

# Supplementary Legislative Consent Memorandum

## Tobacco and Vapes Bill

### Background

1. This memorandum has been lodged by Neil Gray MSP, Cabinet Secretary for Health and Social Care, under Rule 9B.3.1(c) of the Parliament's standing orders, and is supported by Jenni Minto MSP, Minister for Public Health and Women's Health. The memorandum is in addition to [LCM-S6-51](#) and [LCM-S6-51a](#).

2. The Tobacco and Vapes Bill ("the Bill") was introduced in the House of Commons on 5 November 2024. The Bill is currently at report stage in the House of Lords. The latest version of the Bill can be found at: [Tobacco and Vapes Bill publications](#)

### Content of the Tobacco and Vapes Bill

3. The Bill is a significant step in creating a smoke-free UK and seeks to:
- create a smoke-free generation, gradually ending the sale of tobacco products across the country intended to break the cycle of addiction and disadvantage;
  - enable regulation to strengthen the existing ban on smoking in public places to reduce the harms of passive smoking;
  - ban vapes and nicotine products from being deliberately promoted and advertised to children to stop the next generation from becoming hooked on nicotine;
  - broaden our pre-existing tobacco and vapes register to include nicotine products and herbal smoking products; and
  - provide a suite of regulation-making powers to enable requirements to be set in relation to product standards including packaging and features of products.

4. On 17 February 2026 the UK Government tabled a number of amendments to the Bill which extend to Scotland.

5. This includes amendments which the UK Government had planned to move at Committee Stage in relation to enforcement powers (Part 5 of the Bill) and alignment of the definition of "tobacco product" in the Tobacco Advertising and Promotion Act 2002 and the Tobacco and Primary Medical Services (Scotland) Act 2010 (commencement date). I wrote to the Health, Social Care and Sport Committee on 28 October 2025 to confirm that these amendments did not require legislative consent. These amendments 145, 217, 218 and 219 were re-tabled for Report Stage on 17 February 2026.

6. Amendments relating to Filters, Advertising for Public Health, Technology in Devices and Intermediary Liability for Internet Service Providers require the consent of the Scottish Parliament and are addressed in more detail in paragraphs 17 to 25.

7. Amendments 121, 138 and 142 (filters), 205 (review of Act), 184 (video sharing services), 173, 174, 179, 180, 181, 182, 183, 185, 186 and 187 (Advertising: product placement) and 175, 176, 177 and 178 (Advertising public health exception for on-demand programme services) are reserved and do not trigger the need for legislative consent. The UK Government considers amendment 165 is reserved but the Scottish Government considers it has a devolved purpose insofar as it applies to devolved offences and that it requires consent.

8. Other amendments, while relating to devolved matters, would make minor technical changes and do not trigger the need for legislative consent as they do not go beyond the limits of consent previously given by the Scottish Parliament. These include:

- Amendments 99, 148, 150, 154, 156, 158, 160, 167, 170, 171 and 172, which make minor drafting changes to the advertising and free distribution offences for clarity and consistency. There is no change in policy from the original provisions consented to;
- Amendment 200, which corrects a drafting error to ensure that the correct person is designated as responsible for displaying signage in clause 144;
- Amendments 213, 214 and 215 amend clause 165 so it refers to section 33 of the Interpretation and Legislative Reform (Scotland) Act 2010. There would be no change in effect but this is for consistency in drafting;
- Amendment 144, which amends clause 102(5) as a consequence of amendment 145. Amendment 145 will replace clause 103 with a new clause outlining the powers to make provision about enforcement. These are both technical amendments to preserve the enforcement enabling powers provided for in the Bill following the repeal of certain provisions in the Consumer Protection Act 1987.

9. The amendments referred to in paragraph 8 above are not considered to amount to relevant provision made for the first time and do not go beyond the limits of the consent previously given by Parliament on 29 May 2025. Therefore legislative consent is not required.

## Provisions which require the consent of the Scottish Parliament

10. The Scottish Government lodged a [Legislative Consent Memorandum](#) on 21 November 2024 to seek legislative consent to relevant provisions in Parts 2, 5, 6, 7 and 8 of the Bill. Full detail of the provisions for which consent was sought can be found in LCM-S6-51. The Scottish Government lodged a [Supplementary Legislative Consent Memorandum](#) on 28 March 2025, recommending that the Scottish Parliament consent to provisions around Age verification in relation to tobacco and vaping products etc in the Bill.

11. The UK Government tabled amendments on 17 February 2026 which extend to Scotland and which would make relevant provision beyond the limits of consent previously given by the Scottish Parliament. As such, there is a requirement for a supplementary Legislative Consent Memorandum under Rule 9B.3.1(c) of the Parliament's standing orders.

12. It is the view of the Scottish Government that the following amendments require the consent of the Scottish Parliament because they are for a purpose within the legislative competence of the Scottish Parliament (public health) and some of the amendments also alter the executive competence of the Scottish Ministers:

- 100, 102, 122, 128, 135, 136, 137, 139, 140, 141, 143, 146, 188 and 191 (which relate to filters);
- 166 (which relates to advertising for public health);
- 130 and 132 (which relate to technology in devices);
- 165 (which relates liability for internet service providers).

13. The UK Government agrees that an LCM is required for these amendments, other than amendment 165 which it considers to relate to a reserved matter. Although the UK Government position is that the amendment is reserved under the 'internet services' reservation in schedule 5 of the Scotland Act 1998, the view of the Scottish Government is that the amendment has a devolved purpose as it simply defines the scope of offences (including devolved offences).

## Reasons for seeking legislative consent

14. The Bill as originally introduced did not cover filters. Various amendments are made to bring filters into the scope of the Bill. The UK-wide amendments on filters will ensure that the legislation is as comprehensive and future-proof as possible. The evidence base on the harms of these products is emerging. New enabling powers will allow the UK Government and Scottish Government to act quickly as the evidence emerges.

15. Since their introduction, filter-tipped cigarettes have been marketed as safer than unfiltered cigarettes. However, industry-independent evidence has shown that filters and filter ventilation do not reduce the exposure to toxins, and increase the palatability, reduce the harshness of smoking and alter inhalation patterns meaning people inhale deeper and for longer to acquire the same level of nicotine.

16. These amendments will allow the four-nations to respond to evidence gathered after the passage of the Bill and consult before bringing in any restrictions on filters.

17. The proposed Filters amendments (100, 102, 122, 128, 135, 136, 137, 139, 140, 141, 143, 146, 188 and 191) will amend the Bill to:

- Insert a definition of filters into the Tobacco and Primary Medical Services (Scotland) Act 2010 ('the 2010 Act') that more expressly aligns with the definition of filters being used in the rest of the Bill;
- Amend the list of smoking related products in section 35(2) of the 2010 Act to more closely align with the new definition of filters;
- Amend the enabling power in section 35(3) of the 2010 Act to ensure that Scottish Ministers will not be confined to amending the text of section 35(2) (which contains a list of smoking related products) but could, for example, insert a new subsection that defines a term used in section 35(2);
- Amend the enabling power in clause 67 of the Bill to ensure that the power being inserted by clause 67 (the power to amend Part 1 of the 2010 so as to extend provisions relating to tobacco products to other products) will continue to capture 'a filter that does not form part of a tobacco product or herbal smoking product' even if such a product were not listed as a smoking related product in the future. This will ensure that provisions in Part 1 which apply to tobacco products can be extended to such filters and will ensure continued alignment in the future if Scottish Ministers were to amend the definition of smoking related products in section 35(2) of the 2010 Act;
- Provide the Scottish Ministers with a power to allow for sections 9A (Ban on manufacture of snus etc), 9B (Ban on sales of snus etc) and 9C (Possession of snus<sup>1</sup> etc with intent to supply) of the 2010 Act (inserted by clauses 55-57 of the Bill) to be extended to filters. This would mean that Scottish Ministers have the power to ban the sale, manufacture and possession with intent to supply of filters if that is decided to be the best course of action following consultation;
- Extend most of the powers in Part 5 of the Bill which enable the Secretary of State to regulate the product and information requirements of relevant products such as the retail packaging restrictions, features of products and contents and flavours of relevant products. The purpose of these amendments is to extend the powers so they also include filters as a relevant product that is able to be regulated. This would mean that filters can be subject to similar restrictions to other relevant products if that is considered appropriate in response to developing evidence of harm. The Secretary of State will be required to obtain the consent of the Scottish Ministers if future regulations contain provision which would be within the legislative competence of the Scottish Parliament;
- Amend the enabling power in clause 132 (Power to amend Part 6 and the Communications Act 2003 to other products) to enable the Secretary of State to extend any of the advertising and sponsorship provisions to 'a filter that does not form part of a tobacco product or herbal smoking product'. The purpose of this amendment is to ensure that filters can be subject to similar restrictions as other relevant products in response to developing evidence of harm from filters or evidence of continued misperception about protecting from harm given by using filters. The Secretary of State will be required to obtain the consent of the Scottish Ministers if future regulations contain

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<sup>1</sup> Snus is a smokeless tobacco product which has been banned in the UK since 1992, for further information see [Snus \(www.tobaccotactics.org/article/snus/\)](http://www.tobaccotactics.org/article/snus/)

provision which would be within the legislative competence of the Scottish Parliament.

18. The Advertising for Public Health amendment 166 will amend the Bill to introduce a new defence for advertising offences in the Bill to enable public authorities to enter into arrangements with businesses for public health campaigns. It should be noted that the defence only applies to advertisements whose purpose is to promote vaping products or nicotine products in general or a category of such products. This would ensure that Scottish public authorities could make their own decisions on whether or not to promote vapes or nicotine products.

19. The Technology in Devices amendments (130 and 132) will give powers to the Secretary of State (with consent of the Scottish Ministers where regulations contain devolved provision) to regulate technology in vaping products or tobacco related devices (such as heated tobacco devices). Such a power would, in theory, enable government to mandate age-verification technology (e.g. where a vape is connected to a phone to verify the user's age before activation) if evidence supported its use.

20. The development of technology in vaping devices and tobacco-related devices is rapid. There are examples of vapes that contain interactive games, messaging capabilities or Bluetooth connectivity. These amendments would also enable the regulation of other technological features in these devices where evidence suggests a public health need. There will be a requirement for the Secretary of State to obtain the consent of the Scottish Ministers if any future regulations contain provision which would be within the legislative competence of the Scottish Parliament.

21. The Intermediary Liability for Internet Service Providers amendment 165 would ensure that there are exceptions to offences where a completely passive internet service is provided – this applies to both devolved offences in clauses 113, 116 and 117 and reserved offences in clause 118. The amendment does not change the intended policy, but provides clarity on where the liability rests. The exceptions are required to put beyond doubt that such passive providers will not be found liable.

22. Although the UK Government position is that the amendment is reserved under the 'internet services' reservation in schedule 5 of the Scotland Act 1998, the view of the Scottish Government is that the amendment has a devolved purpose insofar as it applies to devolved offences and simply serves to identify who is liable and who is not liable for prosecution. The exceptions limit the scope of the offences and do not have a separate and distinct purpose from the offences themselves. When the Bill was introduced, the Scottish Government sought consent for clauses 113, 116 and 117 (but not 118 which is reserved). Therefore, the Scottish Government is recommending consent for this amendment.

23. Where enabling powers in Part 5 ('Product and Information Requirements etc') and Part 6 ('Advertising and Sponsorship') of the Bill are amended, these powers will require the consent of Scottish Ministers if regulations contain provision which would be within the legislative competence of the Scottish Parliament. Where there are proposals to exercise any of these powers in the future, the Scottish Government will work closely

with the UK Government to ensure time for adequate scrutiny in the Scottish Parliament.

24. Insofar as new powers or amended powers are being conferred on the Scottish Ministers to make regulations under Part 2 of the Bill ('Sale and Distribution: Scotland'), regulations made under them will be subject to the affirmative procedure. The Scottish Parliament will, therefore, have the opportunity to closely scrutinise the content of those regulations.

25. Whilst equivalent provision could be made in Scottish Parliament legislation, the Scottish Government considers it prudent to pursue these amendments through the Bill, particularly as the Scottish Parliament has already given consent to other relevant provisions in the Bill to which these amendments relate. The proposed amendments relating to filters in particular will ensure that Scottish Ministers have the same flexibility to act within the same timescales as the other 3 nations. The amendments will provide the ability to act quickly as the evidence emerges.

## Consultation

26. Due to the tight timescales neither the UK nor the Scottish Government have had time to consult formally on these amendments.

27. Most of the relevant enabling powers require consultation before regulations can be made. Consideration will be given in all cases to whether further consultation is needed, and if so, the nature of such consultation before regulations are brought forward under the relevant powers.

## Financial Implications

28. These amendments are unlikely to have immediate financial implications. Most are enabling powers that will not be exercised until full consultation and impact assessments have been undertaken.

## Post EU Scrutiny

29. The amendments which concern the regulation of additional products such as filters and technology in vaping products and heated tobacco devices simply provide additional enabling powers for future action. Therefore, there is no immediate effect on EU alignment and any alignment implications will be considered when contemplating future proposals.

30. The amendment 165 which would introduce exceptions to the advertising offences for internet service providers is consistent with Articles 12 to 14 of the E-Commerce Directive (2000/31/EC) and the intention of the amendment is to create exceptions for internet service providers that are equivalent in effect to those currently in place for advertising offences under existing legislation.

## Conclusion

31. The Scottish Government recommends consent to these amendments, which relate to the following matters:

- Filters (100, 102, 122, 128, 135, 136, 137, 139, 140, 141, 143, 146, 188 and 191),
- Advertising for Public Health (166),
- Technology in Devices (130 and 132),
- Intermediary Liability for Internet Service Providers (165).

## Draft Motion on Legislative Consent

32. The draft motion, which will be lodged by the Cabinet Secretary for Health and Social Care, is:

“That the Parliament agrees that the relevant provisions of the Tobacco and Vapes Bill, introduced in the House of Commons on 5 November 2024 and subsequently amended relating to filters, advertising for public health, technology in devices and intermediary liability for internet service providers, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.”

Scottish Government  
February 2026

This Supplementary Legislative Consent Memorandum relates to the Tobacco and Vapes Bill (UK Parliament legislation) and was lodged with the Scottish Parliament on 27 February 2026

# Tobacco and Vapes Bill – Supplementary Legislative Consent Memorandum

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