

Health, Care and Sport Committee
Wednesday 30 September 2026
6th Meeting, 2026 (Session 7)

Note by the Clerk on The Tobacco and Vapes Act 2026 (Consequential, Transitional and Saving Provisions) (Scotland) Regulations 2026 (SSI 2026/213)

Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to the negative procedure. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.
2. More information about the instrument is summarised below:

Title of instrument: [Tobacco and Vapes Act 2026 \(Consequential, Transitional and Saving Provisions\) \(Scotland\) Regulations 2026](#) (SSI 2026/213)

Laid under: [Tobacco and Vapes Act 2026](#)

Laid on: 26/06/2026

Procedure: Negative

Deadline for committee consideration: 05/10/2026 (Advisory deadline for any committee report to be published)

Deadline for Chamber consideration: 08/10/2026 (Statutory 40-day deadline for any decision whether to annul the instrument)

Commencement: Regulations 2 to 6 come into force on 29 October 2026. Regulations 7 to 9 come into force on 29 October 2026 immediately after the coming into force of section 68 and schedule 8 of the Tobacco and Vapes Act 2026 (alignment of definition of “vaping product”). Regulation 10 comes into force on 1 January 2027.

Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and

- a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).
 6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

7. The DPLR Committee considered the instrument on 1 September 2026 and reported on it in its [2nd Report, 2026](#). The DPLR Committee highlighted two issues in relation to the instrument:
 - The Committee asked the Scottish Government whether, in the schedule of the instrument, “herbal smoking business” should be “herbal smoking product business”, to reflect the defined term. This was later amended by correction slip.
 - The Committee also asked the Scottish Government about regulation 6 of the instrument. The Scottish Government stated that it would consider amending the heading of regulation 7 in the future, to reflect the omission of regulation 6.

Purpose of the instrument

8. The Policy Note accompanying the instrument is included in the Annexe A. It provides a summary of consultation undertaken on the instrument and the anticipated financial effects.
9. The regulations will make the following technical amendments to secondary legislation to reflect the changes made by the Tobacco and Vapes Act 2026 (“the 2026 Act”):
 - The 2026 Act changes the age of sale offence for tobacco to make it an offence to sell to persons born after 1 Jan 2009 from 1 Jan 2027. The Sale of Tobacco (Prescribed Documents) (Scotland) Regulations 2013 will be amended to reflect this new offence.
 - The 2026 Act makes provision to change the definition of “nicotine vapour product” in the Tobacco and Primary Medical Services (Scotland) Act 2010 (the 2010 Act) to “vaping product” – aligning the definition in Scottish legislation with the definition to be used elsewhere in UK. There are a number of instruments which currently use the term “nicotine vapour product” – those will be amended to ensure that the new term “vaping product” is used in secondary legislation.

- The 2026 Act amends existing offences in the 2010 Act which apply to tobacco products and vaping products, extending them to herbal smoking products and nicotine products. SSIs made using powers in the 2010 Act which underpin some of those offences will be amended to reflect the changes to the core offences, ensuring that all of the relevant products are covered in the relevant secondary legislation.
 - The 2026 Act repeals the offence of purchasing tobacco products by people under 18 and these regulations make amendments to the Sale of Tobacco (Registration of Moveable Structures and Fixed Penalty Notices (Scotland) Regulations 2011 to ensure that there are no longer prescribed fixed penalties for the repealed offences.
 - The 2026 Act adds nicotine product retailers and herbal smoking product retailers to the Register provisions in Part 2 of the 2010 Act. This means that secondary legislation underpinning the Register provisions will need amended to reflect these changes when they are commenced by the Tobacco and Vapes Act 2026 (Commencement No. 1, Transitional and Saving Provisions) (Scotland) Regulations 2026.
10. No public consultation was undertaken for this instrument, as it contains technical regulations required as a result of substantive provisions in the 2026 Act. A UK-wide public consultation was held in relation to the development of the 2026 Act, which covered policies related to age restrictions for nicotine products and the expansion of tobacco policies to herbal smoking products.
11. A [Childs Rights and Wellbeing Impact Assessment](#) (CRWIA) has been carried out for these regulations. This notes that the purpose of the 2026 Act is to stop children from starting to smoke and to prevent the next generation becoming addicted to nicotine. The CRWIA found that the overall policy will have a positive impact on children's rights.
12. The Policy Note also states that a Data Protection Impact Assessment has been completed, although this has not been published.

Committee consideration

13. So far, no motion recommending annulment has been lodged.
14. Members are invited to consider the instrument and decide whether there are any points they wish to raise.
15. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).
16. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

Related instrument

13. This SSI was laid as part of a package, alongside [The Tobacco and Vapes Act 2026 \(Commencement no. 1, Transitional and Saving Provisions\) \(Scotland\) Regulations 2026](#). The latter is a laid only instrument, which commences provisions in the 2026 Act so that retailers selling herbal smoking products and nicotine products are subject to the same registration requirements as retailers who sell tobacco and vaping products. Laid only instruments are not subject to parliamentary procedure.

Clerks to the Committee
September 2026

Annexe A: Scottish Government Policy Note

POLICY NOTE

THE TOBACCO AND VAPES ACT 2026 (CONSEQUENTIAL, TRANSITIONAL AND SAVING PROVISIONS) (SCOTLAND) REGULATIONS 2026

SSI 2026/213

The above instrument was made in exercise of the powers conferred by section 169(1)(a) and 172(1) of the Tobacco and Vapes Act 2026. The instrument is subject to negative procedure.

Summary Box

The Tobacco and Vapes Act 2026 (Consequential, Transitional and Saving Provisions) (Scotland) Regulations 2026 will make technical amendments to secondary legislation to reflect the changes made by the Tobacco and Vapes Act 2026 (“the 2026 Act”).

Policy Objectives

The overarching policy objectives of the 2026 Act are to create a smoke free generation in Scotland and to reduce nicotine and vape product use among young people and non-smokers. The 2026 Act aligns with Scotland’s Population Health Framework¹ and the Tobacco and Vaping Framework².

The Tobacco and Vapes Act 2026 (Consequential, Transitional and Savings Provisions) (Scotland) Regulations 2026 will make technical amendments to secondary legislation to reflect certain changes made by the 2026 Act. This includes amendments to:

- The Sale of Tobacco (Register of Tobacco Retailers) Regulations 2010
- The Sale of Tobacco (Registration of Moveable Structures and Fixed Penalty Notices) (Scotland) Regulations 2011
- The Prisons and Young Offenders Institutions (Scotland) Rules 2011
- The Sale of Nicotine Vapour Products (Prescribed Documents) (Scotland) Regulations 2017
- The Sale of Tobacco (Prescribed Documents) (Scotland) Regulations 2013
- The Sale of Tobacco and Nicotine Vapour Products by Persons Under 18 (Scotland) Regulations 2017

The amendments will reflect the extension of various provisions in the Tobacco and Primary Medical Services (Scotland) Act 2010 (“the 2010 Act”) to cover herbal smoking products and nicotine products and will reflect changes in terminology from “nicotine vapour product” to “vaping product”.

Section 54 of the 2026 Act repeals the offence of purchasing tobacco products by people under the age of 18 and section 55 repeals the offence of a person under 18 failing to comply with a confiscation request. The instrument reflects those provisions by removing prescribed fixed penalties for those offences from secondary legislation.

Part 4 of the Regulations makes amendments in consequence of provision in the 2026 Act (section 69 and schedule 9) which extends Chapter 2 (register of tobacco and vaping product retailers) of Part 1 of the 2010 Act so that retailers selling herbal smoking products and nicotine products are subject to the same registration requirements as retailers who sell

¹<https://www.gov.scot/publications/scotlands-population-health-framework/>

² <https://www.gov.scot/publications/tobacco-vaping-framework-implementation-plan-2023-2025-progress-update/>

tobacco and vaping products. These provisions are brought into force by The Tobacco and Vapes Act 2026 (Commencement No. 1, Transitional and Saving Provisions) (Scotland) Regulations 2026 (S.S.I. 2026/210 (C. 22)).

The instrument provides transitional and saving provisions to ensure that a person who is subject to an existing tobacco and vaping product banning order which was made before 29 October 2026 will, after the relevant consequential amendments come into force, still be required to declare that in an application to be registered. There is a saving provision to ensure that the old form of banning order notice continues to apply for notices relating to existing tobacco and vaping product banning orders.

There is a minor amendment in Part 5 to reflect the change to the age of sale made by section 52 of the 2026 Act which comes into force on 1 January 2027.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024

Compatibility

The Scottish Ministers have made the following statement regarding children's rights. In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Tobacco and Vapes Act 2026 (Consequential, Transitional and Saving Provisions) (Scotland) Regulations 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

There was a UK-Wide public consultation to support the development of the 2026 Act, which covered policies related to age restrictions for nicotine products and the expansion of tobacco policies to herbal smoking products. No public consultation was undertaken for this instrument, as it contains technical regulations required as a result of substantive provisions in the 2026 Act.

Impact Assessments

A Childs Rights and Wellbeing impact assessment and Data Protection Impact Assessment have been completed for the instrument

Financial Effects

The Minister for Community Care confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Population Health Directorate
June 2026