register if checks result in a product needing to be removed from the market. The scheme will enable retailers and enforcement agencies to know which products are approved for sale, supporting a crackdown on illicit products being sold on the market.

Justification for taking the power

249. The detailed regulations that are required to implement this policy would not be appropriate for primary legislation and is conventionally set out in secondary legislation. A delegated power is therefore appropriate as it provides the Secretary of State the flexibility to assess, review and evaluate the impact of the registration scheme. It will also allow for the detailed administrative arrangements to be established and kept up to date, such as the detail on registration fees.

250. It will also allow new nicotine products that enter the UK market to be introduced into a register, and due to the innovative nature of the industry, greater flexibility in the products to be covered. Other requirements included in Part 5 of this Bill (rules on vape flavours, for example) may change the type of products that enter the market in the United Kingdom. This power will give flexibility to adapt the register as appropriate if the products change.

251. There is a requirement to consult before making regulations under Part 5 of this Bill, including on this power. Ministers are therefore legally required to gather a wide range of evidence from stakeholders before making any regulatory changes. This ensures that any regulations will effectively support enforcement and balance the requirement to protect public health with the practical necessity of not being overly burdensome on businesses. It also ensures that ministers cannot act unilaterally without being subject to both public and Parliamentary oversight.

Justification for the procedure

252. Regulations made under this power will be subject to the affirmative procedure. These regulations will have an impact on all businesses that would be required to notify their products. The affirmative procedure will enable a debate and vote in both Houses of Parliament so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny and consideration of the relative impacts.

Clause 95: Information

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

253. As part of notification requirements under TRPR, tobacco producers must submit information relating to product ingredients and emissions. Tobacco producers must also submit annual reports on sales volumes and market research data. For nicotine vapes, manufacturers must submit information relating to the product's ingredients, emissions, nicotine dosage, components and production. Manufacturers of other vape and nicotine products do not need to provide this information under TRPR.

254. This new power allows the Government to continue to provide information requirements about existing products and new products that have emerged on the market. Having this power is part of a wider framework of powers the Bill contains. They have been separated out to make sure the eventual information requirements fits with the registration system.

255. This power will allow the Secretary of State to make regulations to place a requirement on producers or importers of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products to provide information about a product or its producer. The required information could be the same as required for registration, but might be different, including, in particular, market research or sales data.

256. These powers will enable the Government to react if new data emerges on a product, or type of product. The powers will allow for the government to seek further information from a producer or manufacturer, for instance if data demonstrates a growing trend in use of a specific product and clarity is needed. This is why the power allows for information beyond just that required for registration, but also data such as sales information.

Justification for taking the power

257. This power provides for a type of detailed regulation that would not be appropriate for primary legislation and is conventionally set out in secondary legislation. Given that this information might be specific technical or detailed information, it is appropriate to capture this in secondary legislation. The regulations may distinguish between information requirements for different types of products, as

TRPR does now for tobacco products and nicotine vapes. This flexibility, again, is better provided for through secondary legislation.

258. The information that is required will need to be kept under review and updated should there be changes in knowledge of products, or changes in the UK market. For example, the regulations could require provision of sales data. The government may conclude that it requires this information initially, but, as measures in the Bill lead to a reduction in sales of specific products, it may no longer require that information. Furthermore, given the innovative nature of the tobacco and vaping industries, it may be necessary to require more information on specific products that have been introduced that were not commonplace previously. Therefore, a power to make regulations which enables what information is required is appropriate in order to provide that flexibility in adapting to the changing market.

259. There is a requirement to consult before making regulations under Part 5 of this Bill, including on this power. It will be necessary to gather evidence from a wide range of interested parties to ensure that regulations are robust and ensure consumer safety, while not being overly burdensome on industry.

Justification for the procedure

260. Regulations made under this power will be subject to the affirmative procedure. These regulations will have an impact on businesses required to provide this information.

261. The affirmative procedure will enable a debate and vote in both Houses of Parliament so that the regulations are subject to appropriate parliamentary scrutiny and consideration of the relative impacts.

Clause 96: Studies

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

262. Under TRPR, tobacco producers must provide the Secretary of State with reports on studies relating to the effects of ingredients on health, as well as their addictiveness and toxicity. Producers of cigarettes and hand rolling tobacco must also provide studies on certain additives.

263. This power builds on this existing legislation and will allow the Secretary of State to make regulations that require not just a producer of a tobacco product, but also a producer of tobacco related device, herbal smoking product, cigarette papers, vaping or nicotine product to carry out a study on a product or ingredients in a product and submit a report on the results of the study.

264. The regulations may specify certain requirements as to how the study is conducted. For instance, the questions that the study must address.

265. The aim of requiring studies on certain products is to ensure that appropriate information is available to assess the safety and potential harms of products, whether this is new products before they are placed on the UK market or products on sale where new concerns have been raised.

Justification for taking the power

266. This power provides for a type of detailed regulation that would not be appropriate for primary legislation. The studies that will be required, and on which products, are likely to change over time, as knowledge of the different types of products develops. The specifications for studies might include technical detail which would not be suitable for inclusion in primary legislation. A regulation making power provides flexibility for the Secretary of State to amend the requirements to ensure that the studies are providing necessary information, whilst minimising the financial and time burden for producers.

267. There is a requirement to consult ahead of regulations made under Part 5 of this Bill. For this power, it will be necessary to gather evidence from a wide range of interested parties to ensure that studies are workable and useful.

Justification for the procedure

268. Regulations made under this power will be subject to the affirmative procedure. These regulations will have an impact on businesses required to provide this information. The affirmative procedure will enable a debate and vote in both Houses of Parliament so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny and consideration of the relative impacts.

Clause 97: Responsible person

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

269. There is current provision under regulation 31 of TRPR that a producer or importer that is not based in the UK (or in relation to Northern Ireland, in a Member State of the EU) must provide the name and address of a responsible person in the UK when notifying their e-cigarette or refill container.

270. However, the Medicines Healthcare and Regulatory Agency, who currently oversee the vape notification system, have found cases where the details of the responsible person are either non-existent or false. This poses several challenges if, and when, Trading Standards need to contact companies about products that they have found to be non-compliant. This prevents enforcement agencies from being

able to clarify any issues with products, and, ultimately, ensure that a producer or manufacturer is accountable.

271. This power will allow the Secretary of State to make regulations to require producers of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products or nicotine products, to nominate an individual to be responsible for information that is, or that has to be, provided under any regulations under clauses 94 (Registration), 95 (Information) and 96 (Studies). The regulations may specify who is eligible to be nominated and must prohibit a producer from nominating an individual without their consent.

272. The regulations may require the nominee to be resident in or have another connection to the UK. The purpose of requiring a producer to nominate a responsible person with a connection to the UK is to ensure that accurate and reliable information can be obtained about products being placed on the UK market, and that action can be taken as appropriate if information is missing or false. Clause 102 (Offences) provides that regulations made under clauses 94 (Registration), 95 (Information), and 96 (Studies) may make it an offence to provide false or misleading information as required under regulations made under those sections. Regulations made under this clause may provide that if a producer commits an offence of failing to provide or providing false or misleading information as required under regulations made under this Part of the Bill, the offence is also committed by the nominee.

Justification for taking the power

273. This power allows for the details of who is eligible to be nominated, and how they should be connected to the UK, to be set out, which is an appropriate level of detail for secondary legislation.

274. In addition, as the market adapts, either by introducing new products or discontinuing existing products, it may be necessary to amend the requirements for a responsible person to reflect these wider market changes. Regulations provide the necessary flexibility to do this. For instance, as vaping technology advances we may wish to ensure a responsible person is sufficiently qualified to speak to the components of a vape being registered.

275. There is a duty to consult ahead of any regulations being laid under Part 5 of this Bill. It will be necessary to gather views from a wide range of interested parties on topics such as who would qualify as a responsible person and practical details of nominating an individual.

Justification for the procedure

276. Regulations made under this power will be subject to the affirmative procedure. These regulations will have an impact on all businesses which are required to notify products. The affirmative procedure will enable a debate and vote in both Houses of Parliament so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny and consideration of the relative impacts.

Quality control and safety

Clause 98: Testing

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose:

277. Under [The Tobacco and Related Products Regulations 2016](#) (TRPR), it is currently required that cigarette testing is undertaken for tar, nicotine and carbon monoxide (TNCO) yields. There is an annual fee payable of £1,000 for one brand of cigarette variant.

278. This power enables the Secretary of State to make regulations which require a person to test a product to determine whether it complies with requirements set out in regulations that are made under this Part of the Bill. This will help ensure products registered for sale are compliant with our regulations, such as not exceeding maximum nicotine levels.

279. Trading Standards test products which appear to be non-compliant and are frequently finding nicotine vaping products which are not compliant with the requirements under TRPR. This regulation making power would enable establishment of testing regimes that would be more rigorous and effective, with the type and frequency of testing set as appropriate considering the potential safety risks with the different products.

Justification for taking the power

280. This power provides for a type of detailed regulation that would not be appropriate for primary legislation and is conventionally set out in secondary legislation. For example, the regulations might set how many times a year a particular type of product is required to be tested or set technical requirements for how a test must be carried out, or how much a fee should be for testing of these different products.

281. A regulation making power provides the necessary flexibility for these detailed requirements to be updated if necessary, in the light of any evidence post-implementation on whether the testing requirements are appropriate and are having the desired effect.

282. In addition, we have seen an emergence of new nicotine products over the past three years, and this power future proofs our ability to set requirements for the testing of any new product that might come to market.

283. The clause contains a statutory duty to consult. Ministers are therefore legally required to gather evidence and seek input from stakeholders and before making any regulatory changes. This ensures that any regulations will effectively support enforcement and balance the requirement to protect public health with the practical necessity of not being overly burdensome on businesses and local authorities and

ensures that ministers cannot act unilaterally without being subject to public and Parliamentary oversight.

Justification for the procedure

284. Regulations made under this power will be subject to the affirmative procedure. These regulations will have an impact on all businesses in the UK which are required to notify products. The affirmative procedure will enable a debate and vote in both Houses of Parliament so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny and consideration of the relative impacts. Parliamentary scrutiny is especially appropriate where regulations create criminal offences as is the case for this power.

Clause 99: Product safety

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

285. Clause 99 enables the Secretary of State to make regulations to require producers of relevant products to have processes in place for collecting information about the effect of their products on human health and safety. The clause also allows for regulations to be made conferring a power on the Secretary of State to require a product to be recalled from the market or to prohibit or limit the supply of a product in circumstances set out in the regulations, for instance, if there is serious risk to public health.

286. If concerns with a product come to light, the expectation is that information would be sought from the producer or importer in line with requirements imposed under clause 95 (Information), linking with data held under the registration system. A similar requirement is currently imposed in respect of electronic cigarettes and refill containers under regulation 39 of [The Tobacco and Related Product Regulations 2016](#) (TRPR).

287. In an extreme case, should a product cause harm to health or be unsafe, the Secretary of State may need to be able to require a product to be recalled or stop the supply of the product. The power to make regulations under clause 99(1)(b) will enable the circumstances under which such a power could be used to be set out. A similar requirement is currently imposed in respect of electronic cigarettes and refill containers under regulation 40 of TRPR.

Justification for taking the power

288. A level of detail will need to be included in relation to the circumstances when a product must be recalled from the market that would not be appropriate for primary legislation. Further, it is likely that the processes for collecting information and the circumstances when products might be recalled will change over time, and how they are recalled may be different for different products. It will be necessary to gather

evidence post-implementation to ensure that the requirement for producers or importers to collect information on the health impact of their products is having the desired effect and is not overly burdensome on the producers or importers, whilst ensuring that products available on the UK market are safe and compliant with the regulations within this Bill.

289. The regulations may distinguish between safety requirements for different types of products. This flexibility, again, is better provided for through secondary legislation.

290. The clause contains a statutory duty to consult. Ministers are therefore legally required to gather evidence and seek input from stakeholders and before making any regulatory changes.

Justification for the procedure:

291. Regulations made under this power will be subject to the affirmative procedure. These regulations will have an impact on producers and importers who will be required to set up processes. The affirmative procedure will enable a debate and vote in both Houses of Parliament so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny and consideration of the relative impacts.

Matters dealt with by 2016 Regulations

Clause 100: Matters dealt with by 2016 Regulations

Power conferred on: Secretary of State

Power exercised by: Regulations made by statutory instrument.

Parliamentary procedure: Affirmative

Context and purpose:

292. This power enables the Secretary of State to make provision in regulations that are similar to or correspond to any provision of [The Tobacco and Related Products Regulations 2016](#) (TRPR), in so far as not enabled by the other provisions of this Part of the Bill.

293. To the extent that the powers in other clauses do not enable this, the power enables regulations to cover matters which are currently governed by TRPR, which was made under the power in section 2(2) of the European Communities Act 1972 to implement the EU Directive 2014/40/EU.

294. Clause 100(1)(b) enables regulations to apply any measures in TRPR to any of the other products covered by this Bill where provision in TRPR does not currently apply to those products. This power would enable, for example, producers of nicotine products, such as nicotine pouches, or non-nicotine vapes, to be required to notify these products before placing them on the GB market under the current notification system in TRPR. This would enable data to be collected about these products before a new registration system is established.

Justification for taking the power

295. This power provides for a type of detailed regulation that would not be appropriate for primary legislation and is conventionally set out in secondary legislation. Any measures introduced under this clause would be similar to provision currently set out in TRPR.

296. It might be appropriate to extend the application of a requirement in TRPR to a product to which this does not currently apply, in order to create a coherent framework under TRPR which reflects the scope of products covered by the Bill measures.

297. The clause contains a statutory duty to consult. Ministers are therefore legally required to gather evidence and seek input from stakeholders and before making any regulatory changes.

Justification for the procedure

298. Regulations made under this power will be subject to the affirmative procedure. These regulations will have an impact on businesses involved with tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping products and nicotine products. The affirmative procedure will enable a debate and vote in both Houses of Parliament, so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny and consideration of the relative impacts.

Supplementary and miscellaneous

Clause 102: Offences

Power conferred on: provision supplementary to powers conferred on the Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: As per the relative substantive power (all of which are affirmative)

Context and purpose

299. This clause allows for the creation of offences in regulations made under this Part and specifies further detail, such as how any offences created are to be punishable. Clause 102 (Offences) (5) requires regulations to provide that any offences must be triable either way. The maximum penalty on conviction for any new offences is set out on the face of the Bill in clause 102(5).

Justification for power

300. This is required to enable the creation of offences so that there will be appropriate sanctions for non-compliance with requirements imposed under the Regulations.

Justification for the procedure

301. The parliamentary procedure attaching to the substantive power to which provision mentioned in this clause relates will be applicable; in each case, this will be the affirmative procedure.

Clause 103: Enforcement

Power conferred on: provision supplementary to powers conferred on the Secretary of State, Welsh Ministers, Scottish Ministers, and the Department of Health in Northern Ireland

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: As per the relevant substantive power (all of which are affirmative)

Context and Purpose

302. Clause 103 enables the appropriate national authority to make provision about the enforcement of any regulations made under this Bill. Regulations may grant the relevant enforcement authorities with the ability to undertake enforcement and enable the relevant national authority (the Secretary of State for England, Welsh Ministers in Wales, Scottish Ministers in Scotland or the Department of Health in Northern Ireland) to take over enforcement or legal proceedings relating to any offence committed under the regulations.

303. Regulations may include provision applying to any of the enforcement provisions in Parts 2 (consumer safety), 4 (enforcement) and 5 (miscellaneous and supplemental) of the [Consumer Protection Act 1987](#) or provision corresponding to any of those provisions.

Justification for taking the power

304. The power is needed to ensure that relevant enforcement authorities are able to enforce any offences made in regulations under that clause.

Justification for the procedure

305. The parliamentary procedure attaching to the substantive power to which provision mentioned in this clause relates will be applicable; in each case, this will be the affirmative procedure.

Clause 104: Sub-delegation

Power conferred on: provision supplementary to powers conferred on the Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: As per the relevant substantive power (all of which are affirmative)

Context and Purpose

306. This clause enables regulations under Part 5 to sub-delegate functions to other people or bodies.

Justification for taking the power

307. Regulations made using powers in Part 5 of the Bill may set detailed technical requirements which require specific technical expertise to determine whether the requirements have been complied with. As such it considered appropriate that the regulations may confer functions on other bodies or people with the necessary technical expertise.

308. In relation to testing, for example, under clause 98 (Testing) regulations may provide for a person to be required to carry out tests of products, and the technical nature of this would require specific expertise to determine if a test has been met or not. Further, it may be appropriate for detailed technical specifications to be set out in guidance rather than in legislation.

Justification for the procedure

309. The parliamentary procedure attached to the substantive power to which provision mentioned in this clause relates will be applicable; in each case, this will be the affirmative procedure.

Clause 105: Power to make provision binding the Crown

Power conferred on: provision supplementary to powers conferred on the Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: As per the relevant substantive power (all of which are affirmative)

Context and Purpose

310. Clause 105 allows any regulations made under Part 5 of the Bill to bind the Crown and the power requires that any provision binding the Crown does not make the Crown criminally liable as a result of the provision.

Justification for taking the power

311. The presumption in legislation is that it does not bind the Crown unless the presumption is overturned by, usually, express words or by necessary implication. In order that measures brought in under regulations under Part 5 may apply to any products supplied in the United Kingdom without exception, it is considered necessary that express provision may be made for Crown application.

Justification for the procedure

312. The parliamentary procedure attaching to the substantive power to which provision mentioned in this clause relates will be applicable; in each case, this will be the affirmative procedure.

Clause 106: Power to amend legislation

Power conferred on: provision supplementary to powers conferred on the Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: as per the relevant substantive power (all of which are affirmative)

Context and Purpose

313. Clause 106 extends the consequential provision that may be made by regulations under this Part by virtue of section 164 (Regulations: general) (1)(a) to provide that such provision may amend, repeal, or revoke any legislation (whenever passed or made). Clauses 161 to 164 make provision for the equivalent consequential provision to be made in relation to the Act.

Justification for taking the power

314. The power to make consequential provision is extended in the same way as the powers under clauses 161 to 164 because of the existing wide range of legislation on tobacco control, including legislation made over the course of the last century and that which is the responsibility of different government departments. Regulations made under Part 5 will cover some of the same matters and will have to make provision which is compatible with any current legislation or that which will be made after the Bill obtains Royal Assent but before Regulations are made.

315. There is an equivalent power at section 94(11) of the [Children and Families Act 2014](#) (“the 2014 Act”) which is being repealed in consequence of Part 5 of the Bill. The power in the 2014 Act is wider in scope than this power, as it provides for provision to be made in connection with, rather than in consequence of, regulations made under section 94 of the 2014 Act. The government does not consider that it would be justifiable to take such a wide power now and therefore the power in the Bill is limited to making amendments to legislation that are consequential on regulations made under Part 5.

Justification for the procedure

316. Regulations made under Part 5 which include consequential provision by virtue of this clause will be subject to the parliamentary procedure governing the exercise of those regulations; in each case, this is the affirmative procedure. The affirmative procedure will enable a debate and vote in both Houses of Parliament, so that the impacts of the regulations can be subject to the appropriate parliamentary scrutiny to ensure that the right balance has been struck. This is a Henry VIII power that allows for primary legislation to be amended by subordinate legislation and the affirmative procedure is considered to provide the appropriate level of parliamentary scrutiny.

317. A statutory duty to consult before making regulations is not required as any regulations will be made as a consequence of implementing the substantive provisions in Part 5 of the Bill, for which there are statutory duties to consult.

Part 6: Advertising and Sponsorship

Tobacco Advertising and Promotion Act 2002

318. Part 6 makes provisions to prohibit the publication, design, printing or distribution of advertisements which have the purpose or effect to promote tobacco, herbal smoking, vaping or nicotine products or cigarette papers. It also prohibits sponsorship agreements which promote these products.

319. The [Tobacco Advertising and Promotion Act 2002](#) (“the 2002 Act”) creates offences and confers regulation-making powers in respect of the publishing, devising and distribution of tobacco advertisements in the UK press, billboards, and on the internet. The 2002 Act, and its subsequent regulations, also prohibited the use of sponsorship or brandsharing as methods to advertise or promote a tobacco product. The clauses in Part 6 re-enact and update the existing provisions for tobacco products in the 2002 Act.

320. Research¹⁵ conducted after the 2002 Act was introduced showed that young people’s awareness of tobacco marketing declined significantly following the ban. Smoking rates amongst young people have continued to fall since restrictions on tobacco advertising were introduced. Analysis conducted by the National Cancer Institute and the World Health Organisation (WHO) estimate advertising bans reduce consumption of tobacco by 11.7%.¹⁶

321. [The Tobacco and Related Products Regulations 2016](#) prohibited the advertisement of nicotine vapes (e-cigarettes) in the main media (tv, radio, newspapers and the internet), but these products are allowed to be advertised in other forms such as on buses and billboards, so the general public are still exposed to advertisements for these products. There are no restrictions on advertisements of non-nicotine vaping products and nicotine products, such as nicotine pouches.

¹⁵ [Effects of the 2003 advertising/promotion ban in the United Kingdom on awareness of tobacco marketing: findings from the International Tobacco Control \(ITC\) Four Country Survey | Tobacco Control](#)

¹⁶ [The Economics of Tobacco and Tobacco Control | Division of Cancer Control and Population Sciences \(DCCPS\)](#)

Children continue to be targeted and are susceptible to vaping and nicotine products adverts in permitted media.

322. For example, a 2024 meta analysis of 43 papers found that vape campaigns exert stronger effects on consumers' likelihood of vaping, particularly among non-smokers than smokers, and that the relationship between vape campaigns and vaping tendency are stronger for adolescents than adults.¹⁷ Therefore, to prevent children from being hooked on nicotine, it is important to prohibit these products from being advertised.

323. Based on this evidence and increasing rates of underage vaping, and the rationale outlined in the paragraphs above, Part 6 extends the scope of the advertising restrictions to include vaping products, nicotine products, herbal smoking products and cigarette papers, to protect younger generations from advertising and marketing of these products.

324. This Bill will repeal the 2002 Act and the measures relating to tobacco advertising and sponsorship will be replaced with clauses in this Part.

325. The 2002 Act also included clauses that ban the free distribution and display of tobacco products which are replicated in Part 1 of this Bill.

Advertising

Clause 120: Specialist tobacconists

Power conferred on: Secretary of State, Welsh Ministers, Department of Health in Northern Ireland, Scottish Ministers

Power exercised by: Regulations by Statutory Instrument/Statutory Rule/ Scottish Statutory Instrument

Parliamentary procedure: Negative

Context and purpose

326. Under Section 6 of the Tobacco Advertising and Promotion Act 2002 ("the 2002 Act") regulations may provide that no offence is committed under section 2 (prohibition of tobacco advertising) provided an advertisement is by a specialist tobacconist and complies with any requirements set out in the regulations. The Tobacco Advertising and Promotion (Specialist Tobacconists) (England) Regulations 2010 provide that a tobacco advertisement must not be visible from outside of the specialist tobacconist. This requirement is now on the face of the Bill in clause 120(1)(b).

327. In addition the 2010 Regulations include requirements relating to the information and health warnings which must be included in any advertisement. For example, the number for the NHS smoking helpline.

¹⁷ [How Do Vape Advertising Campaigns Affect Consumers' Vaping Tendency? A Meta-Analytic Investigation - Zhiyong Yang, Franklin Velasco, Emily C. Tanner, John F. Tanner, 2024](#)

328. Clause 120 replaces section 6 of the 2002 Act, however it narrows the power so that an exemption from the offences provided by clauses 113 (Publishing advertisements), 114 (Designing advertisements) 116 (Printing advertisements), 116 (Distributing advertisements) and 117 (Causing publication, designing, printing or distribution) is on the face of the Bill (see clause 120 (1)(a), (b), (c) and (d)) and regulations can now only be made relating to the inclusion in advertisements of health warnings and information.

329. The aim of this clause is in line with the similar provision within the 2002 Act, to impose requirements to enable limited advertising by specialist tobacconists.

Justification for taking the power

330. This power provides for a type of detailed regulation that would not be appropriate for inclusion in primary legislation and is conventionally set out in secondary legislation. A regulation making power allows the necessary flexibility for each nation to update the wording of any health warning or information.

Justification for the procedure:

331. Regulations made under this power will be subject to the negative procedure. The prohibition of advertising tobacco, vaping, herbal smoking and nicotine products and cigarette papers is on the face of the Bill, with Clause 120 (Advertising: defences) providing defences. The negative procedure affords an appropriate level of parliamentary scrutiny for regulations, the detail of health warnings and other information which is to be included in an advertisement in a specialist tobacconist. Use of the affirmative procedure is considered to be an inappropriate use of parliamentary time relative to the minor potential impact on business of provision made by these regulations. This is also consistent with the procedure for the equivalent power in section 6 of the 2002 Act.

Brandsharing

Clause 122: Brandsharing

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose:

332. Section 11 of the [Tobacco Advertising and Promotion Act 2002](#) (“the 2002 Act”) provides a power to make regulations to prohibit or restrict “brandsharing”. [The Tobacco Advertising and Promotion \(Brandsharing\) Regulations 2004](#) (“the 2004 Regulations”) were made under section 11 of the 2002 Act and banned tobacco brandsharing and reverse brandsharing, with some exceptions, such as when the person using the tobacco feature is not employed by or been commissioned by the tobacco industry.

333. Brandsharing, or brandstretching as it is sometimes known, is a form of indirect advertising involving the use of tobacco branding on non-tobacco products or services, or vice versa. The rationale for acting against this form of advertising is that it also increases consumption of tobacco.

334. Prior to the ban, tobacco brandsharing was widespread, with companies promoting tobacco products using other products such as clothes or smoking accessories, one example being using a particular tobacco brand for Classic Clothing. Producers of vaping and nicotine products, i.e. nicotine pouches, could adopt similar marketing strategies that mirror the tobacco industry's previous brandsharing practice. This clause allows the government to regulate to prohibit or restrict such a practice.

335. The [Youth vaping call for evidence](#) undertaken by the Department for Health and Social Care in 2023 highlighted that the diverse range of branding associated with vaping could potentially expose children to vaping products. Similarly, the government's consultation included questions around policies which have the potential to reduce the appeal of vaping to children, with most respondents advocating that a prohibition on branding would satisfy this objective.

336. Clause 122 therefore re-enacts section 11 of the 2002 Act and extends its scope to enable regulation of brandsharing in relation to include vaping products and nicotine products, as well as herbal smoking products and cigarette papers.

337. The power requires the Secretary of State to obtain consent from Scottish Ministers and the Department of Health in Northern Ireland if the regulations contain provision which could be within the legislative competence of the Scottish Parliament or the Northern Ireland Assembly respectively.

338. Similar to section 11 of the 2002 Act, the power also enables the Secretary of State to create offences for failing to comply with the regulations with the penalties set out in the Bill.

Justification for taking the power

339. Regulations made under this power will cover a level of detail that is not appropriate for primary legislation. The regulations will set out the detail of the ban, which may need to be tailored for the different types of products, taking account of differences between the tobacco industry and vape and other product industries.

340. A regulation making power also enables a degree of flexibility to determine which products to regulate, and whether the same restrictions for tobacco and other products, the advertising of which is regulated by Part 6, would be appropriate. Flexibility is also needed to adapt restrictions if the vaping and nicotine product industry adopt brandsharing techniques in response to the extended advertising ban and ban on sponsorship of these products. The power enables future proofing to respond to any industry moves to use brandsharing as an alternative to direct advertising of vapes or nicotine products.

Justification for the procedure

341. Regulations made under this power will be subject to the affirmative procedure. These regulations will have an impact on the use of names, emblems and other features which identify a tobacco product, herbal smoking product, nicotine product, vaping product or cigarette papers and therefore has an impact on businesses owning such branding. The affirmative procedure will enable a debate and vote in both Houses of Parliament so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny to ensure that the right balance has been struck between industry and public health. This power also allows for the creation of criminal offences for failure to comply with the regulations.

Sponsorship

Clause 124: Sponsorship: vaping and nicotine and other products

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: None

Context and Purpose

342. Clause 124 makes it an offence to be party to an agreement and contribute in the course of a business such that this has the purpose or effect of promoting a herbal smoking product, a vaping or nicotine product and cigarette papers. The purpose of this clause is to restrict sponsorship deals that promote herbal smoking products, cigarette papers, vaping products and nicotine products to children and non-smokers. For example, by prohibiting sports teams from being sponsored by a vaping company, reducing the use of these products, and particularly tackling underage use, and thus improving public health.

343. Clause 124 comes into force two months after the day on which the Bill is passed (see clause 1689 Commencement: Parts 5 to 8 (2)(a)). The new offences will apply to agreements entered into after that date, when contributions are made under the agreement and the purpose or effect of anything done on or after the 'specified date' as a result of the agreement is to promote herbal smoking products, cigarette papers, vaping or nicotine products.

344. The date specified in regulations must be after the period of two months beginning with the day on which the Bill is passed.

Justification for taking the power

345. Having the ability to specify the relevant date by regulations will give the Secretary of State the ability to gauge when sufficient notice will have been given, so that there is no risk of any retrospective effect.

Justification for the procedure

346. Regulations made under this power do not have a parliamentary procedure attached to them. They are akin to commencement regulations, so it is not considered that any parliamentary scrutiny is required.

Power to extend advertising legislation

Clause 1323: Power to extend Part 6 and Communications Act 2003 to other products

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

347. This power will allow the Secretary of State to amend Part 6 (Advertising and sponsorship) of the Bill and the [Communications Act 2003](#) to extend any provision that applies to a tobacco product to also apply to ‘a device of a specified description which enables tobacco to be consumed (for example, a heated tobacco device or pipe),’ and ‘an item which is intended to form part of such a device.’ Before exercising this power, the Secretary of State must obtain consent from the devolved governments, if the provision is within devolved competence.

348. The tobacco industry is known to be extremely innovative and may produce new forms of tobacco product which are consumed via a device, and promotion of these devices may be used to encourage tobacco use. The industry is already known to do this with heated tobacco devices, which they claim they are permitted to advertise as the actual device is not a tobacco product.

349. The purpose of this power is to ensure that if it becomes necessary to prohibit advertising or promotion of certain devices that are used to consume tobacco this can be done to avoid indirect promotion of tobacco products.

350. Before making regulations under this power, the Secretary of State must obtain the consent from the Welsh Ministers, the Scottish Ministers or the Department of Health in Northern Ireland if the regulations contain provision which could be within the legislative competence of Senedd Cymru, the Scottish Parliament or the Northern Ireland Assembly respectively.

351. There are equivalent powers that apply to parts 1-3 of the Bill, at clauses 45 (Power to extend Part 1 to other products), 67 (Power to extend 2010 Act to other products), and 85 (Power to extend legislation to other products).

Justification for taking the power

352. The market is known to be extremely innovative. The tobacco industry is fast moving, and heated tobacco products first entered the market in 2016. Although their current usage in the UK is low, there is the potential for increase. This power is

needed to future proof the legislation so government can react in cases where the industry develop new devices or try to promote existing devices as a way to bypass the advertising and sponsorship restrictions in response to the additional tobacco control measures in this Bill. It will also enable us to react if use of heated tobacco or other ways to consume tobacco become more prominent. By providing a delegated power in this Bill, it ensures that we can act flexibly to changing markets.

353. The details of what devices would be in scope will be set out in the regulations and this level of detail is not appropriate for primary legislation. Whilst the power in clause 132 could be used to extend the scope of any provision in Part 6, the regulations would apply to a narrow scope of products.

354. This power will be subject to a requirement to consult any persons which the Secretary of State considers appropriate before making regulations. Consultation ensures that there will be appropriate engagement prior to any provisions being extended to include tobacco related devices.

Justification for the procedure

355. Regulations made under this power will be subject to the affirmative procedure. The affirmative procedure will enable a debate and vote in both Houses of Parliament, so that the impacts of the regulations can be subject to the appropriate parliamentary scrutiny to ensure that the right balance has been struck between industry and public health. This is a Henry VIII power that allows for primary legislation to be amended by subordinate legislation and the affirmative procedure is considered to provide the appropriate level of parliamentary scrutiny.

Part 7: Smoke-free places, Vape-free Places and Other Free-From Places

356. Second-hand (passive) smoke is extremely harmful to health and particularly dangerous to vulnerable people such as children, pregnant women, and those with pre-existing but usually invisible health conditions. People exposed to second-hand smoke are at increased risk of cancer, chronic (irreversible) respiratory disease and cardiovascular disease. Some harms are manifested immediately (such as asthma attacks), while others take years to develop (such as chronic obstructive pulmonary disease). The WHO estimate that every year second-hand smoke [kills up to 1.3 million people](#) worldwide.

357. The [Health Act 2006](#) provided means by which enclosed or substantially enclosed public places and places of work could be designated smoke-free to protect public health. Additional places could also be designated where there was a risk that, without designation, people present would be exposed to significant quantities of smoke. In 2007, we made the historic decision to ban smoking in indoor public places, and smoking prevalence in the UK today is the lowest on record. This has led to a significant drop in disease and pressure on the NHS.

358. The evidence on second-hand vaping is still developing. Whilst vapes are less harmful than smoking, there are legitimate concerns regarding the unknown long-term harms of vaping. Vapes produce aerosol that can also pose health risks to children and vulnerable people, for example by [acting as an irritant for those with](#)

[asthma](#)¹⁸. There are currently no legal restrictions on where people can vape, but many indoor places that are covered under smoke-free legislation have already voluntarily made themselves vape-free and/or introduced vape-free policies.

England

Clause 135: Addition of smoke-free places in England

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

359. Under Section 4 of the [Health Act 2006](#) (“the 2006 Act”), the Secretary of State could make regulations to designate additional places as smoke-free, provided that they were of the opinion that there was a significant risk persons present in such a place would be exposed to significant quantities of smoke without a smoke-free designation.

360. The power in section 4 of the 2006 Act has been amended to omit the risk condition, i.e. there does not have to be risk of exposure to significant level of smoke, for a relevant additional place to be designated smoke-free. Our assessment is this measure is no longer an appropriate test to define whether somewhere should be designated smoke-free. Some areas, such as children’s playgrounds, may not meet the existing test of significant quantities of smoke but, as these areas are where the most vulnerable will be exposed, it is appropriate to allow for action.

361. The purpose is to broaden the scope of the existing power so that additional places can more readily be designated as smoke-free places in England, particularly outdoor spaces. However, this expansion is mitigated by the addition that, as in section 2 of the 2006 Act, only workplaces or spaces open to the public can now be designated as additional smoke-free places, and only during the times they are being used.

362. Section 5 of the 2006 Act gave the Secretary of State powers to make regulations for vehicles to be smoke-free. The clause also amends section 5 to enable the Secretary of State to sub-delegate the designation of smoking areas within vehicles to identified categories of individual. This change has been made so that smoking-areas can be designated by persons familiar with how the vehicles operate.

Justification for taking the power

363. This is not a new power but an amendment of existing powers in sections 4 and 5 of the 2006 Act, and so there is precedent for a delegated power in this area.

¹⁸ [Association between Second-Hand Exposure to E-Cigarettes at Home and Exacerbations in Children with Asthma - PMC](#)

364. A delegated power continues to be appropriate as it will allow the government to set out detail at the appropriate level. Including the list of additional smoke-free places on the face of the Bill would prevent the list from being swiftly updated based on any evidence that may come to light about the harms of second-hand smoke in particular areas. Delegated powers help ensure that the regulatory framework is flexible and adaptable and that it can be adjusted as necessary to ensure its measures remain proportionate relative to their societal and public health impact.

365. Ahead of making regulations under this section, the Secretary of State must consult any persons the Secretary of State considers it appropriate to consult. This ensures that a full assessment of the health benefits, as well as other factors such as cost to business will take place each time the power is exercised.

Justification for the procedure

366. Regulations made under this power will be subject to the affirmative procedure, which is already the case for the 2006 Act sections this clause amends. Regulations made under this power would affect the scope of the smoke-free places restrictions. Therefore, the affirmative procedure will enable a debate and vote in both Houses of Parliament, so that the impacts of the regulations can be subject to appropriate parliamentary scrutiny.

Clause 136: Smoke-free premises: recasting of power to exempt performers

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

367. Section 3 of the [Health Act 2006](#) (“the 2006 Act”) provides that regulations may make provisions for those taking part in performances to be permitted to smoke if the artistic integrity of the performance made it appropriate.

368. Provision has been made under the [Smoke-free \(Exemptions and Vehicles\) Regulations 2007](#) to allow this exemption for performers. This clause recasts the performers exemption as a power for the Secretary of State to create limited defences to the offences of smoking in a smoke-free place and failing to prevent smoking in a smoke-free place. The effect of this is to provide an exception for performers enabling them to smoke during a performance, where it is justified in order to preserve the artistic integrity of the performance.

Justification for taking the power

369. This is an existing exemption making power which is being recast as a defence-making power to simplify its drafting and for greater consistency with the Bill’s other provisions. The scope of the power is very narrow, and a delegated power continues to be appropriate as there may come a time when this exemption is no longer necessary. For example, more sophisticated props may be developed that

better resemble smoking, rendering the need to smoke obsolete. A delegated power will allow the government to respond more swiftly to any such developments.

Justification for the procedure

370. Regulations made under provision will be subject to the affirmative procedure, which was the case for the original exemption making power in the 2006 Act. Use of the affirmative procedure is considered to be appropriate to allow consideration of impact on the industry.

Clause 137: No-smoking signs in England

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary procedure: Negative

Context and purpose

371. Section 6 of the [Health Act 2006](#) (“the 2006 Act”) contains provisions relating to no smoking signs. Clause 138 re-enacts existing powers in section 6(3) and 6(4), which provide that regulations may impose requirements relating to the appearance of signs and how they must be displayed.

372. This power already exists and has been redrafted slightly in this clause to make it clearer what exactly the regulations are able to stipulate in relation to signage requirements, and to make them more suitable for signage that needs to be displayed in outdoor settings.

373. Clauses 142 (No-smoking signs in Scotland), 148 (No-smoking signs in Wales) and 153 (No-smoking signs in Northern Ireland) are the equivalent powers in each nation.

Justification for taking the power

374. Delegated legislation is necessary to allow flexibility to adapt no-smoking signs to be fit for purpose with any areas that are designated smoke-free in the future.

375. This power is narrow in scope and we consider that it is more appropriate, due to their technical nature, for signage requirements to be set out in regulations. This is a level of detail which is conventionally set out in secondary legislation.

376. It is anticipated that the regulations will set specific requirements for what signs must be displayed and any specific warnings that must be given in relation to non-smoking premises. As it is an offence to smoke in smoke-free premises, it is necessary to ensure that signage requirements are effective and flexibility is needed in order to ensure this.

Justification for the procedure

377. These regulations will be made under the negative procedure, which is consistent with the procedure for the original powers in section 6 of the 2006 Act. This affords an appropriate level of parliamentary scrutiny for regulations that detail specifications for smoke-free signs. Use of the affirmative procedure is considered to be an inappropriate use of parliamentary time relative to the minor potential impact on business of provision made by these regulations.

Clause 138: Vape-free places in England

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary procedure: Affirmative sub-section 8B, 8C and 8D and Negative sub-section 8E

Context and purpose

378. Clause 138 inserts a new Chapter 1A into the [Health Act 2006](#) (“the 2006 Act”) that provides powers to make regulations to prohibit the use of vapes in places or vehicles, which are equivalent to those relating to the prohibition of smoking.

379. Clause 138 provides the Secretary of State the power to designate places and vehicles in England vape-free, and the power impose requirements in relation to no-vaping signage, which includes requirements relating to the appearance of the signs and how they must be displayed.

380. Clause 138 also gives the Secretary of State powers to create limited defences to the offences of vaping in a vape-free place and failing to prevent vaping in a vape-free place. In effect, this will provide an exemption for performers to vape during a performance for performers during a performance, if it can be justified to preserve the artistic integrity of the performance.

Justification for taking the power

381. The power to designate a space vape-free is limited in that for a place to be so designated it must already be designated as smoke-free.

382. Evidence on the harms of second-hand vaping is still emerging, although the harm is unlikely to be zero. A delegated power is appropriate in this context as it will enable government to update the regulatory framework in response to new evidence as it comes to light. This will help ensure that the provisions can be adapted swiftly to ensure they remain proportionate relative to their societal and public health impacts.

383. In particular, there is a tension between the benefits of vaping as a smoking cessation aid, the harms of second-hand vapour inhalation and the risk of children taking up vaping. Secondary legislation will help ensure that the correct balance is struck between these competing aims and that adjustments can be made as needed to redress any imbalances.

384. In relation to the ability to set signage requirements, a delegated power is appropriate due to the technical nature of the provisions. Other aspects of the vape-free framework, which are not minor and technical, such as offences, have been addressed on the face of the Bill. The power includes the defence for vaping during a performance, if the usage is justified to preserve the artistic integrity of the performance. By including this as a power, it provides the flexibility required to adapt these defences in the future if needed.

385. Ahead of making regulations under section 8B, the Secretary of State must consult any persons they consider it appropriate to consult. This will ensure that a full assessment of the health benefits, as well as other factors such as cost to business, take place each time the power is exercised.

Justification for the procedure

386. Regulations made under sub-section 8B relating to the designation of vape-free places and vehicles will be subject to the affirmative procedure. Regulations made under this power will limit where a person may use a vape, and therefore this may impact both individuals and businesses. The affirmative procedure will enable a debate and vote in both Houses of Parliament, thereby ensuring the correct level of scrutiny.

387. Regulations made under sub-section 8E relating to signage will be subject to the negative procedure, which is the same as the equivalent smoke-free provisions in the 2006 Act. The negative procedure affords an appropriate level of parliamentary scrutiny for these regulations, which are limited to setting no-vaping signage requirements and creating exceptions relating to signage requirements in vehicles. Use of the affirmative procedure is considered to be an inappropriate use of parliamentary time relative to the minor potential impact on business of provision made by these regulations.

Clause 139: Heated tobacco-free places in England

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary procedure: Affirmative sub-section 8G, 8H and 8I and Negative sub-section 8J

Context and purpose

388. Clause 139 inserts a new Chapter 1B into the [Health Act 2006](#) (“the 2006 Act”) to provide powers to make regulations to prohibit the use of heated tobacco in places or vehicles.

389. Clause 139 provides the Secretary of State with powers to designate places and vehicles in England heated tobacco-free and the power to impose requirements in relation to no-heated tobacco signage, which includes requirements relating to the appearance of the signs and how they must be displayed. This clause also gives the Secretary of State powers to create limited defences to the offences of using a heated tobacco device in a heated tobacco-free place and failing to prevent use. In

effect, this will provide an exemption for performers to use a heated tobacco device during a performance, if it is justified to preserve the artistic integrity of the performance.

Justification for taking the power

390. The power to designate spaces is limited in that for a place to be designated heated-tobacco free it must already be designated smoke-free.

391. Heated tobacco is a novel tobacco product. Its use is currently limited in the UK¹⁹, but increasing and independent evidence on the harms of second hand heated tobacco vapour is also limited. A delegated power is appropriate in this context, as it will enable government to update the regulatory framework in response to new evidence as it comes to light, including increased usage of these products. This will help ensure that the provisions can be adapted swiftly to ensure they remain proportionate relative to their societal and public health impacts.

392. A delegated power is more appropriate in relation to the power to set requirements in relation to signage due to the technical nature of the provisions. For example, the power to adapt signage so that it will be fit for purpose in heated tobacco-free places is typically too technical for primary legislation. Other aspects of the heated tobacco-free framework, which are not minor and technical, such as offences, are contained in primary legislation.

393. The power includes the defence for the use of heated tobacco during a performance, if the usage is justified to preserve the artistic integrity of the performance. By including this as a power, it provides the flexibility required to adapt these defences in the future if needed.

394. Ahead of making regulations under section 8G, the Secretary of State must consult any persons they consider it appropriate to consult. This will ensure that a full assessment of the health benefits, as well as other factors such as cost to business take place each time the power is exercised.

Justification for the procedure

395. Regulations made under sub-section 8G 8H and 8I relating to the designation of heated tobacco-free places and defences for performers will be subject to the affirmative procedure. Regulations made under this power will limit where a person may use heated tobacco and therefore this may impact them on both individuals and businesses. The affirmative procedure will enable a debate and vote in both Houses of Parliament, thereby ensuring the correct level of scrutiny.

396. Regulations made under sub-section 8J relating to signage will be subject to the negative procedure, which is the same as the equivalent smoke-free provisions in the 2006 Act. The negative procedure affords an appropriate level of parliamentary scrutiny for these regulations which are limited to setting no-heated tobacco signage requirements and creating exceptions relating to signage requirements in vehicles. Use of the affirmative procedure is considered to be an inappropriate use of

¹⁹ [E Cigarettes Latest Trends - Graphs - Smoking in England](#)

parliamentary time relative to the minor potential impact on business of provision made by these regulations.

Scotland

Clause 141: No-smoking premises in Scotland

Power conferred on: Scottish Ministers

Power exercised by: Regulations by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

397. Section 4 of the [Smoking, Health and Social Care \(Scotland\) Act 2005](#) (“the 2005 Act”) provides Scottish Ministers with the power to prescribe “no-smoking premises.” This clause amends section 4.

398. The purpose of this amendment is to broaden the scope of places that Scottish Ministers can designate as smoke-free, including shared outdoor places. This expansion is mitigated as the spaces that can be designated smoke-free are limited to wholly or substantially enclosed spaces, workplaces or spaces open to the public, and only during the times they are being so used. The amendments also bring greater alignment between smoke-free provisions across the UK.

Justification for taking the power

399. The justification for taking the power is the same as that outlined for the equivalent power in clause 135 (Addition of smoke-free places in England) for England.

Justification for the procedure

400. Regulations made under this power will be subject to the affirmative procedure as is already the case for section 4 of the 2005 Act, which is amended. Regulations made under this power will affect the scope of the smoke-free places restrictions. Therefore, the affirmative procedure will enable a debate and vote in the Scottish Parliament, thereby ensuring the appropriate parliamentary scrutiny.

Clause 142: No-smoking signs in Scotland

Power conferred on: Scottish Ministers

Power exercised by: Regulations by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Context and Purpose

401. Section 3 of the Smoking, Health and Social Care (Scotland) Act 2005 contains provisions relating to the display on no-smoking signs. Clause 142 re-enacts existing

section 3 making provision for regulations to impose requirements relating to the appearance of signs and how they must be displayed to create consistency with equivalent Bill provisions.

402. Clauses 137 (No-smoking signs in England), 148 (No-smoking signs in Wales) and 153 (No-smoking signs in Northern Ireland) are the equivalent powers in each nation.

Justification for taking the power

403. The justification for taking the power is the same as that outlined for the equivalent power in clause 137 (No-smoking signs in England) for England.

Justification for taking the procedure

404. Regulations made under this power will be subject to the affirmative procedure as is already the case for section 3 of the 2005 Act. The affirmative procedure will enable a debate and vote in The Scottish Parliament, thereby ensuring appropriate scrutiny.

Clause 143: Vape-free premises in Scotland

Power conferred on: Scottish Ministers

Power exercised by: Regulations by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

405. This clause inserts a new section Chapter 2 into Part 1 of the [Smoking, Health and Social Care \(Scotland\) Act 2005](#) to enable Scottish Ministers to make regulations to prohibit the use of vapes in specified places and vehicles, which are equivalent to those relating to the prohibition of smoking.

406. The purpose and rationale for this power are the same as those outlined for the equivalent power in England, clause 138 (Vape-free places in England).

Justification for taking the power

407. The justification for taking the power is the same as that outlined for the equivalent power in clause 138 (Vape-free places in England) for England.

Justification for the procedure

408. Regulations made under this power will be subject to the affirmative procedure, as is the case for their equivalent smoke-free provisions. Regulations made under this power may limit where a person may use vapes and therefore this may impact on both individuals and businesses. The affirmative procedure will enable a debate and vote in the Scottish Parliament, thereby ensuring appropriate scrutiny.

Clause 144: Heated tobacco-free premises in Scotland

Power conferred on: Scottish Ministers

Power exercised by: Regulations by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Context and purpose

409. This clause inserts a new Chapter 3 into Part 1 of the [Smoking, Health and Social Care \(Scotland\) Act 2005](#) to enable Scottish Ministers to make regulations to prohibit the use of heated tobacco in specified places and vehicles.

410. The purpose for taking the power is the same as that outlined for the equivalent power in clause 139 (Heated tobacco-free places in England) for England.

Justification for taking the power

411. The justification for taking the power is the same as that outlined for the equivalent power in clause 139 (Heated tobacco-free places in England) for England.

Justification for the procedure

412. Regulations made under this power will be subject to the affirmative procedure. Regulations made under this power will limit where a person may use heated tobacco and therefore this may impact on both individuals and businesses. The affirmative procedure will enable a debate and vote in the Scottish Parliament, thereby ensuring sufficient scrutiny.

Wales

Clause 148: No-Smoking signs in Wales

Power conferred on: The Welsh Ministers

Power exercised by: Regulations by Statutory Instrument

Parliamentary procedure: Negative

Context and purpose

413. Section 17 of the [Public Health \(Wales\) Act 2017](#) contains provisions relating to no smoking signs. This clause re-enacts existing powers in section 17(1) and 17(2), which provide that regulations may impose requirements relating to how signs are to be displayed and requirements to which they must conform.

414. This power already exists and has been redrafted slightly in this clause to make it clearer what exactly the regulations are able to stipulate in relation to signage requirements, and to make them more suitable for signage that needs to be displayed in outdoor settings.

415. Clauses 137 (No-smoking signs in England), 142 (No-smoking signs in Scotland) and 153 (No-smoking signs in Northern Ireland) are the equivalent powers in each nation.

Justification for taking the power

416. The justification for taking the power is set out in the equivalent clause for England, clause 137 (No-smoking signs in England).

Justification for the procedure

417. Regulations made under this power relating to signage will be subject to the negative procedure, which is the same as the original powers in section 17 of the [Public Health \(Wales\) Act 2017](#). The negative procedure affords an appropriate level of parliamentary scrutiny for these regulations. Use of the affirmative procedure is considered to be an inappropriate use of parliamentary time relative to the minor potential impact on business of provision made by these regulations.

Clause 149: Vape-free places in Wales

Power conferred on: Welsh Ministers

Power exercised by: Regulations by Statutory Instrument

Parliamentary procedure: Affirmative sub-section 17B and Negative sub-section 17E

Context and purpose

418. Clause 142 inserts a new Chapter 1A into the [Public Health \(Wales\) Act 2017](#), which provides powers to make regulations to prohibit the use of vapes in specified places and vehicles in Wales, which are equivalent to those relating to the prohibition of smoking.

419. The purpose and rationale of this power are the same as those outlined for England in clause 138 (Vape-free places in England).

Justification for taking the power

420. The justification for taking the power is the same as that outlined for the equivalent power in clause 138 for England.

Justification for the procedure

421. Regulations made under 17B relating to the designation of vape-free places and vehicles will be subject to the affirmative procedure. Regulations made under this power will prohibit where a person may use a vape. Therefore, this may impact on both individuals and businesses. The affirmative procedure will enable a debate and vote in the Senedd Cymru (Welsh Parliament), ensuring appropriate parliamentary scrutiny.

422. Regulations made under 17E relating to signage will be subject to the negative procedure, which is the same as the equivalent smoke-free provisions in the [Public](#)

[Health \(Wales\) Act 2017](#). The negative procedure affords an appropriate level of parliamentary scrutiny for these regulations which are limited to setting no-vaping signage requirements and creating exceptions relating to signage requirements in vehicles. Use of the affirmative procedure is considered to be an inappropriate use of parliamentary time relative to the minor potential impact on business of provision made by these regulations.

Clause 150: Heated tobacco-free places in Wales

Power conferred on: Welsh Ministers

Power exercised by: Regulations by Statutory Instrument

Parliamentary procedure: Affirmative sub-section 17G and Negative sub-section 17J

Context and purpose

423. This clause amends the [Public Health \(Wales\) Act 2017](#) by inserting a new Chapter 1B which provides a power to make regulations that prohibit the use of heated tobacco in places or vehicles which are equivalent to those relating to the prohibition of smoking in those settings.

424. The purpose and rationale of this power is the same as that outlined in the equivalent clause for England, clause 139 (Heated tobacco-free places in England).

Justification for taking the power

425. The justification for taking the power is the same as that outlined for the equivalent power in clause 139 (Heated tobacco-free places in England) for England.

Justification for the procedure

426. Regulations made under sub-section 17G relating to the designation of heated tobacco-free places will be subject to the affirmative procedure like its smoking equivalent. Regulations made under this power will prohibit where a person may use heated tobacco and therefore this may impact both individuals and businesses. The affirmative procedure will enable a debate and vote in the Senedd Cymru (Welsh Parliament), ensuring appropriate scrutiny.

427. Regulations made under sub-section 17J relating to signage requirements will be subject to the negative procedure, which is the same as the equivalent smoke-free provisions in the [Public Health \(Wales\) Act 2017](#). The negative procedure affords an appropriate level of parliamentary scrutiny for these regulations which are limited to setting no-heated tobacco signage requirements and creating exceptions relating to signage requirements in vehicles. Use of the affirmative procedure is considered to be an inappropriate use of parliamentary time relative to the minor potential impact on business of provision made by these regulations.

Northern Ireland

Clause 152: Additional smoke-free places in Northern Ireland

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations by Statutory Rule

Northern Ireland Assembly procedure: Affirmative

Context and purpose

428. Clause 152 amends Article 5 of [The Smoking \(Northern Ireland\) Order 2006](#) (“the 2006 Order”), which enabled the Department of Health in Northern Ireland to designate additional places smoke-free.

429. Under Article 5, the Department could designate such spaces smoke-free only if satisfied that, without the designation, persons present would be likely to be exposed to smoke. Clause 152 omits this pre-condition.

430. The purpose and rationale for this power are the same as those outlined in the section on the equivalent power for England, clause 135 (Addition of smoke-free places in England).

Justification for taking the power

431. The justification for taking this power is the same as the equivalent power for England (clause 135 Addition of smoke-free places in England).

Justification for the procedure

432. Regulations made under this power will be subject to the affirmative procedure and so there has been no change from the procedure of the original Article 5 provisions. Regulations made under this power would impact the scope of the smoke-free places restrictions. Therefore, the affirmative procedure will enable a debate and vote in the Northern Ireland Assembly and ensure sufficient scrutiny.

Clause 153: No-smoking signs in Northern Ireland

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations by Statutory Rule

Northern Ireland Assembly procedure: Negative

Context and purpose

433. Article 7 of [The Smoking \(Northern Ireland\) Order 2006](#) (“the 2006 Order”) contains provisions relating to no smoking signs. Clause 154 re-enacts existing powers in article 7(3) and 7(4) which provide that regulations may impose requirements relating to the appearance of signs and now they must be displayed.

434. This power already exists and has been redrafted slightly in this clause to make it clearer what exactly the regulations are able to stipulate in relation to signage requirements, and to make them more suitable for signage that needs to be displayed in outdoor settings.

435. Clauses 142 (No-smoking signs in Scotland), 148 (No-smoking signs in Wales) and 137 (No-smoking signs in England) are the equivalent powers in each nation.

Justification for taking the power

436. The justification for taking this power is the same as in the equivalent clause for England, clause 137 (No-smoking signs in England).

Justification for the procedure

437. These regulations will be subject to the negative procedure, which is the same as the original provisions in the 2006 Order. The negative procedure affords an appropriate level of scrutiny for these regulations. Use of the affirmative procedure is considered to be an inappropriate use of time relative to the minor potential impact on business of provision made by these regulations.

Clause 154: Vape-free places in Northern Ireland

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations by Statutory Rule

Northern Ireland Assembly procedure: Affirmative sub-section 9A and Negative sub-section 9B

Context and purpose

438. Clause 154 inserts a new Part 3 into [The Smoking \(Northern Ireland\) Order 2006](#), providing regulation-making powers to specify places or vehicles in Northern Ireland as vape-free.

439. The purpose and rationale of this power is the same as that which is set out for the equivalent power for England, clause 138 (Vape-free places in England).

Justification for taking the power

440. The justification for taking the power is the same as that outlined for the equivalent power in clause 138 (Vape-free places in England) for England.

Justification for the procedure

441. Regulations made under sub-section 9A relating to the designation of vape-free places and vehicles will be subject to the affirmative procedure like their smoke-free equivalents. Regulations made under this power will limit where a person may use vapes and therefore may impact on both individuals and businesses. The affirmative procedure will enable a debate in the Northern Ireland Assembly, thereby ensuring sufficient scrutiny.

442. Regulations made under sub-section 9B relating to signage will be subject to the negative procedure, which is the same as the equivalent smoke-free provisions

in [The Smoking \(Northern Ireland\) Order 2006](#). The negative procedure affords an appropriate level of scrutiny for these regulations, which are limited to setting no-vaping signage requirements and creating exceptions relating to signage in vehicles. Use of the affirmative procedure is considered to be an inappropriate use of time relative to the minor potential impact on business of provision made by these regulations.

Clause 155: Heated tobacco-free places in Northern Ireland

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations by Statutory Rule

Northern Ireland Assembly procedure: Affirmative sub-section 9E and Negative sub-section 9F

Context and purpose

443. This clause amends [The Smoking \(Northern Ireland\) Order 2006](#) (“the 2006 Order”) by inserting a new Part 4, which contains regulation-making powers which would allow for places or vehicles in Northern Ireland to be designated heated tobacco-free.

444. The purpose and rationale for this power is the same as that outlined in the equivalent clause for England, clause 139 (Heated tobacco-free places in England).

Justification for taking the power

445. The justification for taking the power is the same as that outlined for the equivalent power in clause 139 (Heated tobacco-free places in England) for England.

Justification for the procedure

446. Regulations made under sub-section 9E relating to the designation of heated tobacco-free places will be subject to the affirmative procedure. Regulations made under this power will prohibit where a person may use heated tobacco and therefore this may impact on both individuals and businesses. The affirmative procedure will enable a debate in the Northern Ireland Assembly, ensuring an appropriate level of scrutiny.

447. Regulations made under sub-section 9F relating to signage will be subject to the negative procedure, which is the same as the equivalent smoke-free provisions in the 2006 Order. The negative procedure affords an appropriate level of scrutiny for these regulations which are limited to setting no-heated tobacco signage requirements and creating exceptions relating to signage in vehicles. Use of the affirmative procedure is considered to be an inappropriate use of time relative to the minor potential impact on business of provision made by these regulations.

Ships

Clause 157: Power to prohibit vaping etc on ships

Power conferred on: Secretary of State

Power exercised by: Regulations by Statutory Instrument

Parliamentary procedure: Negative

Context and purpose

448. The [Health Act 2006](#) amended section 85 of the [Merchant Shipping Act 1995](#) (“the 1995 Act”) to enable safety regulations made under that Act to provide for smoke-free provision for ships and hovercraft which corresponds with provisions in the Health Act 2006.

449. The purpose of this clause is to amend section 85 of the Merchant Shipping Act, in line with the amendments made to the [Health Act 2006](#) in this Bill, to enable safety regulations made under section 85 to provide for vape-free and heated tobacco-free provision for ships and hovercraft, which corresponds with provisions in the [Health Act 2006](#).

Justification for taking the power

450. This clause amends an existing regulation making power. It provides for a type of detailed regulation that would not be appropriate for primary legislation and is conventionally set out in secondary legislation.

Justification for procedure

451. Regulations made under this power will be subject to the negative procedure. This is the procedure taken in section 85 of the 1995 Act, which is amended by this clause. Use of the affirmative procedure would be an inappropriate use of parliamentary time relative to the potential impact of the regulations made under this clause.

Part 8: General

Clause 160: Power of Secretary of State to make consequential provision

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: Affirmative in relation to primary legislation, otherwise negative

Context and Purpose

452. Clause 160 confers a power on the Secretary of State to make provision that is consequential on this Bill.

453. Regulations that make consequential provision may amend, repeal, or revoke any primary legislation passed before, or later in the same session of Parliament as

this Bill (including provision made by this Bill). Amending, revoking, or repealing primary legislation must be subject to the affirmative procedure; amendments to any other legislation are subject to the negative procedure.

454. This power may be needed to give effect to the provisions in and made under the Bill.

Justification for taking the power

455. This power may only be exercised to make provision that is consequential in this Bill. This power is required to enable consequential amendments to secondary legislation, of which the government is aware, and it is standard practice to make such amendments through secondary legislation. The power also provides for consequential amendments to primary legislation, because, although every effort has been made to identify and make provision in the Bill for such amendments, the Bill brings together a whole range of legislation made over the course of the last century on a range of overlapping topics, which increases the complexity. Therefore, there is the small possibility that further consequential amendments may be required to give effect to the Bill and the commencement of the replacement provisions in the Bill being made bit by bit. The government considers that it would therefore be prudent for the Bill to contain a power to deal with these in secondary legislation.

456. The rationale for including provisions that are made by this Act is due to the complex nature of commencement of provisions in the Bill. Some provisions will become spent or otiose as changes to the complex legislative landscape across the UK progress.

Justification for the procedure

457. Any regulations made under this power are subject to the negative procedure, or the affirmative procedure where they are used to amend primary legislation. Insofar as this power is used to amend primary legislation, it is a Henry VIII power. Any regulations amending statutory instruments will be subject to the negative procedure as the changes are unlikely to be substantive and will only be ensuring the effectiveness of the provisions. The affirmative procedure is considered appropriate so that any change to primary legislation can be debated and approved in both Houses of Parliament.

Clause 161: Power of Scottish Ministers to make consequential provision

Power conferred on: Scottish Ministers

Power exercised by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative procedure, unless the power is exercised to modify primary legislation then affirmative procedure.

Context and Purpose

458. Clause 161 confers a power on Scottish Ministers to make provision consequential on Part 2 (Sale and Distribution), clauses 141 (No-smoking premises in Scotland), 142 (No-smoking signs in Scotland), 143 (Vape-free premises in Scotland), 144 (Heated tobacco-free premises in Scotland) and 145 (Amendments consequential on sections 141 to 144), and Schedule 18 (smoke-free places, vape-free places and other free-from places: Scotland) of the Bill. Regulations that make consequential provision may amend, repeal or revoke an Act passed before, or later in the same session of Parliament, as this Bill, or an Act of the Scottish Parliament passed before this Bill.

459. This power may be needed to make amendments to legislation if required in consequence of Part 2, clauses 141 to 145, and Schedule 18 of the Bill to give it effect. Regulations can be made under this power on the day the Bill is passed, similar to the power in clause 160 (Power of Secretary of State to make consequential provision), clause 162 (Power of Welsh Ministers to make consequential provision), and clause 163 (Power of Northern Ireland department to make consequential provision).

Justification for taking the power

460. This power may only be exercised to make provision that is consequential on Part 2, clauses 141 to 145, and Schedule 18 of the Bill. This power is required to enable consequential amendments to secondary legislation, of which the government is aware, and it is standard practice to make such amendments through secondary legislation. The power also provides for consequential amendments to primary legislation, because although every effort has been made to identify and make provision in the Bill for such amendments, the Bill does bring together a whole range of legislation made over the course of the last century and therefore there is the small possibility that further consequential amendments may be required to give effect to the Bill. The government considers that it would therefore be prudent for the Bill to contain a power for Scottish Ministers to deal with these in secondary legislation.

Justification for the procedure

461. Any regulations made under this power are subject to the negative procedure, or the affirmative procedure where they are used to amend primary legislation. Insofar as this power is used to amend primary legislation, it is a Henry VIII power. Any regulations amending statutory instruments will be subject to the negative procedure as the changes are unlikely to be substantive and will only be ensuring the effectiveness of the provisions. In line with DPRRC guidance, the affirmative procedure is considered appropriate so that any change to primary legislation can be debated in the Scottish Parliament.

Clause 162: Power of Welsh Ministers make consequential provision

Power conferred on: Welsh Ministers

Power exercised by: Regulations by Statutory Instrument

Parliamentary procedure: Negative procedure, unless the power is exercised to modify primary legislation then affirmative procedure

Context and Purpose

462. Clause 162 confers a power on Welsh Ministers to make consequential provision on Part 1 (sale and distribution), sections 146 (Smoke-free places and vehicles in Wales: duty to consult), 147 (Smoke-free vehicles in Wales), 148 (No-smoking signs in Wales), 149 (Vape-free places in Wales), 150 (Heated tobacco-free places in Wales) 151 (Amendments consequential on sections 146 to 150), and Schedule 19 (smoke-free places, vape-free places and other free-from places: Wales). The power may amend, repeal, or revoke an Act passed before, or later in the same session of Parliament as this Bill, or an Act or Measure of Senedd Cymru passed before this Bill. Only provision that would be within the legislative competence of Senedd Cymru may be made under this power.

463. This power may be needed to make amendments to legislation if required in consequence of this Bill to give it effect.

Justification for taking the power

464. This power may only be exercised to make provision that is consequential in this Bill. This power is required to enable consequential amendments to secondary legislation, of which the government is aware, and it is standard practice to make such amendments through secondary legislation. The power also provides for consequential amendments to primary legislation, because although every effort has been made to identify and make provision in the Bill for such amendments, the Bill brings together a whole range of legislation made over the course of the last century on a range of overlapping topics, which increases the complexity. Therefore, there is the small possibility that further consequential amendments may be required to give effect to the Bill and the commencement of the replacement provisions in the Bill potentially being made bit by bit. The government considers that it would therefore be prudent for the Bill to contain a power for Welsh Ministers to deal with these in secondary legislation.

Justification for the procedure

465. Any regulations made under this power are subject to the negative procedure, or the affirmative procedure where they are used to amend primary legislation. Insofar as this power is used to amend primary legislation, it is a Henry VIII power. Any regulations amending statutory instruments will be subject to the negative procedure as the changes are unlikely to be substantive and will only be ensuring the effectiveness of the provisions. The affirmative procedure is considered appropriate so that any change to primary legislation can be debated and approved in the Senedd Cymru.

Clause 163: Power of Northern Ireland Department to make consequential provision

Power conferred on: Department of Health in Northern Ireland

Power exercised by: Regulations by Statutory Rule

Parliamentary procedure: Negative procedure, unless the power is exercised to modify primary legislation then affirmative procedure

Context and Purpose

466. Clause 163 confers a power on the Department of Health in Northern Ireland to make provision consequential on Part 3 (Sale and Distribution), clauses 152 (Additional smoke-free places in Northern Ireland), 153 (No-smoking signs in Northern Ireland), 154 (Vape-free places in Northern Ireland), 155 (Heated tobacco-free places in Northern Ireland), 156 (Amendments consequential on sections 152 to 155), and Schedule 20 (smoke-free places, vape-free places and other free-from places: Northern Ireland) of the Bill. Regulations that make consequential provision may amend, repeal or revoke an Act passed before, or later in the same session of Parliament as this Bill, or Northern Ireland legislation passed or made before this Bill.

467. This power may be needed to make amendments to legislation if required in consequence of Part 3, clauses 152 to 156, and Schedule 20 of the Bill to give it effect, similar to the power in clause 160 (Power of Secretary of State to make consequential provision, clause 161 (Power of Scottish Ministers to make consequential provision), and clause 162 (Power of Welsh Ministers to make consequential provision).

Justification for taking the power

468. This power may only be exercised to make provision that is consequential on Part 3 (Sale and Distribution), clauses 152 to 156, and Schedule 20 of the Bill. This power is required to enable consequential amendments to secondary legislation, of which the government is aware, and it is standard practice to make such amendments through secondary legislation. The power also provides for consequential amendments to primary legislation, because although every effort has been made to identify and make provision in the Bill for such amendments, the Bill does bring together a whole range of legislation made over the course of the last century and therefore there is the small possibility that further consequential amendments may be required to give effect to the Bill. The government considers that it would therefore be prudent for the Bill to contain a power for a Northern Ireland Department to deal with these in secondary legislation.

Justification for the procedure

469. Any regulations made under this power are subject to the negative procedure, or the affirmative procedure where they are used to amend primary legislation. Insofar as this power is used to amend primary legislation, it is a Henry VIII power. Any regulations amending statutory instruments will be subject to the negative procedure as the changes are unlikely to be substantive and will only be ensuring the effectiveness of the provisions. The affirmative procedure is considered appropriate so that any change to primary legislation can be debated and approved in the Northern Ireland Assembly.

Clause 164: Regulations: general

Power conferred on: provision supplementary to powers conferred on the Secretary of State, Scottish Ministers, Welsh Ministers and the Department of Health in Northern Ireland

Power exercised by: Regulations made by Statutory Instrument

Parliamentary procedure: as per the relevant substantive power

Context and Purpose

470. The supplementary power in clause 167 allows any regulations that are made under powers in this Bill, except for clauses 167 (Commencement: Parts 1 to 4), clause 168 (Commencement: Parts 5 to 8) or 169 (Transitional provision), to make consequential, supplementary, incidental, transitional or saving provision, provision for different purposes and different provision for different parts of the United Kingdom.

Justification for taking the power

471. This is a standard provision in legislation as it provides that a power to make regulations under the Bill may include any provision necessary to ensure the legislation can operate effectively in practice. The provisions outlined in the power will help to ensure the legislation works within the existing legislative framework.

Justification for the procedure

472. The parliamentary procedure attaching to the substantive power to which provision mentioned in this clause relates will be applicable.

Clause 167: Commencement: Parts 1 to 4

Power conferred on: Secretary of State, Welsh Ministers, Scottish Ministers and Department of Health in Northern Ireland

Power exercised by: Regulations or an order made by Statutory Instrument

Parliamentary procedure: None

Context and Purpose

473. Clause 167 contains a power for the Secretary of State to bring clauses 16 (Prohibition of retail sales of tobacco products etc without a licence) to 18 (Financial penalties for breach of licence conditions: England), Schedule 1 (Retail licensing scheme: England) and Schedule 2 (Financial penalties for breach of retail licence conditions: England) into force by regulations, and different days may be appointed for different purposes.

474. Clause 167 contains a power for Welsh Ministers to bring clauses 40 (Handing over tobacco etc to underage people in Wales), 19 (Prohibition of retail sales of tobacco products etc in Wales without a licence) 20 (Offences in connection with

licences: Wales), 21 (Financial penalties for breach of licence conditions: Wales), 22 (Repeal of register of retailers of tobacco and nicotine products in Wales etc), and Schedules 3 (Retail licensing scheme: Wales), 4 (Financial penalties for breach of retail licence conditions: Wales) and 5 (Handing over tobacco etc to underage people in Wales) of the Bill into force by regulations, and different days may be appointed for different purposes.

475. Clause 167 contains a power for Scottish Ministers to bring clause 65 (Extension of retailer register etc) and Schedule 9 (Extension of retailer register etc: Scotland) of the Bill into force by regulations, and different days may be appointed for different purposes.

476. Clause 167 contains a power for the Department of Health in Northern Ireland to bring clause 83 (Extension of retailer register), 84 (Prohibition of retail sales of tobacco products etc without a licence) and Schedules 10 (Extension of retailer register: Northern Ireland), 11 (Retail licensing scheme in Northern Ireland), 12 (Financial penalties for breach of retail licence conditions in Northern Ireland) and 13 (Licensing of retail sales of tobacco products etc: consequential amendments) of the Bill into force by order, and different days may be appointed for different purposes.

Justification for taking the power

477. Clause 40 (Handing over tobacco etc underage people in Wales) and Schedule 5 (Handing over tobacco etc to underage people in Wales) amend provisions of the [Public Health \(Wales\) Act 2017](#) which have not yet been brought into force and are subject to commencement on such a day as Welsh Ministers may appoint by regulations made by statutory instrument. Therefore, for consistency with the existing structure, it is appropriate to use this same approach to commence the amendments made by the Bill.

478. Clause 65 (Extension of retailer register etc) and Schedule 9 (Extension of retailer register etc: Scotland) amend provisions of the Tobacco and Primary Medical Services (Scotland) Act 2010 (“the 2010 act”) to extend the provisions to include herbal smoking products and nicotine products. The provisions within the 2010 Act are commenced by statutory instrument and commencement via statutory instrument enables necessary flexibility to deal with matters concerning the technical implementation of the policy, such as developing new IT systems.

479. Clauses 83 (Extension of retailer register), 84 (Prohibition of retail sales of tobacco products etc without a licence) and Schedules 10 (Extension of retailer register: Northern Ireland), 11 (Retail licensing scheme in Northern Ireland), 12 (Financial penalties for breach of retail licence conditions in Northern Ireland) and 13 (Licensing of retail sales of tobacco products etc: consequential amendments) amend provisions to the [Tobacco Retailers Act \(Northern Ireland\) 2014](#) to extend the provisions to include vaping products and nicotine products. Commencement via statutory rule enables necessary flexibility to deal with matters concerning the technical implementation of the policy, such as developing new IT systems.

480. Clauses 16 (Prohibition of retail sales of tobacco products etc in England without a licence), 18 (Financial penalties for breach of retail licensing conditions: England), Schedule 1 (Retail licensing scheme: England) and Schedule 2 (Financial penalties for breach of retail licence conditions: England) are subject to

commencement on such a day as the Secretary of State may appoint by regulations made by statutory instrument. This enables the necessary flexibility to deal with matters regarding the technical implementation of a licensing scheme, e.g. new IT infrastructure.

Justification for the procedure

481. As usual with commencement powers, regulations made under this clause are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them and commencement by statutory instrument enables the provisions to be brought into force at a convenient time and in an orderly manner.

Clause 168: Commencement: Parts 5 to 8

Power conferred on: Secretary of State, Welsh Ministers, Scottish Ministers and Department of Health in Northern Ireland

Power exercised by: Regulations or an order made by Statutory Instrument

Parliamentary procedure: None

Context and Purpose

482. Clause 168 confers a power on the Secretary of State to commence provisions in Part 6 (excluding clauses 124, 131, 133, and 134), and clauses 135 (Addition of smoke-free places in England), 136 (Smoke-free premises: recasting of power to exempt performers), 137 (No-smoking signs in England), 138 (Vape-free places in England), 139 (Heated tobacco-free places in England), 140 (Amendments consequential on sections 135 to 139), 157 (Power to prohibit vaping etc on ships), 159 (Further consequential amendments), Schedules 17 (Amendments consequential on sections 135 to 139) and 21 (Consequential amendments: general).

483. This clause confers a power on Scottish Ministers to commence provisions in clauses 141 (No-smoking premises in Scotland), 142 (No-smoking signs in Scotland), 143 (Vape-free premises in Scotland), 144 (Heated tobacco-free premises in Scotland) 145 (Amendments consequential on sections 141 to 144), and Schedule 18 (Amendments consequential on sections 141 to 144).

484. This clause confers a power on Welsh Ministers to commence provisions in clauses 146 (Smoke-free places and vehicles in Wales: duty to consul), 147 (Smoke-free vehicles in Wales), 148 (No-smoking signs in Wales), 149 (Vape-free places in Wales), 150 (Heated tobacco-free places in Wales), 151 (Amendments consequential on sections 146 to 150), and Schedule 19 (Amendments consequential on sections 146 to 150).

485. This clause confers a power on the Department of Health in Northern Ireland to commence clauses 152 (Additional smoke-free places in Northern Ireland), 153 (No-smoking signs in Northern Ireland), 154 (Vape-free places in Northern Ireland), 155 (Heated tobacco-free places in Northern Ireland), 156 (Amendments

consequential on sections 152 to 155) and Schedule 20 (Amendments consequential on sections 152 to 155).

Justification for taking the power

486. It is appropriate to commence Part 6 of the Bill together with the amendments consequential on Part 6 by regulations because Part 6 in part replaces the [Tobacco Advertising and Promotion Act 2002](#) (TAPA). When Part 6 is fully commenced, TAPA and associated legislation will be repealed and, as part of the repeal, regulations will need to be made in order to maintain the current ban on displays and advertising of tobacco products. The government will also consider the appropriate timing for an introduction of a ban on advertising of vaping and other products in order to allow appropriate notice to minimise costs to business.

487. Health is a devolved matter, and the devolved governments currently exercise powers in their respective legislature ([Public Health \(Wales\) Act 2017](#), [Smoking, Health and Social Care \(Scotland\) Act 2005](#), and [The Smoking \(Northern Ireland\) Order 2006](#)). Therefore, it is appropriate and consistent for each devolved government to have the power to commence their regulations on smoke-free, vape-free, and heated tobacco-free clauses.

Justification for the procedure

488. As usual with commencement powers, regulations made under this clause are not subject to any parliamentary procedure. Parliament has approved the principle of the provisions to be commenced by enacting them and commencement by statutory instrument enables the provisions to be brought into force at a convenient time and in an orderly manner.

Clause 169: Transitional provision

Power conferred on: Secretary of State, Scottish Ministers, Welsh Ministers, Department of Health in Northern Ireland

Power exercised by: Regulations made by Statutory Instrument/ Statutory Rule

Parliamentary procedure: None

Context and Purpose

489. This clause contains a standard power for Ministers to make transitional or saving provision in connection with the bringing into force of provisions of the Bill.

490. Welsh Ministers may by regulations make transitional or saving provision in connection with the coming into force of clause 40 (Handing over tobacco etc to underage people in Wales) and Schedule 5 (Handing over tobacco etc to underage people in Wales) and clauses 146 (Smoke-free places and vehicles in Wales: duty to consult) to 151 (Amendments on sections 146 to 150) and Schedule 19 (smoke-free places, vape-free places and other free-from places).

491. Scottish Ministers may by regulations make transitional or saving provision in connection with coming into force of any provision of Part 2, clauses 141 (No-

smoking premises in Scotland) to 145 (Amendments consequential on sections 141 to 144) and Schedule 18 (smoke-free places, vape-free places and other free-from places: Scotland).

492. The Department of Health in Northern Ireland may by regulations make transitional or saving provision in connection with the coming into force of any provision of Part 3, clauses 152 (Additional smoke-free places in Northern Ireland) to 156 (Amendments consequential on sections 152 to 155) and Schedule 20 (smoke-free places, vape-free places and other free-from places: Northern Ireland).

493. The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Bill.

494. The powers conferred in subsections (1) to (4) of this clause include the power to make different provision for different purposes.

Justification for taking the power

495. It may be necessary to make transitional or saving provision in connection with the commencement of provisions in the Bill in order to ensure effective implementation.

Justification for the procedure

496. As is usual with a power to make transitional or saving provision in connection with the coming into force of the provisions of a Bill, regulations made under this clause are not subject to any Parliamentary procedure.