



The Scottish Parliament  
Pàrlamaid na h-Alba

## Delegated Powers and Law Reform Committee

Neil Gray MSP  
Cabinet Secretary for Health and Social Care

**29 January 2025**

Dear Cabinet Secretary

### Tobacco and Vapes Bill

At the meeting of the Delegated Powers and Law Reform Committee on Tuesday, 28 January, the Committee considered the delegated powers exercisable within devolved competence in the above UK Bill, as referred to in the [Legislative Consent Memorandum](#) (“the LCM”) lodged on 21 November 2024.

To assist the Committee in its consideration of the LCM, it agreed to request further information in relation to the following clauses in the Bill, all of which are only exercisable by the Secretary of State:

- clauses 90, 91 and 92: Powers to regulate packaging, features of products, and contents and flavour;
- clause 93: Substances released into human body and emissions;
- clause 94: Non-compliant images;
- clause 96: Information;
- clause 97: Studies;
- clause 98: Responsible person;
- clause 99: Testing;
- clause 101: Matters dealt with by TRPR;
- clause 123: Brandsharing; and
- clause 133: Power to extend Part 6 and Communications Act 2003 to other products.

Given that these powers could be exercised within the legislative competence of the Scottish Parliament with the consent of the Scottish Ministers, the Committee asks the Scottish Government:

- 1. in light of the four-nations approach to regulation under the Tobacco and Vaping Framework, what consideration was given to requiring regulations proposed under each of these clauses which make provision within the Scottish Parliament's legislative competence to be laid in both the United**

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Contact: Delegated Powers and Law Reform Committee, The Scottish Parliament, Edinburgh, EH99 1SP. Email [DPLR.Committee@parliament.scot](mailto:DPLR.Committee@parliament.scot). We welcome calls through Relay UK and in BSL through Contact Scotland BSL.

**Kingdom Parliament and the Scottish Parliament, and to be subject to procedure in both Parliaments?**

- 2. whether the powers in these clauses fall within the scope of SI Protocol 2 and, if so, whether it is content to add those powers to Annex A of SI Protocol 2?**
- 3. if the Scottish Government's position is that the powers do not fall within the scope of SI Protocol 2, how will it facilitate parliamentary scrutiny to consent to the making of regulations under:**
  - a) clause 111 of the Bill in relation to the powers in clauses 90, 91, 92, 93, 94, 96, 97, 98, 99 and 101;**
  - b) clause 123(5) of the Bill in relation to the powers in clause 123; and**
  - c) clause 133(3) of the Bill in relation to the powers in clause 133?**

Finally, in relation to Clause 61 of the Bill, the Committee notes that the scope of the power in the new section 3A of the Tobacco and Primary Medical Services (Scotland) Act 2010 does not extend to the display of herbal smoking products, vaping products or nicotine products on websites or the display of their prices on websites. The Committee notes that the Explanatory Notes for the Bill state that websites are excluded to maintain consistency with section 3 of the 2010 Act. The Committee asks the Scottish Government **whether there is any equivalent power in current legislation to deal with the displays of such products and their prices on websites?**

I would be grateful if you could please email your response to the Committee's questions by **Wednesday, 5 February**.

Yours sincerely

**Stuart McMillan MSP**  
**Convener**