

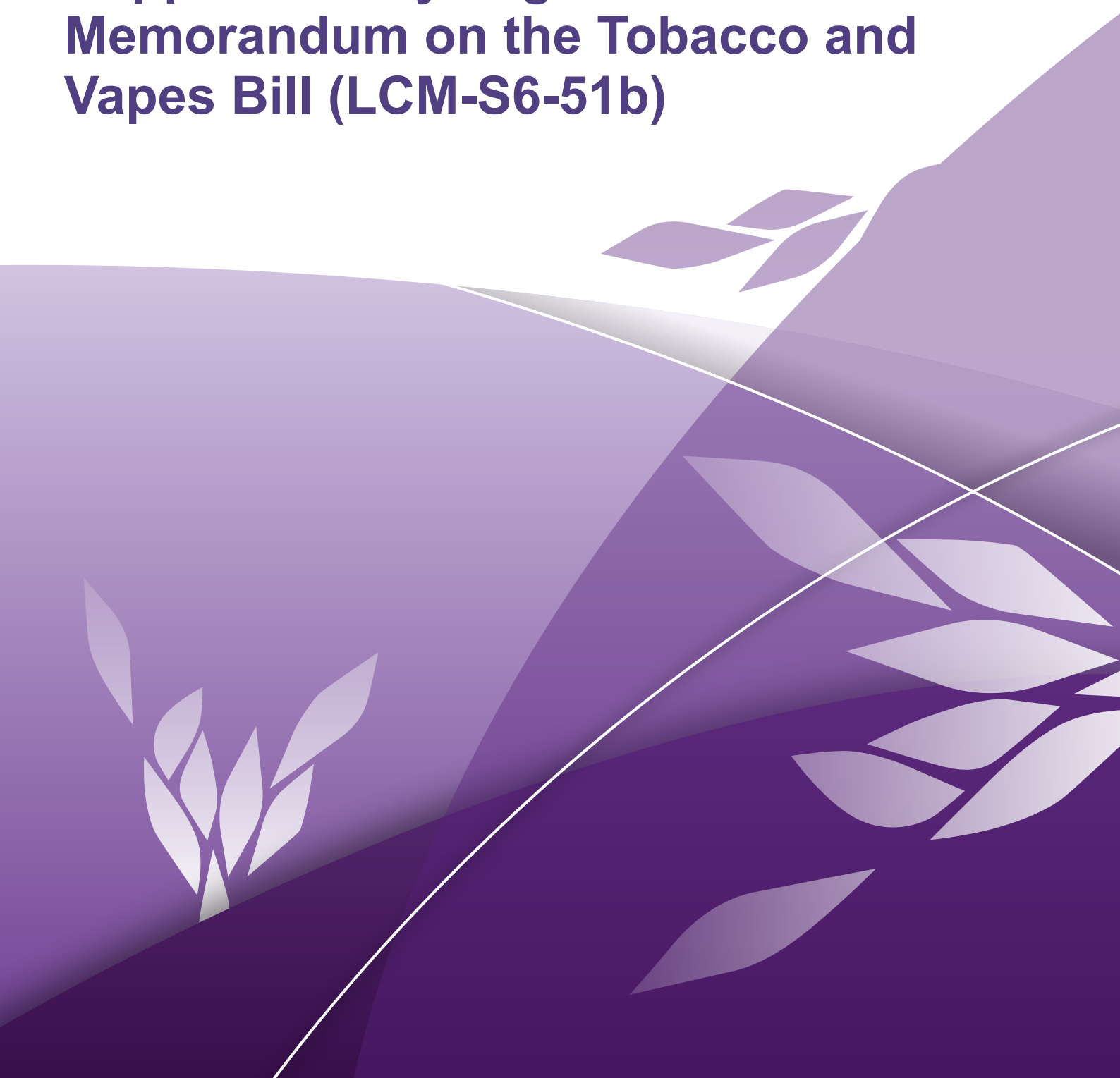


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Pàrlamaid na h-Alba

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## Health, Social Care and Sport Committee

# Supplementary Legislative Consent Memorandum on the Tobacco and Vapes Bill (LCM-S6-51b)



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# Health, Social Care and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Social Care.

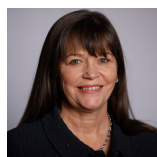


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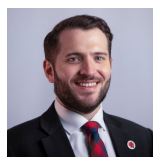


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# Committee Membership



**Convener**  
**Clare Haughey**  
Scottish National Party



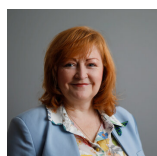
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**Sandesh Gulhane**  
Scottish Conservative  
and Unionist Party



**Emma Harper**  
Scottish National Party



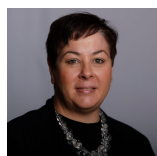
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**Carol Mochan**  
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**David Torrance**  
Scottish National Party



**Elena Whitham**  
Scottish National Party



**Brian Whittle**  
Scottish Conservative  
and Unionist Party

# Introduction

1. A Tobacco and Vapes Bill was originally introduced in the House of Commons by the Conservative UK Government at the time on 20 March 2024 and subsequently reintroduced in modified form by the newly elected UK Labour Government in November 2024.
2. Further information about the Committee's scrutiny of previous LCMs relating to this Bill can be found in [its report published on 12 May 2025](#).
3. On 17 February 2026, further amendments to the Tobacco and Vapes Bill were tabled in the UK Parliament which extend to Scotland, thereby triggering the need for a further supplementary LCM. [LCM-S6-51b](#) was subsequently lodged in the Scottish Parliament on 27 February 2026.
4. LCM-S6-51b sets out 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 because 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)

# Interaction with devolved competence

5. Under Rule 9B.1 of the Standing Orders of the Scottish Parliament, the Scottish Ministers are to lodge an LCM in respect of a “relevant Bill”. A “relevant Bill” is one which makes provision applying to Scotland for any purpose within the legislative competence of the Scottish Parliament or which alters that legislative competence or the executive competence of the Scottish Ministers.
6. As set out in supplementary LCM-S6-51b, the Scottish Government recommends that the Scottish Parliament should give legislative consent to amendments to the Tobacco and Vapes Bill related to the following matters insofar as they fall within the legislative competence of the Scottish Parliament and alter the executive competence of Scottish Ministers:
  - 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).
7. The UK Government agrees that an LCM is required for these amendments, with the exception of amendment 165 which it considers relates 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 insofar as it applies to devolved offences and simply serves to identify who is liable and who is not liable for prosecution, and that the exceptions limit the scope of the offences and do not have a separate and distinct purpose from the offences themselves.
8. The Bill as originally introduced did not cover filters, therefore various amendments are made to bring filters into the scope of the Bill. The UK-wide amendments on filters are intended to ensure that the legislation is as comprehensive and future-proof as possible. The supplementary LCM describes the evidence base on the harms of these products as “emerging” and concludes that new enabling powers will allow the UK Government and Scottish Government to act quickly as this evidence emerges.
9. 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. This defence only applies to advertisements whose purpose is to promote vaping products or nicotine products in general or a category of such products. The supplementary LCM concludes that this would ensure that Scottish public authorities could make their own decisions on whether or not to promote vapes or nicotine products.
10. 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.

11. 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 supplementary LCM concludes that this amendment does not change the intended policy, but provides clarity on where the liability rests and that these exceptions are required to put beyond doubt that such passive providers will not be found liable.
12. In relation to the regulation-making powers conferred on Scottish Ministers by the Bill or requiring the consent of Scottish Ministers, the supplementary LCM also makes various comments about the ongoing scrutiny role of the Scottish Parliament.
13. Where enabling powers in Part 5 ('Product and Information Requirements etc') and Part 6 ('Advertising and Sponsorship') of the Bill are amended, it is noted that 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 supplementary LCM commits the Scottish Government to work closely with the UK Government to ensure time for adequate scrutiny in the Scottish Parliament.
14. 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'), it is further noted that regulations made under them will be subject to the affirmative procedure and that the Scottish Parliament will, therefore, have further opportunity to scrutinise the content of those regulations. 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 supplementary LCM concludes that 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 and that the amendments will provide the ability to act quickly as the evidence emerges.
15. The draft motion, lodged by the Cabinet Secretary for Health and Social Care on 27 February 2026, states:
  - ” 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.

## Committee consideration

### Delegated Powers and Law Reform Committee consideration

16. The Delegated Powers and Law Reform Committee considered LCM-S6-51b at its meeting on 17 March 2026 and [published its report](#).
17. The DPLR Committee noted the Scottish Government's previous commitment to keeping the lead committee informed of consultations and decisions regarding future regulations, and called on the Scottish Government to restate that commitments to keeping the lead committee informed on any subsequent discussions within the UK nations on the need for regulations to evolve.

### Health, Social Care and Sport Committee consideration

18. Due to the tight timescales involved, neither the UK nor the Scottish Government consulted formally on the amendments that triggered the requirement for a further supplementary LCM.
19. The Health, Social Care and Sport Committee similarly did not have time to issue a call for views given the reporting deadlines and existing work programme commitments. However, the Committee has previously taken extensive evidence on the original LCM and subsequent supplementary LCM-S6-51a as outlined in its [previously published report](#).
20. The Committee took oral evidence on LCM-S6-51b from the Minister for Public Health and Women's Health, and Scottish Government officials, on [10 March 2026](#).
21. In her opening statement to Committee, the Minister highlighted that there remains cross-party support for the Bill and that there has been engagement across the four nations in its development. Regarding the LCM, she flagged that when initially introduced, the Bill did not cover filters and so amendments were necessary to bring filters into the scope of the Bill. She further stated the powers that are included in the parts of the bill that cover product requirements and advertising rest with UK ministers but will require the consent of the Scottish ministers where regulations contain devolved provision. She assured Committee that any future regulations on filters would be informed by consultation.
22. She further stated that the amendments relating to technology in devices give powers to the Secretary of State to regulate technology in vaping products or tobacco related devices, such as heated tobacco devices. There will be a requirement for the Secretary of State to obtain the consent of the Scottish Ministers if any future regulations contain provision that would be within the legislative competence of the Scottish Parliament. She explained that this was deemed necessary due to rapidly developing technology in vaping devices.

23. Regarding those amendments related to advertising for public health, she argued that these would provide clarity around the intentions of the Bill and informed the Committee that they would introduce a new defence for advertising offences when a person is acting in accordance with arrangements made by a public authority. Similarly, the intermediary liability for internet service providers amendment would ensure that there are exceptions to offences where a completely passive internet service is being provided.
24. Finally, the Minister made a commitment to continue to work across the four nations on the Bill's development and implementation and informed the Committee that officials had already started to consider co-ordinated implementation plans where appropriate . She noted that most of the relevant enabling powers would require consultation before regulations are made and that this would give the Scottish Parliament an opportunity to scrutinise the content of these regulations to ensure they meet the needs of Scottish policy.
25. The Minister concluded by calling on the Committee to recommend that the Scottish Parliament should agree to the supplementary LCM.
26. In follow-up questions, the Minister was asked some general questions about the Scottish Government's broader policy on vapes. Since these questions did not relate to the content of the supplementary LCM, the Minister responded that such matters would be further addressed in the Chamber. She went on to confirm that the Scottish Government's position on vapes had not changed - namely, that they can be a useful tool to help smokers quit, but that non-smokers should not use them. In response to another question, the Minister confirmed that snus is not covered by the Bill but noted that such products would already be regulated under general consumer product safety regulations. Asked whether the evolution of the Tobacco and Vapes Bill implied that the Scottish Government would be inclined to wait for policy on the public health implications of vaping to develop on a UK-wide basis, the Minister reaffirmed the Scottish Government's commitment to work with Public Health Scotland to take action in Scotland where appropriate.

# Conclusion

27. The Committee recommends that the Parliament agree to a legislative consent motion in similar terms to the draft motion included in the supplementary LCM.

