



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **The Tobacco Products and Nicotine Inhaling Products
(Amendment) (EU Exit) Regulations 2018**

DATE **5 November 2018**

BY **Julie James AM, Leader of the House and Chief Whip**

The Tobacco Products and Nicotine Inhaling Products (Amendment) (EU Exit) Regulations 2018

The Law which is being amended

The Tobacco Advertising and Promotion Act 2002

The Tobacco Advertising and Promotion (Brandsharing) Regulations 2004

The Standardised Packaging of Tobacco Products Regulations 2015

The Nicotine Inhaling Products (Age of Sale and Proxy Purchasing) Regulations 2015

The Tobacco and Related Products Regulations 2016

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

The Regulations will make minor amendments to UK legislation in relation to tobacco products and nicotine inhaling products, some of which is within devolved competence. These amendments will not confer any new functions on the Welsh Ministers or the Secretary of State and are purely technical with no policy impact.

The Regulations will also transfer a number of the European Commission functions in relation to the labelling and safety of tobacco and tobacco products to the Secretary of State. The Regulations provide that before using these powers to make regulations that apply in Wales, the Secretary of State must consult with the Welsh Ministers. The subject matter of these powers largely relates to specific areas of reserved competence namely product safety and liability and product labelling. Those elements of the powers which it might be argued are within devolved competence could not in practice be meaningfully exercised by the Welsh Ministers independently of the Secretary of State.

The purpose of the amendments

The purpose of the amendments is to correct minor deficiencies in UK legislation, some of which are within devolved competence, arising from the UK leaving the European Union

relating to labelling and retailing of products containing tobacco products.

The Regulations also transfers powers currently assigned to the European Commission in relation to tobacco legislation to the Secretary of State, but with the requirement that they can only be exercised after consultation with the Welsh Minister. These powers relate to:

- the setting of standards for tobacco products and e-cigarettes such as setting procedures for determining toxicity, updating the list of additives and modifying the methods of measurement of tar, nicotine and carbon monoxide; and,
- the modification of the combined health warnings on tobacco products for smoking and the health warnings on e-cigarette packaging.

The SI and accompanying Explanatory Memorandum, setting out the effect of each amendment is available here:

<http://www.legislation.gov.uk/ukdsi/2018/9780111174203/contents>

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.