

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](#) which was lodged on 21 November 2024.

2. The Tobacco and Vapes Bill ("the Bill") was introduced in the House of Commons on 5 November 2024. The Bill has now entered the House of Lords having had its first reading on 27 March 2025. 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 landmark step in creating a smoke-free UK and will:
- 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; and
 - strengthen enforcement activity to support the implementation of the above measures and broaden our pre-existing tobacco and vapes register by including nicotine products and herbal smoking products.
4. On 18 March 2025 the UK Government tabled amendments to the Bill which extend to Scotland ([amendments NC11, 81 and 64](#)).
5. Amendment NC11 inserts a new clause into the Bill, relating to the defence to the offence of underage sale of tobacco or vaping products. This provision triggers the need for a supplementary legislative consent memorandum. Amendment 81 gives the Scottish Ministers the power to commence this new clause by regulations.

6. Amendment 64 amends an existing Bill clause which bans the sale of tobacco products, vaping products, nicotine products, herbal smoking products and cigarette papers from vending machines. The amendment makes clear that this covers both machines from which relevant products can be bought and those from which they are dispensed. This was the intention of the original clause, with the amendment being tabled to put this beyond any doubt and so is considered to be within scope of the original legislative consent memorandum.

Provisions which require the consent of the Scottish Parliament

7. The Bill is a relevant Bill under Rule 9B.1.1 of the Standing Orders, as it makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament, namely public health.

8. 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.

9. The UK Government tabled an amendment NC11, on 18 March 2025, inserting a new clause into the Bill which extends to Scotland only, and is not considered to be covered by LCM-S6-51. This new clause 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.

Age verification

10. It is a defence to the offence of selling tobacco or vaping products to a customer under the age of sale to demonstrate that reasonable steps were taken to establish the customer's age. The Tobacco and Primary Medical Service (Scotland) Act 2010 ("the 2010 Act") prescribes the kind of document which, if shown to a retailer, can be relied upon in the context of that defence. Digital, as well as physical, documents can be used however it is not possible to specify other methods of age verification that do not involve a document being shown to the seller.

11. The age verification amendment will give the Scottish Ministers the power to prescribe methods, including but not limited to the showing of a document, which can be used to establish a person's age.

12. The UK Government is enabling digital identity services to be more trustworthy and secure, so that people can prove things about themselves (including their age) without presenting physical documents. The Data (Use and Access) Bill will underpin a structure of standards and governance for providers to offer trusted digital identity services to those who want to use them.

13. There are already over 50 providers certified against government standards, and the use of digital identities is expected to rise, so the UK Government are taking the decision to ensure their tobacco legislation is capable of accommodating trustworthy digital identities.

14. 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.

Reasons for seeking legislative consent

15. As noted above in paragraphs 12 to 14, developments around age verification have arisen. As a result, 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.

16. 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.

17. Ministers will have the power to commence these changes by regulations, giving flexibility as to when new regulations need to be brought forward. Consideration will be given as to whether consultation is needed and, if so, the nature of such consultation depending on the content of future regulations.

18. Insofar as new powers are being granted to the Scottish Ministers to make regulations, regulations made under them will be subject to the negative procedure. The Scottish Parliament will, therefore, have the opportunity to closely scrutinise the content of those regulations to ensure these meet the needs of Scottish policy.

19. Whilst equivalent provision could be made in Scottish Parliament legislation, the Scottish Government considers it prudent to pursue this through the Bill. The proposed provision ensures that Scottish Ministers have the same flexibility to adapt to future digital advances in age verification to the same timescales as Ministers in the other 3 UK administrations, if appropriate to do so. If we do not take the opportunity to amend the 2010 Act through this Bill, it would not be possible to adapt to changes in technology as quickly in Scotland, which in turn could impact on businesses and consumers. The Scottish Parliament will scrutinise any regulations made under this power, as they scrutinised the existing regulations under the existing power.

Consultation

20. Due to the tight timescales neither the UK nor the Scottish Government have had time to consult formally on this provision. The Scottish Government has however sought advice from Trading Standards to consider the implications of the proposal and they are supportive. Consideration will be given as to whether consultation is needed, and if so, the nature of such consultation before regulations are brought forward under the power. While no formal consultation has happened yet, the topic of Digital ID was discussed during committee stage at the House of Commons. This highlighted that the UK Government was introducing the use of digital ID and it was noted it could potentially improve the process of age verification for members of the public and retailers.

Financial implications

21. Scottish Ministers will have the power to commence this provision by regulations at some time in the future and therefore it does not come with any immediate financial implications. It does however future proof the legislation as developments in digital age verification move forward.

Conclusion

22. The Scottish Government recommends consent to the following provision:

- Age verification in relation to tobacco and vaping products etc

Draft Legislative Consent Motion

23. 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 age verification in relation to tobacco and vaping products etc, 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
March 2025

This Supplementary Legislative Consent Memorandum relates to the Tobacco and Vapes Bill (UK legislation) and was lodged with the Scottish Parliament on 28 March 2025

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