



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020**

DATE **04 November 2020**

BY **Rebecca Evans MS, Minister for Finance and Trefnydd**

The Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020

Policy Overview of the SI

Tobacco control legislation is a mixture of EU derived legislation: primarily the Tobacco and Related Products Regulations 2016 ('TRPR') and directly applicable EU tertiary legislation. The two main pieces of EU legislation in relation to tobacco and related products are Directive 2014/40/EU (the 'Tobacco Products Directive') and Directive 2003/33/EC (the 'Tobacco Advertising Directive').

UK wide legislation has been made in part to implement the Tobacco Products Directive (TPD) such as the standardised packaging legislation, and devolved legislation imposing requirements relating to restrictions such as the age of sale for tobacco products and e-cigarettes.

The Tobacco Products and Nicotine Inhaling Products (Amendment etc.) (EU Exit) Regulations 2019, ('the 2019 Regulations') laid for a no deal scenario, amend the TRPR such that they apply for the end of the Implementation Period. The TRPR implemented the TPD. The 2019 Regulations were made to remedy deficiencies in retained EU and domestic legislation relating to tobacco and nicotine inhaling products (e-cigarettes), or failures of that legislation to operate effectively, which would arise from the withdrawal of the UK from the EU, in the event of no deal.

These amendments included two main changes to the requirements under TRPR:

- Allow for the establishment of new notification systems for tobacco products including novel products and herbal products for smoking, and e-cigarettes.
- Allow for the use of Australian picture warnings to replace the EU picture warnings on which the Commission holds the copyright.

The purpose of the amendments

The Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020 amend the 2019 Regulations in order to give effect to the Withdrawal Agreement and amend the amendments made in the 2019 Regulations to the TRPR, for example by removing references to the UK, so that the TPD remains directly applicable in NI ensuring the Protocol is reflected in law. In particular, the new notification system for tobacco products and e-cigarettes will be used for the GB market only, and tobacco products placed on the NI market will be required to use the EU picture warnings. The amendments introduced by the 2020 Instrument will ensure that tobacco control legislation continues to work effectively after the end of the Implementation Period. The Statutory Instrument and accompanying Explanatory Memorandum, setting out the effect of each amendment are available here: <https://www.legislation.gov.uk/ukdsi/2020/9780348212532>

Any impact the SI may have on the Senedd's legislative competence and/or the Welsh Ministers' executive competence

The Welsh Government is of the view that the Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2020 contain provisions which relate to public health protection and are within devolved competence, and, therefore, Welsh Ministers' consent is required in accordance with the terms of the Intergovernmental Agreement in advance of laying the instrument. The UK Government did not seek the consent of the Welsh Ministers in relation to this SI. The Minister for Mental Health, Wellbeing and the Welsh Language has therefore written to the Minister of State for Health to raise concerns that consent was not sought and to provide consent.

The SI has no impact on the Welsh Ministers' executive competence or the legislative competence of the Senedd. The SI does not involve the transfer of any functions nor does it confer any new functions on the Welsh Ministers.

Why consent was given

There is no divergence between the Welsh Government and the UK Government on the policy for the correction. Therefore, making separate SIs in Wales and England would lead to duplication, and unnecessary complication of the statute book. Consenting to a UK-wide SI ensures that there is a single legislative framework across the UK which promotes clarity and accessibility during this period of change. In these exceptional circumstances, the Welsh Government considers it appropriate that the UK Government legislates on our behalf in this instance.