

The Welsh Government's Legislative Consent Memorandum on the Tobacco and Vapes Bill

February 2025



1. Background

The UK Government's Tobacco and Vapes Bill

1. The Tobacco and Vapes Bill¹ (the Bill) was introduced into the House of Commons and had its first reading on 5 November 2024. It is sponsored by the Department of Health and Social Care.
2. The Explanatory Notes to the Bill provide the following overview:

"The Tobacco and Vapes Bill will be a landmark step in creating a smoke-free UK. It will:

A. create a smoke-free generation, gradually ending the sale of tobacco products across the country and breaking the cycle of addiction and disadvantage.

B. strengthen the existing powers to ban smoking in public places to reduce harms of passive smoking, particularly around children and vulnerable people.

C. ban vapes and nicotine products from being deliberately branded, promoted, and advertised to children to stop the next generation from becoming hooked on nicotine.

D. provide powers to introduce a licensing scheme for the retail sale of tobacco, vapes and nicotine products, extend the retail registration scheme in Scotland, and strengthen enforcement activity to support the implementation of the above measures.

E. the Bill sits alongside wider support across the health service to support smokers to quit.

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.

¹ Tobacco and Vapes Bill, as introduced

The Bill broadly seeks to align provisions across the UK, building on the existing legislative frameworks that apply.”²

3. The long title to the Bill states that it is a Bill to:

“Make provision about the supply of tobacco, vapes and other products, including provision prohibiting the sale of tobacco to people born on or after 1 January 2009 and provision about the licensing of retail sales and the registration of retailers; to enable product and information requirements to be imposed in connection with tobacco, vapes and other products; to control the advertising and promotion of tobacco, vapes and other products; and to make provision about smoke-free places, vape-free places and heated tobacco-free places.”³

4. The Bill is in eight parts, and runs to 171 clauses and 21 Schedules.

5. This Bill had its second reading on 26 November 2024. Committee stage in the House of Commons concluded on 30 January 2025. At the time we agreed our report, dates for Report stage and Third reading were yet to be announced.

The Welsh Government's Legislative Consent Memorandum

6. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales that has regard to devolved matters.

7. On 20 November 2024, Sarah Murphy MS, the Minister for Mental Health and Wellbeing (the Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.⁴

8. The Business Committee agreed that the Health and Social Care Committee and the Legislation, Justice and Constitution Committee should report on the Memorandum by 7 February 2025.⁵ On 3 December 2024 the Business Committee agreed a new reporting deadline of 21 February 2025.⁶ On 14 January

² [Explanatory Notes to the Tobacco and Vapes Bill](#), page 3

³ Tobacco and Vapes Bill, as introduced, page 1

⁴ Welsh Government, [Legislative Consent Memorandum, The Tobacco and Vapes Bill](#), November 2024

⁵ Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Tobacco and Vapes Bill](#), November 2024

⁶ Business Committee, [Revised Timetable for consideration: Legislative Consent Memorandum on the Tobacco and Vapes Bill](#), December 2024

2025 the Business Committee further revised the reporting deadline to 28 February 2025.⁷

9. On 4 February 2025, the Minister wrote to both relevant Senedd Committees informing us that, at the request of the Welsh Government, two amendments had been tabled to the Bill regarding clauses 168 and 170.⁸ The Minister also informed us that she was undertaking discussions with the UK Government regarding clauses 34, 150, and 151, and was continuing discussions on clauses 45, 95, 100 and 123. These details are outlined later in our report.

The Welsh Government's position and engagement with the UK Government

10. The Welsh Government's view is that the core measures of the Bill include the following:

“Create a smoke-free generation, gradually ending the sale of tobacco products across the country and breaking the cycle of addiction and disadvantage by making it an offence to sell tobacco products to anyone born on or after 1 January 2009;

Enable regulation to strengthen the existing ban on smoking in public places to reduce the harms of passive smoking, particularly around children, families and vulnerable people;

Ban vapes and nicotine products from being deliberately branded, promoted and advertised to children to step the next generation from becoming hooked on nicotine;

Strengthen enforcement activity to support implementation of the above measures and provide powers to introduce a licensing scheme for the retail sale of tobacco, herbal smoking products, cigarette papers, vapes and nicotine products in England, Wales and Northern Ireland and extend the retail registration scheme in Scotland; and the Bill sits alongside wider support across the health service to support smokers to quit.”⁹

⁷ Business Committee, [Revised Timetable for consideration: Legislative Consent Memorandum on the Tobacco and Vapes Bill](#), January 2025

⁸ [Letter from the Minister for Mental Health and Wellbeing](#), 4 February 2025

⁹ Memorandum, paragraph 3

11. The Bill is supported by the governments of all four nations who, according to the Minister, share ambitions to eradicate smoking and to tackle youth vaping.¹⁰ The Memorandum states:

“Whilst the Bill’s development has been led by the DHSC, co-operation between the Welsh Government, DHSC, Scottish Government and Northern Ireland Executive on the policy and Bill development has been strong and sustained.”¹¹

12. The Minister states in the Memorandum:

“The Tobacco and Vapes Bill was previously laid in Parliament on 20 March 2024.¹² Progress on the Bill halted when Parliament was dissolved prior the General Election.

During the Bill’s development, the Welsh Ministers met and corresponded with Ministers in the UK government with responsibility for tobacco to discuss and agree inter-government working on the measures, the consultation, its outcome, policy approaches and the Bill’s development.”¹³

13. The Minister’s reasons for making provision for Wales in the Bill are set out in paragraphs 182 to 194 of the Memorandum and include:

- “Given the nature of the regulation and enforcement of tobacco, vapes, herbal tobacco and nicotine products, and the product, advertising and sponsorship requirements, it is considered that a collaborative approach between the four nations is the most efficient and effective way to proceed for Wales and the UK. The starting point for the regulatory regime for these products should be that it is, as far as possible, identical across the UK or at least Great Britain. Further, as far as possible, that it should be introduced at the same time. Otherwise, products that are acceptable in one part of the UK may be able to enter another part of the UK where they might not meet regulations.”¹⁴
- “The Bill enables policy objectives to be achieved in a manner that also provides coherence and consistency throughout the UK. This approach

¹⁰ Memorandum, paragraph 8

¹¹ Memorandum, paragraph 8

¹² ~~The Tobacco and Vapes Bill~~, laid in Parliament 20 March 2024 and fell when Parliament was dissolved

¹³ Memorandum, paragraph 13 and 14

¹⁴ Memorandum, paragraph 189

achieves a single regulation regime across the whole of the UK as a way of ensuring a coherent and operable system across the whole of the UK regarding these products. A similar approach is currently being pursued in relation to the introduction of the ban on single-use vapes from 1 June 2025, given the recognised benefits to aligning the introduction of the requirements for business, consumers as well as enforcement.”¹⁵

- “The Bill provides the Welsh Ministers with regulation making powers where it has been identified that a Wales-only approach is appropriate. For example, the regulation of point of sale displays for vapes and other nicotine products as well as the introduction of vape-free and heated tobacco free places.”¹⁶
- “Separately to the provisions in the Bill, the Welsh Government, UK Government and other Devolved Governments intend to introduce legislation to ban the sale of single-use vapes, due to their environmental effects and links to youth vaping: <https://www.gov.wales/written-statement-single-use-vapes-regulations>”.¹⁷

14. In the Memorandum the Minister states that she is seeking assurances from the UK Government that the requirements of clauses 34, 150 and 151 align with the requirements of the *Public Health (Wales) Act 2017* (the 2017 Act).¹⁸

15. In the Memorandum the Minister also states that she “will engage further with the UK Government in relation to clauses 45, 95, 100 and 123 to seek the necessary constitutional assurances to ensure these provisions align with our Cabinet Principles on UK Legislation”.¹⁹

16. In the Memorandum the Minister concludes:

“In my view it is appropriate to deal with these provisions in this UK Bill as there is a need for a UK wide approach on tobacco and vapes. I will seek further engagement with the UK Government in relation to clauses 45, 95, 100 and 123 and provide the Senedd with updates accordingly. I strongly support

¹⁵ Memorandum, paragraph 190

¹⁶ Memorandum, paragraph 191

¹⁷ Memorandum, paragraph 192

¹⁸ Memorandum, paragraphs 63 and 162

¹⁹ Memorandum, paragraph 178

the policy proposals of the Bill and therefore, I recommend that the Senedd gives its consent to this Bill."²⁰

Provision for which the Senedd's consent is required

17. In the Memorandum, the Minister provides a summary of the provisions in the Bill that contain provision in relation to Wales that have regard to devolved matters and therefore require the Senedd's consent, as follows:

Part 1: Sale and distribution: England and Wales:

- clauses 1 to 4 and 6 – Sale of tobacco etc;
- clauses 7 to 9 – Snus etc;
- clauses 10 to 12 – Sale of vaping and nicotine products etc;
- clause 14 – Display of products or prices;
- clause 15 – Free distribution and discounts;
- clauses 19 to 22 and Schedules 3 and 4 – Retail licensing: Wales;
- clauses 23 to 27 – Restricted premises orders;
- clauses 28 to 30 – Restricted sale orders;
- clause 31 – Offences by bodies;
- clauses 32 and 34 – Enforcement functions;
- clauses 35(2) and 36(2) – Power of ministers to take over enforcement;
- clauses 37, 38(1), (2), (4), (5) and 39(2) to (4) – Fixed penalties;
- clause 40 and Schedule 5 – Handing over tobacco etc to underage people in Wales;
- clauses 41 to 44 and Schedules 6 and 7 – Consequential, transitional and transitory provision;
- clauses 45 and 46 – Powers to adjust scope;

²⁰ Memorandum, paragraph 201

- clause 47 – Crown application;
- clauses 48 and 49 – Interpretation of Part 1 etc.

Part 4: Snus etc: Seizure and detention powers:

- clause 89 – Power of officer of Revenue and Customs to seize and detain snus etc.

Part 5: Product requirements and information requirements etc:

- clauses 90 to 93 – Product requirements etc;
- clause 94 – Non-complaint images;
- clauses 95 to 98 – Registration and information requirements;
- clauses 99 and 100 – Quality control and safety;
- clauses 101 and 102 – Matters dealt with by 2016 Regulations;
- clauses 103 to 109 – Supplementary and miscellaneous;
- clauses 110 and 111 – Consultation and consent;
- clauses 112 and 113 – Interpretation of Part 5 etc.

Part 6: Advertising and sponsorship:

- clauses 114 to 119 – various advertising offences;
- clauses 120 to 122 – defence and exclusions from advertising offences;
- clause 123 – Brand-sharing;
- clauses 124 and 125 – Sponsorship to tobacco, vaping and nicotine products;
- clauses 126 and 127 – Audiovisual services and radio broadcasting;
- clause 128 – Offences by bodies;
- clauses 129 to 131 – Enforcement;
- clause 132 – Alignment of definition in old advertising legislation pending replacement;

- clause 133 – Power to extend advertising provisions, and provisions regarding TV, radio and other broadcasters, to heated tobacco devices;
- clause 134 – Crown application;
- clause 135 – Interpretation of Part 6.

Part 7: Smoke-free places, vape-free places and other free-from places:

- clauses 147²¹ to 152 – Wales.

Part 8: General:

- clauses 160, 161, 163, 165 to 170 – General.²²

18. The Welsh Government's assessment is, therefore, that the consent of the Senedd is required "in relation to the entirety of the Bill, except for clauses 5, 13, 16, 17, 18, 33, 35(1), 36(1), 38(3) and 39(1), Parts 2 and 3, clauses 136-146, 153-158, 159, 162, 164, and 171."²³

19. With regards to the UK Government's views on the need for consent, the Minister states in the Memorandum that:

"The UK Government has sought consent for the entirety of the Bill with the exception of clauses 5, 13, 16-18, 25, 29, 33, Parts 2, 3, and 4, clauses 95, 100, 109, 114-120, 123, 126, 127, 136-147, 153-159, 162 and 164 as these have been determined by the UK government not to require engage the LCM process.

The Welsh Government agree with the UK government's assessment in relation to clauses 5, 13, 16-18, 33, Parts 2 and 3, clauses 136-147, 153-159, 162 and 164.

However, there is a difference in position in relation to the need for consent for clauses 25, 29, Part 4 and clauses 95, 100, 109, 114-120, 123, 126 and 127. In my view, these clauses make provision in relation to Wales that have regard to the devolved

²¹ There appears to be an error in paragraphs 179 and 180 of the Memorandum. Paragraphs 179 and 180 make reference to clause 147 not engaging the legislative consent process. However, clause 147 is not included in the list of clauses which the Minister considers do not require consent in paragraph 15.

²² Memorandum, paragraphs 15 to 174

²³ Memorandum, paragraph 15

matter of public health. As a result, in accordance with Standing Order 29, Senedd consent is required."²⁴

Delegated powers in the Bill

20. The Bill extensively amends the 2017 Act. It includes bilingual provisions which will modify the scope of the 2017 Act, and add to or modify the powers currently delegated to the Welsh Ministers in that Act.

21. We believe there are 19 powers in the Bill delegated to the Secretary of State to act in devolved areas, 15 of which would require the consent of the Welsh Ministers before being used. In addition, we believe there are 20 powers in the Bill delegated to the Welsh Ministers.

22. It is our understanding that powers are delegated to the Secretary of State as follows:

- 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. Before making regulations under this clause the Secretary of State must obtain the **consent** of the Welsh Ministers if the regulations contain provision which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.
- Clause 90: 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. Before making regulations under this clause the Secretary of State must obtain the **consent** of the Welsh Ministers if the regulations contain provision which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.
- Clause 91: 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. Before making regulations under this

²⁴ Memorandum, paragraphs 179 to 181

clause the Secretary of State must obtain the **consent** of the Welsh Ministers if the regulations contain provision which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.

- Clause 92: 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. Before making regulations under this clause the Secretary of State must obtain the **consent** of the Welsh Ministers if the regulations contain provision which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.
- Clause 93: 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 and emissions that may be released by “relevant products”. The power includes making provisions about how the nature and amount of substances or emissions are determined. Before making regulations under this clause the Secretary of State must obtain the **consent** of the Welsh Ministers if the regulations contain provision which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.
- Clause 94: 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 etc. Before making regulations under this clause the Secretary of State must obtain the **consent** of the Welsh Ministers if the regulations contain provision which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.
- Clause 95: Registration – This power will allow the Secretary of State to establish a register of tobacco products, etc. Before making regulations under this clause the Secretary of State must obtain the **consent** of the Welsh Ministers if the regulations contain provision which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.

- Clause 96: 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 products, cigarette papers, vaping product or nicotine product to provide information that is related to the product or its producer. Before making regulations under this clause the Secretary of State must obtain the **consent** of the Welsh Ministers if the regulations contain provision which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.
- Clause 97: Studies – This power will allow the Secretary of State to make regulations to require a producer of a tobacco product, tobacco related device, herbal smoking product, cigarette papers, vaping product or 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. Before making regulations under this clause the Secretary of State must obtain the **consent** of the Welsh Ministers if the regulations contain provision which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.
- Clause 98: 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 96 (Non-compliant images, Registration, Information). Before making regulations under this clause the Secretary of State must obtain the **consent** of the Welsh Ministers if the regulations contain provision which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.
- Clause 99: 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. Before making regulations under this clause the Secretary of State must obtain the **consent** of the Welsh Ministers if the regulations contain provision which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.

- Clause 100: Product safety – This power will allow the 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. Before making regulations under this clause the Secretary of State must obtain the **consent** of the Welsh Ministers if the regulations contain provision which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.
- Clause 101: 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 (this is assimilated law). Before making regulations under this clause the Secretary of State must obtain the **consent** of the Welsh Ministers if the regulations contain provision which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.
- Clause 105 (supplementary): Sub-delegation – Clause 105 provides for legislative sub-delegation by the Secretary of State. This allows the regulations to confer discretions. For example, this could allow the Secretary of State to appoint a person to make a decision or determination for the purposes of the regulations, including sub-delegation to the Welsh Ministers. Before making regulations under this clause the Secretary of State must obtain the **consent** of the Welsh Ministers if the regulations contain provision which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.
- Clause 123: Brand-sharing – This power will allow the Secretary of State to introduce regulations to prohibit or restrict brand-sharing of tobacco products, etc.
- Clause 125: 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.
- Clause 133: Power to extend Part 6 and the *Communications Act 2003* (the 2003 Act) 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 2003 Act 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. The Secretary of State must obtain **consent** from the Welsh Ministers before making the regulations.

- Clause 161: 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 the Act. This is a Henry VIII power.
- Clause 170: Transitional provision – This clause confers on the Secretary of State a regulation-making power to make transitional or saving provision in connection with the coming into force of any provision of the Act.

23. Similarly, it is also our understanding that powers are delegated to the Welsh Ministers as follows:

- Clause 6: Age of sale notice at point of sale: Wales – This clause contains a re-enactment with modifications of the regulation-making power in section 4 of the *Children and Young Persons (Protection from Tobacco) Act 1991* (the 1991 Act). It will allow the 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.
- Clause 14: Displays of products or prices in Wales – This clause contains a re-enactment with modifications of the regulation-making powers in the *Tobacco Advertising and Promotion Act 2002* (the 2002 Act). It will allow the Welsh Ministers to regulate the display of tobacco products, herbal smoking products, cigarette papers, vaping products and nicotine products and their prices, as well as the display of empty retail packaging, in retailers in Wales. Regulations may also allow for the creation of offences.
- Clause 19: Prohibition of retail sales of tobacco products etc in Wales without a licence – This power will allow the 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.
- Clause 21: Financial penalties for breach of licence conditions: Wales – This power will allow the 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.

- Clause 27: Power to extend restricted premises orders in Wales – This clause contains a re-enactment with modifications of the regulation-making power in section 51 of the 2017 Act. It will allow the 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.
- Clause 39: Power to change amount of fixed penalties – This power will allow the Welsh Ministers 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. This is a Henry VIII power.
- Clause 46: Power to amend lists of identity documents – This power allows the Welsh Ministers to amend, through regulations, clauses 1 and 10 to change the meaning of an “identity document”. This is a Henry VIII power.
- Clause 104 (supplementary): Enforcement – This power may give the function of enforcement of the regulations to relevant enforcement authorities. The relevant enforcement authorities are a local weights and measures authority in England, Scotland and Wales and a district council in Northern Ireland. The regulations may make the same provisions as are made in this Bill under clauses 35 and 36, thereby allowing the relevant national authority (the Welsh Ministers in Wales) to take over enforcement, or legal proceedings relating to any offence committed under the regulations, from a relevant enforcement authority.
- Clause 121: Specialist tobacconists – This clause reenacts existing legislation and an existing regulation-making power delegated to the appropriate national authority i.e. the Welsh Ministers in Wales.
- Clause 148: Smoke-free vehicles in Wales – This clause amends the 2017 Act and modifies an existing regulation-making power delegated to the Welsh Ministers, enabling them to identify classes of person who may designate areas of a vehicle as not smoke-free.
- Clause 149: No-smoking signs in Wales – This clause amends the 2017 Act requirements around no-smoking signs. The clause modifies an

existing regulation-making power and provides for regulations which may specify the display and design requirements of no-smoking signs, and how and where the signs are to be displayed.

- Clause 150: Vape-free places in Wales – This clause amends the 2017 Act to insert a new chapter relating to vaping. This clause gives the Welsh Ministers powers to introduce regulations that prohibit the use of vapes in specific places or vehicles in Wales.
- Clause 151: Heated tobacco-free places in Wales – This clause amends the 2017 Act to insert a new chapter relating to heated tobacco. This clause gives the Welsh Ministers powers to introduce regulations that prohibit the use of heated tobacco devices in specific places or vehicles in Wales.
- Clause 163: Power of Welsh Ministers to make consequential provision – This power will enable the 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 147 to 152, and Schedule 19 (smoke-free places, vape-free places and other free-from places: Wales) of this Bill. This is a Henry VIII power.
- Clauses 168 and 169: Commencement: Parts 1 to 4 and Commencement: Parts 5 to 8 – Power conferred on Welsh Ministers – These clauses provide order-making powers to the Welsh Ministers to bring into force clauses 19 to 22, Schedules 3 and 4, clause 40, Schedule 5, clauses 147 to 152, and Schedule 19 (so far as not already in force by virtue of clause 168(2)²⁵.
- Clause 170: Transitional provision – This clause confers a regulation-making power on the Welsh Ministers to make transitional or saving provision in relation to the coming into force of clauses 19 to 22, Schedules 3 and 4²⁶, clause 40, Schedule 5, clauses 147 to 152, and Schedule 19.
- Schedule 5: Handing over tobacco etc to underage people in Wales – This schedule amends the 2017 Act to update the provision about handing over of tobacco etc to persons under 18 to align with the new

²⁵ Letter from the Minister for Mental Health and Wellbeing, 4 February 2025, information relating to amendment number 15 tabled and agreed at Committee stage in the House of Commons

²⁶ Letter from the Minister for Mental Health and Wellbeing, 4 February 2025, information relating to amendment number 16 tabled and agreed at Committee stage in the House of Commons

age of sale restrictions, to include vaping products, herbal smoking products, cigarette papers, and nicotine products in this restriction. Paragraph 11 adds a new section 54A (Power to extend this Chapter to other products) to the 2017 Act, which will provide a power to the Welsh Minister to extend the products to which Chapter 4 of Part 3 of the 2017 Act applies to include devices which enable a tobacco product to be consumed.

2. Committee consideration

24. We considered the Memorandum at our meeting on 13 January 2025.²⁷

25. At our meeting on 10 February 2025²⁸, we considered the Minister's letter dated 4 February 2025.

26. We agreed our report on 17 February 2025.²⁹

Our view

Provisions requiring consent

27. We note the Welsh Government's assessment of the provisions within the Bill which require the consent of the Senedd as set out above in paragraphs 17 and 18.

28. We also note that the Welsh and UK governments' views on legislative consent align, with the exception of clauses 25, 29, 89, 95, 100, 109, 114 to 120, 123, 126 and 127. The UK Government does not consider that the Senedd's consent should be sought for these provisions.

Conclusion 1. We agree with the Welsh Government's assessment, as set out in the Memorandum, of the provisions within the Bill which require consent of the Senedd in accordance with Standing Order 29.

The Welsh Government's position, including its engagement with the UK Government

29. We note that the Bill is supported by the governments of all four nations in the UK. We also note that, while the Bill's development has been led by the UK Government, the Minister states that there has been "strong and sustained" co-

²⁷ [Legislation, Justice and Constitution Committee](#), 13 January 2025

²⁸ [Legislation, Justice and Constitution Committee](#), 10 February 2025

²⁹ [Legislation, Justice and Constitution Committee](#), 17 February 2025

operation between the UK Government, Welsh Government, Scottish Government and the Northern Ireland Executive on the policy and the Bill's development.

30. When the previous UK Government introduced a Tobacco and Vapes Bill³⁰ into the UK Parliament in March 2024, the Welsh Government laid a Legislative Consent Memorandum before the Senedd³¹. This Bill failed to complete its passage through the UK Parliament before its prorogation on 24 May 2024 and its subsequent dissolution on 30 May 2024.

31. Before it fell, the Committee began work scrutinising the Legislative Consent Memorandum and wrote to the then Cabinet Secretary for Health and Social Care, Eluned Morgan MS, on 30 April 2024 with a series of questions.³² The then Cabinet Secretary responded to the Committee on 14 May 2024. On the subject of intergovernmental working and whether the *United Kingdom Internal Market Act 2020* had influenced the Welsh Government's decision to take a 'four-nations approach', the Committee was told that it was:

"... one of the considerations why it would be appropriate to adopt a four-nations approach to the UK Tobacco and Vapes Bill, however the overriding consideration was public health benefit. Our decision to engage in this Bill is because, if passed, it represents one of the most significant public health interventions in a generation. This is a view shared by many stakeholders during the Bill's recent Committee evidence sessions.

The decision to work jointly was taken early on during the process because all governments could see clear benefits to public health from a united approach. Given that the Bill was planned for the fourth Parliamentary session, the Bill also provided an opportunity to respond swiftly to pressing public health issues and protect children and young people from nicotine addiction."³³

32. We note that, in the Memorandum, the Minister states:

³⁰ The Tobacco and Vapes Bill, laid in Parliament 20 March 2024 and fell when Parliament was dissolved

³¹ Welsh Government, [Legislative Consent Memorandum: The Tobacco and Vapes Bill](#), May 2024

³² [Letter to the Cabinet Secretary for Health and Social Care](#), 30 April 2024

³³ [Letter from the Cabinet Secretary for Health and Social Care](#), 14 May 2024

“The starting point for the regulatory regime for these products should be that it is, as far as possible, identical across the UK or at least Great Britain. Further, as far as possible, that it should be introduced at the same time. Otherwise, products that are acceptable in one part of the UK may be able to enter another part of the UK where they might not meet regulations.”

33. The Minister also states in the Memorandum:

“The Bill enables policy objectives to be achieved in a manner that also provides coherence and consistency throughout the UK. This approach achieves a single regulation regime across the whole of the UK as a way of ensuring a coherent and operable system across the whole of the UK regarding these products.”

34. As we have said in reports on other legislative consent memoranda, it is not our role to comment on the policy merits or otherwise of the Bill. However, as a Committee, we take an interest in how legislation that affects devolved matters in Wales is made, where it is made, why it is being made the way it is, and how Members of the Senedd are able to shape its making.

35. Health is an area of policy where devolution across the UK has resulted in intra-UK divergence when each devolved institution has considered that appropriate. Restrictions on smoking in workplaces and enclosed public spaces were brought into effect at different times across the UK nearly 20 years ago. In 2021, Wales became the first country in the UK to ban smoking in outdoor school spaces, playgrounds and hospital grounds.

36. We again re-iterate that we do not seek to comment on the policy merits of these decisions. Nonetheless, devolution has meant that, should there be evidence and support for public health legislation to differ in Wales to that of the rest of the UK, divergence may be desirable.

37. We acknowledge that the Bill delegates powers to the Welsh Ministers to act in Wales but this approach still limits the ability for Members of the Senedd to fully scrutinise the policy proposals, including by tabling amendments.

38. We also note that the Bill will enable the Secretary of State to act in devolved areas. We are concerned that it reduces the flexibility of the Welsh Ministers and the Senedd to act to take account of Welsh circumstances and undermines the principle of devolution.

Recommendation 1. The Minister should provide further clarity to the Senedd on the reasons why the Welsh Government has adopted the joint approach with the other governments of the UK in the Bill, and confirm whether the *United Kingdom Internal Market Act 2020* is a contributing factor.

39. We also note that the Bill is extensively amending the *Public Health (Wales) Act 2017* (the 2017 Act), and the Bill contains numerous new bilingual provisions that are being added to the 2017 Act.

Recommendation 2. The Minister should confirm whether it was the UK Government or the Welsh Government that prepared the Welsh language text of the provisions in the Bill that will be inserted into the *Public Health (Wales) Act 2017*. If it was the UK Government, the Minister should confirm that the text has been approved by the Welsh Government.

Recommendation 3. The Minister should explain how and why she considers that the UK Parliament is able to scrutinise sufficiently and effectively the Welsh language text of the provisions in the Bill that will be inserted into the *Public Health (Wales) Act 2017*.

40. We note that, in the Memorandum, the Minister states that she is seeking assurances from the UK Government that the requirements of clauses 34, 150 and 151 align with the requirements of the 2017 Act. We further note that, in her letter to us on 4 February, the Minister again confirmed that discussions are ongoing with the UK Government on these clauses.

Recommendation 4. The Minister should update the Committee and the Senedd as soon as possible on the progress being made in discussions with the UK Government on clause 34 of the Bill.

41. We discuss clauses 150 and 151 in the next section of our report.

42. We note that the Minister is seeking further engagement with the UK Government in relation to clauses 45, 95, 100 and 123. We provide further commentary on these provisions in the next section of our report.

Delegated powers in the Bill

43. The Bill will delegate a significant number of powers to the Welsh Ministers, which include Henry VIII powers. The Bill will also delegate to the Secretary of State a significant number of powers to act in devolved areas.

Conclusion 2. The ability of Members of the Senedd to influence the delegation of power to the Welsh Ministers is limited by the fact these provisions are included in a UK Government Bill introduced to the UK Parliament.

44. As we state earlier in our report, in paragraph 21, we believe there are 19 powers in the Bill delegated to the Secretary of State to act in devolved areas, 15 of which would require the consent of the Welsh Ministers before being used. In addition, we also believe there are 20 powers in the Bill delegated to the Welsh Ministers. Some of these powers are modifying existing powers delegated to the Welsh Ministers.

Recommendation 5. The Minister should clarify and confirm our understanding, as set out in paragraphs 21 to 23 of our report, of the precise number of powers in the Bill delegated to the Secretary of State to act in devolved areas and how many of those require the consent of the Welsh Ministers before being used, as well as confirming the number of powers in the Bill delegated to the Welsh Ministers.

45. Earlier in our report we highlighted the correspondence we exchanged with the Welsh Government when the previous UK Government introduced an earlier iteration of the Tobacco and Vapes Bill into the UK Parliament. In her letter to the Committee on 14 May 2024, the then Cabinet Secretary for Health and Social Care responded to questions we asked about the detail on the face of that Bill and the delegated powers in that Bill. The Committee was told:

"In conjunction with our colleagues across the UK, we have been engaged with the UK Government on these issues and consider that the right balance has been struck on this occasion between the need to give due and proper scrutiny to the provisions on the face of the Bill and the need to retain flexibility, in particular, to respond to the rapidly evolving vaping industry. (...)

The Deputy Minister for Mental Health and Wellbeing made clear her position that for the most part, any powers in the Bill that are to lie with the Secretary of State, that are within Welsh devolved competence (for example those in Part 4 of the Bill, regulating the product requirements of tobacco and vaping products) should only be made with the consent of the Welsh Ministers (see Clause 67(a)). Whilst we recognise the need for some regulations to be made on a UK-wide basis for reasons of coherence and consistency, it was considered essential that

Welsh Government officials are involved in the development of the regulations to ensure they take account of the Welsh policy position and perspective. I am pleased to see this approach has been adopted in the Bill."

46. We note that, in the Memorandum, the Minister states that "The Bill provides the Welsh Ministers with regulation making powers where it has been identified that a Wales-only approach is appropriate." Given the discussions held between the Welsh and UK governments on the Bill's previous iteration, we believe clarity is needed on whether it was the Welsh Government that "identified that a Wales-only approach is appropriate", and would welcome confirmation from the Minister. In particular, we believe it is important to understand how this position was arrived at, given that, in the future, Welsh circumstances may change and the Secretary of State's power to exercise a regulation-making power in a devolved area could be exercised by a different UK government.

Recommendation 6. The Minister should confirm whether and how the Welsh Government identified where a Welsh only approach was needed and, as a result, requested the specific regulation-making powers being taken in the Bill for the Welsh Ministers.

Recommendation 7. The Minister should state whether there have been any disagreements over where responsibility for regulation-making powers in the Bill should lie and whether any powers for the Welsh Ministers have been refused by the UK Government.

47. We note that, in the Memorandum, the Minister states that clauses 45, 95, 100, and 123 contain power for the Secretary of State to make regulations in areas which, in the Minister's view, relate to devolved matters. The exercise of the powers in clauses 45, 95 and 100 would first require the consent of the Welsh Ministers. We note that the Minister is seeking further engagement with the UK Government in relation to these four clauses "to seek the necessary constitutional assurances to ensure these provisions align with our Cabinet Principles on UK Legislation".

48. It is unclear to us why the Minister has focused her concerns on clauses 45, 95, 100 and 123, because there are other powers delegated to the Secretary of State in clauses 90 to 101 which would require the consent of the Welsh Ministers and which are clauses the Minister considers engage Standing Order 29.

49. Furthermore, we note that, according to the Memorandum, the Minister is of the view that clauses 125 and 161 are clauses for which the Minister is seeking the Senedd's consent. The powers delegated to the Secretary of State in clauses 125 and 161 may be exercised without the consent of the Welsh Ministers. We are again therefore unclear why it is only the power for the Secretary of State to make regulations in devolved areas without the consent of the Welsh Ministers in clause 123 that appears to be troubling the Minister.

Recommendation 8. The Minister should provide clarity and further detail on why it is only the powers in clauses 45, 95, 100 and 123 which she considers do not currently align with the Welsh Government Cabinet's Principles on UK Legislation.

Recommendation 9. The Minister should confirm whether she will recommend to the Senedd that it does not provide consent for any clauses in the Bill, including 45, 95, 100 and 123, should they remain out of alignment with the Welsh Government Cabinet's Principles on UK Legislation.

Recommendation 10. The Minister should confirm what changes to clause 45 she is seeking, and whether agreement on these changes has been reached with the UK Government.

Recommendation 11. The Minister should confirm what changes to clause 95 she is seeking, and whether agreement on these changes has been reached with the UK Government.

Recommendation 12. The Minister should confirm what changes to clause 100 she is seeking, and whether agreement on these changes has been reached with the UK Government.

Recommendation 13. The Minister should confirm what changes to clause 123 she is seeking, and whether agreement on these changes has been reached with the UK Government.

50. We note that clause 105 of the Bill provides for legislative sub-delegation and that, if the Secretary of State wishes to sub-delegate in an area devolved to Wales, consent must be obtained from the Welsh Ministers if the regulations contain provision which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.

51. We further note that, by virtue of clause 107, the powers delegated to the Secretary of State in Part 5 of the Bill would enable the modification of primary legislation, and that the consent of the Welsh Ministers must again be obtained if

the regulations contain provision which would be within the legislative competence of the Senedd if contained in an Act of the Senedd.

52. We note that clauses 150 and 151 of the Bill delegate to the Welsh Ministers powers relating to vape-free and heated tobacco-free places in Wales. We further note that, in her letter to us on 4 February, the Minister confirmed that discussions are ongoing with the UK Government on these clauses.

Recommendation 14. The Minister should update the Committee and the Senedd as soon as possible on the progress being made in discussions with the UK Government on clause 150 of the Bill.

Recommendation 15. The Minister should update the Committee and the Senedd as soon as possible on the progress being made in discussions with the UK Government on clause 151 of the Bill.

53. We note that clauses 168 and 169 confer specific powers on the Welsh Ministers to bring into force clause 19 to 22, Schedules 3 and 4, clause 40, Schedule 5, clauses 147 to 152, and Schedule 19. However, we also note that a wide power is delegated to the Secretary of State in clause 170(4) which may be used in devolved areas to make transitional or saving provision in connection with the coming into force of any provision of the Bill. It is our understanding that, before exercising this power, the Secretary of State will only be required to seek the consent of the Welsh Ministers if the regulations relate to provisions in Part 5 of the Bill.

Recommendation 16. The Minister should confirm what discussions she has had with the UK Government about the power delegated to the Secretary of State in clause 170(4), and clarify in what situations the consent of the Welsh Ministers would be required if this power were to be used.

Other matters

54. We note that clause 147 of the Bill will result in a new requirement being placed on the Welsh Ministers to consult before seeking to make regulations relating to smoke-free places and vehicles in Wales.

55. At various points in our report we have made reference to a letter we received on 4 February 2025 from the Minister in which she informed us of amendments that were made to the Bill during Commons' Committee stage.

Recommendation 17. The Minister should confirm that the amendments drawn to the attention of Senedd Committees in correspondence on 4 February 2025 will be included in a supplementary legislative consent memorandum laid before the Senedd.