

Health, Social Care and Sport Committee
Tuesday, 6 May 2025
13th Meeting, 2025 (Session 6)

Tobacco and Vapes Bill Supplementary LCM

Note by the Clerk

Background

1. At today's meeting, the Committee will be holding an evidence session with the Minister for Public Health and Women's Health as part of its consideration of the Tobacco and Vapes Bill Legislative Consent Memorandum (LCM-S6-51) and subsequent supplementary LCM-S6-51a.
2. 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.
3. A Legislative Consent Memorandum related to this Bill was lodged on 2 April 2024 by Neil Gray, Cabinet Secretary for Health and Social Care, under Rule 9B.3.1(a) of the Parliament's standing orders, and was supported by Jenni Minto, Minister for Public Health and Women's Health. The Health, Social Care and Sport Committee was designated as the lead committee for consideration of the LCM.
4. At its meeting on [21 May 2024](#), the Committee took evidence on the LCM from the following stakeholders:
 - Scottish Grocers Federation
 - UK Vaping Industry Association
 - ASH Scotland
 - Public Health Scotland
5. Prior to the introduction of the original Tobacco and Vapes Bill in March 2024, the Health, Social Care and Sport Committee held an evidence session on the public health impact of vaping at its [meeting on 14 November 2023](#).
6. At the dissolution of the 2019-2024 UK Parliament, the Tobacco and Vapes Bill fell on 30 May 2024. On this basis, the Committee subsequently decided to take no further action in relation to its scrutiny of the LCM.
7. Following the UK General Election on 4 July 2024, the newly elected UK Labour Government subsequently introduced a modified version of the [Tobacco and Vapes Bill in the House of Commons on 5 November 2024](#).
8. On 21 November, a [Legislative Consent Memorandum](#) related to the reintroduced Bill was lodged by Neil Gray, Cabinet Secretary for Health and

Social Care, under Rule 9B.3.1(a) of the Parliament's standing orders, and was supported by Jenni Minto, Minister for Public Health and Women's Health.

9. The Health, Social Care and Sport Committee was designated as the lead committee for consideration of the new LCM and held an evidence session with the Minister for Public Health and Women's Health on [17 December 2024](#).
10. In preparation for considering the LCM, the Committee wrote to those stakeholders from whom it previously took evidence on 21 May 2024, inviting them to share their views on the reintroduced Tobacco and Vapes Bill and the associated LCM. Links to their respective responses are provided below:
 - [ASH Scotland](#)
 - [Public Health Scotland](#)
 - [Scottish Grocers' Federation](#)
 - [UK Vaping Industry Association](#)
11. On 18 March 2025, the UK Government tabled amendments NC11, 81 and 64 to the Tobacco and Vapes Bill. Amendment NC11 inserts a new clause into the Bill which extends only to Scotland, and is not covered by the original LCM-S6-51, therefore triggering the need for [supplementary LCM-S6-51a](#).
12. The amendment pertains to age verification and will give Scottish Ministers the power to prescribe methods, including but not limited to the showing of a document, which can establish a person's age.
13. According to the supplementary LCM, "The UK Government is also enabling digital identity services to be more trustworthy and secure, so that people can prove things about themselves without presenting a physical document". It further explains that Scottish Ministers have asked the UK Government to include this power for Scottish Ministers to enable them to authorise such methods in future, should they be satisfied that it is appropriate to do so.
14. Amendment 81 will amend the 2010 Act to provide Scottish Ministers with a power to prescribe methods of age verification through secondary legislation. The prescribed list of documents on the face of the 2010 Act will be removed. Ministers will have flexibility to authorise digital forms of age verification in future, should they be satisfied that it is appropriate to do so. The supplementary LCM further states that "Taking the power does not require authorisation of digital ID".
15. Amendment 64 also amends the existing Bill clause which bans the sale of tobacco products, vaping products, nicotine products, herbal smoking products and cigarette papers from vending machines. The amendments makes clear that this covers both machines from which relevant products can be bought and those

from which they are dispensed, with the aim of clarifying the intention of the original clause in the Bill.

Consultation on the Bill

16. To inform the previous version of the Bill, a four nations consultation on [Creating a Smoke Free Generation and Tackling Youth Vaping](#) was held in 2023. The consultation built on recommendations from the independent Khan review in 2022, which set out a set of recommendations to tackle smoking rates and youth vaping in the UK.
17. This consultation received nearly 28,000 responses from individuals and organisations across the UK. A joint government response was published on [29 January 2024](#).
18. There was no further consultation on the reintroduced version of the Bill.
19. Due to “tight timescales”, neither the UK nor Scottish Government consulted formally on the supplementary LCM tabled. The Scottish Government has however sought advice from Trading Standards to consider the implications of the proposal and describes their position as “supportive”.
20. The Health, Social Care and Sport Committee wrote to stakeholders for their view on the supplementary LCM.
21. The Committee received a brief response from Public Health Scotland, which stated that age verification will be an important consideration for enforcement of the rising age at which individuals will be legally permitted to purchase tobacco products under the Bill. Public Health Scotland also expressed support for Scottish Ministers being given powers to prescribe methods of age verification through secondary legislation, and argued that doing so would provide suitable flexibility to enable ministers to decide the right approach for Scotland.
22. The Committee also received responses from ASH Scotland and Cancer Research UK (see **Annexe A**), expressing support for the supplementary LCM.

Content of LCM-S6-51

23. The main provisions of the reintroduced Bill requiring consent can be summarised as follows:

Part 2 – Sale and distribution

24. This part of the Bill amends Scottish legislation to bring it in line with the provisions set out in part 1 of the Bill which extend to England and Wales. Some of these provisions repeal existing Scottish legislation and re-enact it:
 - Creates an offence to sell tobacco products to anyone born on or after 1 January 2009.
 - Repeals the offence of purchasing tobacco products by under 18s.

- Repeals the power to confiscate tobacco products from persons under 18.
- Creates an offence to sell cigarettes that are not in their original packaging.
- Extends the tobacco legislation to cover herbal smoking products. This will, for example, bring them into line with the age of sale and proxy purchasing restrictions.
- Introduces a new power which will allow Scottish Ministers to regulate the retail display of herbal smoking, vaping and nicotine products (including display of prices).
- Bans the manufacture and supply of oral tobacco products such as 'snus'.
- Extends the restrictions on vaping to nicotine products more generally (e.g. to nicotine pouches). This would include the age of sale, proof of age schemes and proxy-purchasing provisions.
- Extends the Tobacco and Nicotine Vapour Products register to include herbal smoking products and nicotine products more generally.
- Provides powers for Scottish Ministers to make provision about the size or appearance of warning statements.

Part 5 – Product and information requirements

- Provides regulation-making powers which would cover the production, importation, and supply of products. This would include broad powers to regulate various packaging elements such as markings, appearance, size, shape and other distinguishing features.
- Provides powers to regulate the flavours and content of products.
- Provides powers to regulate the nature and amount of substances emitted from tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping and nicotine products.

Part 6 – Advertising and sponsorship

- Repeals and replaces the Tobacco Advertising and Promotion Act 2002 ("TAPA"). TAPA prohibits the advertising of tobacco products and sponsorship agreements that promote such products. The Bill will re-enact those restrictions and extend them to herbal smoking products, cigarette papers, vaping products and other nicotine products. There is also a power for the Secretary of State to prohibit or restrict brand-sharing¹.

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

- Gives Ministers the power to broaden the types of places that can be designated smoke-free to those which are not 'wholly or substantially enclosed'.
- Gives Ministers the power to extend smoke-free spaces to also be vape-free and heated tobacco-free.

¹ Refers to the practice of using one brand's name, logo, or other identifying features on a different product or service. For example, a popular cigarette brand might share its branding with a line of snacks, or a clothing brand might extend its name to accessories.

25. LCM-S6-51 contains broadly the same core provisions as the first LCM but with some notable additions:

- the power for Ministers to make regulations to extend the smoking ban to spaces which are not 'wholly or substantially enclosed',
- the power for Ministers to make spaces 'vape-free' or 'heated tobacco-free' as well as smoke-free,
- the extension of the Tobacco and Nicotine Vapour Products retailer register to businesses that sell herbal smoking products,
- a ban on the manufacture, sale and possession of 'snus' (oral tobacco) with intent to supply.

Content of LCM-S6-51a

26. The main provisions of supplementary LCM-S6-51a requiring consent pertain to relevant provisions in Parts 2, 5, 6, 7, and 8 of the Bill. The UK Government's amendment NC11, which extends only to Scotland, inserts a new clause into the Bill which requires the legislative consent of the Scottish Parliament as it is a provision for a purpose which is within the legislative competence of the Scottish Parliament, namely public health. The UK Government are in agreement that consent is required.

Today's meeting

27. Following on from the previous evidence session on 17 December 2024, at today's meeting, Members will have a further opportunity to put questions to the Minister for Public Health and Women's Health regarding the reintroduced Tobacco and Vapes Bill and, specifically, the policy implications of the supplementary LCM-S6-51a.

Clerks to the Committee
May 2025

Ash Scotland Letter to for Health, Social Care and Sport Committee in the Scottish Parliament

Tobacco and Vapes Bill Supplementary Legislative Consent Memorandum April 2025

Dear Clare,

Thank you for the Health, Social Care and Sport Committee's invitation for ASH Scotland (Action

on Smoking and Health Scotland) to share our organisation's view in relation to the Tobacco and

Vapes Bill supplementary Legislative Consent Motion (LCM).

To inform ASH Scotland's response, we consulted colleagues at the Society of Chief Officers of Trading Standards in Scotland (SCOTSS).

We share the SCOTSS's view that proposed provision for Scotland to amend the 2010 Act to provide Scottish Ministers with a power to prescribe methods of age verification through secondary legislation is sensible, with the prescribed list of documents on the face of the Tobacco and Primary Medical Service (Scotland) 2010 Act being removed.

Should the Tobacco and Vapes Bill and LCM be passed, it is vital that retailers selling age-restricted products such as addictive and health harming tobacco, nicotine and herbal smoking/heated products in Scotland should comply with age verification policies and that future age verifications regulations are developed through a process compliant with the Government's and Parliament's responsibilities under the World Health Organisation Framework Convention on

Tobacco Control Article 5.3.

We support the proposal that Ministers should have the flexibility to authorise digital forms of age verification in future, should they be satisfied that it is appropriate to do so. We would like to see Scotland's retail register be made conditional, to assist with regulatory and enforcement options

ASH Scotland is therefore content to encourage Members of the Health, Social Care and Sport Committee to recommend its support for the Bill's supplementary LCM.

Thank you for considering ASH Scotland's views on this matter.

Yours sincerely,

Sheila Duffy. Chief Executive

Cancer Research UK

Written submission for Health, Social Care and Sport Committee in the Scottish Parliament

Tobacco and Vapes Bill Supplementary Legislative Consent Memorandum April 2025

Summary:

- Cancer Research UK supports the legislation as introduced by the UK Government on 20th March 2024.
- Cancer Research UK supports the Legislative Consent Memorandum (LCM) and motion as lodged by the Scottish Government on 2nd April 2024.
- Cancer Research UK would encourage the Health, Social Care and Sport Committee to recommend that the Scottish Parliament agrees to introduce the Tobacco and Vapes Bill in full through the Legislative Consent Motion.
- Cancer Research UK supports the supplementary memorandum, which would allow Scottish Ministers to make regulations to authorise trusted digital forms of identification in future, should they be satisfied that it is appropriate to do so.

Why Cancer Research UK supports legislation to raise the age of sale of tobacco

Smoking is the biggest cause of cancer and death in Scotland. The Scottish Government is not on track to meet its 2034 smokefree target (less than 5% of the population smoking) until 2048. Raising the age of sale of tobacco offers an historic opportunity for all four UK nations to create the first ever smokefree generation, which will help prevent young people from suffering a lifetime of addiction, ill health, and premature death.

- The potential impact of this proposed change cannot be understated.
- Tobacco kills one person every 40 minutes in Scotland and is responsible for around 6,300 cancer deaths each year.
- When used exactly as recommended by the manufacturer, tobacco is the one legal consumer product that will kill most users – 2 out of 3 people who smoke will die from smoking.
- Smoking levels are at their lowest recorded point – around 1 in 10 (11%) of the Scottish adult population smoke.
- Smoking rates do not fall on their own - they come down with government action.

- Nothing would have a bigger impact on reducing the number of preventable deaths in the Scotland than ending smoking.
- Almost 9 in 10 people in the UK who smoke report that they started smoking before the age of 21. Raising the age of sale could reduce the number of people who take up smoking.
- [75% of adults in Scotland](#) support the Scottish Government's smokefree ambition.
- **We support this bill being introduced in Scotland and being UK-wide as it is important that no nation gets left behind on the road to a Smokefree UK.**

Why raise the age of sale of tobacco incrementally?

This specific model to raise the age of sale would mean that nobody born on or after 1 January 2009 could ever be legally sold tobacco. This would take the legal sale of cigarettes beyond school age and could help protect young children from exposure to older pupils who smoke.

- This could stop young people from ever developing a dangerous addiction that they may then struggle to overcome and reduce their risk of cancer in the future.
- Up to 820,000 fewer cigarettes will be smoked each day in Scotland by 2040 if these new laws are passed to increase the age of sale of tobacco.

Raising the age of sale by one year every year, as opposed to a single leap to either 21 or 25, would help to create the first ever smokefree generation which could prevent future generations from ever taking up smoking.

- The previous rise – a change from 16 to 18 - led to reductions in smoking across the UK, however, for some people it just pushed back the age at which they started. Smoking is dangerous at any age, and it is important we do not just delay the age at which someone starts smoking, but instead fully prevent people from taking it up in the first place.
- Action on Smoking and Health (ASH) reported that when the tobacco age of sale increased from 16 to 18 in 2007 it had no impact on black market sales. An incremental rise makes this even less likely as it will be a gradual change.

The proposed legislation would not impact adults who currently smoke.

- It would not affect anyone currently able to buy tobacco products.

Introducing this legislation would cement Scotland's and the UK's position as a world-leader in tobacco control.

How will this be enforced?

For this law to be effective and have the greatest impact, it will need to be sufficiently enforced. This requires sufficient resourcing and funding for trading standards services.

- The UK Government has committed to investing an extra £30 million for enforcement agencies in England every year for the next five years. £8 million of this is expected, though not confirmed, to be allocated to Scotland.
- Cancer Research UK is calling on the UK and Scottish governments for this investment to be sufficient and sustainable in the long-term.

Regulatory consistency across all 4 UK nations

Cancer Research UK welcomes the Scottish Government's decision to repeal the purchase offence for under 18s, which will mean that nobody under the legal age of sale will be criminalised for purchasing tobacco. As this purchase offence was unique to Scotland, the amendment will mean that the Scottish law will align with the rest of the UK.

The decision to retain the proxy purchasing offence, and to extend the tobacco legislation to herbal smoking products will also ensure regulatory consistency across the UK.

Supplementary Legislative Consent Memorandum

A supplementary memorandum was published by Neil Gray MSP, Cabinet Secretary for Health and Social Care on 28th March 2025, following the first reading of the Tobacco and Vapes Bill on 27th March 2025.

As stated in Paragraph 15 and 16 of the Supplementary [Legislative Consent Memorandum](#)–

“....the UK Government have added a provision to the Bill which gives the Secretary of State the power to designate steps which can be taken to verify age. This will allow the UK Government to make provision for digital methods of age verification which can form part of a reasonable steps defence. The provision on the face of the Bill which lists specific documents will be removed from the Bill.

The proposed provision for Scotland will amend the 2010 Act to provide Scottish Ministers with a power to prescribe methods of age verification through secondary legislation. The prescribed list of documents on the face of the 2010 Act will be removed. Ministers will have flexibility to authorise digital forms of age verification in future, should they be satisfied that it is appropriate to do so. Taking the power does not require the authorisation of digital ID.”

Cancer Research UK wants to ensure the measures within the Tobacco and Vapes Bill can be effectively enforced.

Ensuring that people are able to verify their age when required will be important to enforcing changes on raising the age of sale of tobacco.

The amendment tabled by the UK Government, NC11, would help to future-proof the Tobacco and Vapes Bill by allowing for new forms of valid identification to be introduced alongside existing forms. This would ensure that what constitutes a valid form of identification within this Bill is consistent with wider changes that may happen on digital IDs.

Cancer Research UK supports the supplementary memorandum, which would allow Scottish Ministers to make regulations to authorise trusted digital forms of identification in future, should they be satisfied that it is appropriate to do so.

Further information

We would welcome the opportunity to provide oral evidence to the committee on the proposed legislation as it relates to cancer.

- How does smoking cause cancer? <https://www.cancerresearchuk.org/about-cancer/causes-of-cancer/smoking-and-cancer/how-does-smoking-cause-cancer>
- Tobacco Statistics: <https://www.cancerresearchuk.org/health-professional/cancer-statistics/risk/tobacco>
- Cancer Statistics for the UK: <https://www.cancerresearchuk.org/health-professional/cancer-statistics-for-the-uk>