

Tobacco and Vapes Bill

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Health and Social Care, are published separately as Bill 121—EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Wes Streeting has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Tobacco and Vapes Bill are compatible with the Convention rights.

Tobacco and Vapes Bill

[AS INTRODUCED]

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[AS INTRODUCED]

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Make provision about the supply of tobacco, vapes and other products, including provision prohibiting the sale of tobacco to people born on or after 1 January 2009 and provision about the licensing of retail sales and the registration of retailers; to enable product and information requirements to be imposed in connection with tobacco, vapes and other products; to control the advertising and promotion of tobacco, vapes and other products; and to make provision about smoke-free places, vape-free places and heated tobacco-free places.

BE IT ENACTED by the King’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

SALE AND DISTRIBUTION: ENGLAND AND WALES

Sale of tobacco etc

1 Sale of tobacco etc

- (1) It is an offence to sell any of the following to a person born on or after 1 January 2009— 5
- (a) a tobacco product;
 - (b) a herbal smoking product;
 - (c) cigarette papers.
- (2) It is a defence for a person charged with an offence under this section to prove— 10
- (a) that they were shown what appeared to be an identity document belonging to the purchaser and that the date of birth shown on that document was before 1 January 2009, or
 - (b) that they otherwise took all reasonable steps to avoid the commission of the offence. 15
- (3) In subsection (2) “identity document” means—

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- (a) a passport,
 - (b) a UK driving licence,
 - (c) a driving licence issued by any of the Channel Islands or the Isle of Man,
 - (d) a European Union photocard driving licence, or
 - (e) an identity card issued by the Proof of Age Standards Scheme and bearing its hologram (a PASS card).
- (4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale. 5
- 2 Purchase of tobacco etc on behalf of others** 10
- (1) It is an offence for a person aged 18 or over to buy, or attempt to buy, any of the following on behalf of a person born on or after 1 January 2009 –
- (a) a tobacco product;
 - (b) a herbal smoking product;
 - (c) cigarette papers. 15
- (2) It is a defence for a person charged with an offence under this section to prove that they had no reason to suspect that the other person was born on or after 1 January 2009.
- (3) It is a defence for a person charged with an offence under this section in respect of cigarette papers to prove that they had no reason to suspect that the other person intended to use the papers for smoking. 20
- (4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- 3 Tobacco vending machines**
- (1) A person commits an offence if the person has the management or control of premises on which a tobacco vending machine is available for use. 25
- (2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) In this section “tobacco vending machine” means an automatic machine from which any of the following may be bought – 30
- (a) tobacco products,
 - (b) herbal smoking products, or
 - (c) cigarette papers.
- 4 Sale of unpackaged cigarettes**
- (1) It is an offence for a tobacco retailer to sell cigarettes that are not in their original packaging. 35
- (2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (3) In this section “original packaging” means the retail packaging in which the cigarettes were supplied to the tobacco retailer for the purpose of sale.

5 Age of sale notice at point of sale: England

- (1) A tobacco retailer who sells tobacco products on premises in England must display an age of sale notice on those premises. 5
- (2) For the purposes of this section an “age of sale notice” is a notice containing the following statement –
- “It is illegal to sell tobacco products to anyone born on or after 1 January 2009”.
- (3) The notice must be displayed in a prominent position where it is readily visible to people at each point of sale of tobacco products. 10
- (4) The notice must comply with any requirements set out in regulations made by the Secretary of State as to the size or appearance of –
- (a) the statement to be displayed on the notice, or
- (b) any other aspect of the notice. 15
- (5) Regulations under subsection (4) are subject to the negative resolution procedure.
- (6) A person who fails to display an age of sale notice as required by this section commits an offence.
- (7) It is a defence for a person charged with an offence under this section to prove that they took all reasonable steps to avoid the commission of the offence. 20
- (8) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

6 Age of sale notice at point of sale: Wales

- (1) A tobacco retailer who sells tobacco products on premises in Wales must display an age of sale notice on those premises. 25
- (2) For the purposes of this section an “age of sale notice” is a notice containing both the following statements –
- “It is illegal to sell tobacco products to anyone born on or after 1 January 2009” 30
- “Mae’n anghyfreithlon gwerthu cynhyrchion tybaco i unrhyw un a anwyd ar neu ar ôl 1 Ionawr 2009”.
- (3) The notice must be displayed in a prominent position where it is readily visible to people at each point of sale of tobacco products. 35
- (4) The notice must comply with any requirements set out in regulations made by the Welsh Ministers as to the size or appearance of –

- (a) the statement to be displayed on the notice, or
 - (b) any other aspect of the notice.
- (5) Regulations under subsection (4) are subject to the negative resolution procedure.
- (6) A person who fails to display an age of sale notice as required by this section commits an offence. 5
- (7) It is a defence for a person charged with an offence under this section to prove that they took all reasonable steps to avoid the commission of the offence.
- (8) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 10

Snus etc

7 Ban on manufacture of snus etc

- (1) It is an offence to manufacture a relevant oral tobacco product.
- (2) In subsection (1) “relevant oral tobacco product” means a tobacco product that— 15
- (a) is intended for oral use,
 - (b) is not intended to be inhaled or chewed, and
 - (c) consists wholly or partly of tobacco in powder or particulate form.
- (3) A person who commits an offence under this section is liable— 20
- (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

8 Ban of sales of snus etc

- (1) It is an offence to— 25
- (a) sell a relevant oral tobacco product, or
 - (b) offer or expose a relevant oral tobacco product for sale.
- (2) In subsection (1) “relevant oral tobacco product” has the meaning given by section 7(2). 30
- (3) It is a defence for a person charged with an offence under this section to prove that they took all reasonable steps to avoid the commission of the offence.
- (4) A person who commits an offence under this section is liable— 35
- (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both;

- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

9 Possession of snus etc with intent to supply

- (1) It is an offence for a person to have a relevant oral tobacco product in their possession with intent to supply it to another in the course of business. 5
- (2) In subsection (1) “relevant oral tobacco product” has the meaning given by section 7(2).
- (3) A person who commits an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both; 10
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

Sale of vaping and nicotine products etc

10 Sale of vaping or nicotine products to under 18s

- (1) It is an offence to sell a vaping product or nicotine product to a person who is under the age of 18. 15
- (2) It is a defence for a person charged with an offence under this section to prove—
 - (a) that they were shown what appeared to be an identity document belonging to the purchaser and it confirmed the purchaser’s age as at least 18 years old, or 20
 - (b) that they otherwise took all reasonable steps to avoid the commission of the offence.
- (3) In subsection (2) “identity document” means—
 - (a) a passport, 25
 - (b) a UK driving licence,
 - (c) a driving licence issued by any of the Channel Islands or the Isle of Man,
 - (d) a European Union photocard driving licence, or
 - (e) an identity card issued by the Proof of Age Standards Scheme and bearing its hologram (a PASS card). 30
- (4) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

11 Purchase of vaping or nicotine products on behalf of under 18s

- (1) It is an offence for a person aged 18 or over to buy, or attempt to buy, a vaping product or nicotine product on behalf of a person who is under the age of 18. 35

- (2) It is a defence for a person charged with an offence under this section to prove that they had no reason to suspect that the other person was under the age of 18.
- (3) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale. 5

12 Vaping and nicotine product vending machines

- (1) A person commits an offence if the person has the management or control of premises on which a vape vending machine or a nicotine product vending machine is available for use.
- (2) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale. 10
- (3) In this section—
 “nicotine product vending machine” means an automatic machine from which nicotine products may be bought;
 “vape vending machine” means an automatic machine from which vaping products may be bought. 15

Displays of products or prices

13 Displays of products or prices in England

- (1) The Secretary of State may by regulations impose prohibitions, requirements or limitations on retailers in relation to— 20
 (a) the display, in the course of business, of relevant products in a place in England where the products are offered for sale;
 (b) the display, in the course of business, of empty retail packaging of relevant products in a place in England where the products are offered for sale; 25
 (c) the display, in the course of business, of prices of relevant products in a place in England where the products are offered for sale.
- (2) In subsection (1) “relevant products” means— 30
 (a) tobacco products,
 (b) herbal smoking products,
 (c) cigarette papers,
 (d) vaping products, or
 (e) nicotine products.
- (3) In subsection (1)(a) a reference to a product includes anything that represents the product and that is intended to be exchanged for it at the point of sale. 35
- (4) Regulations under this section may create offences in relation to a failure to comply with the regulations.

- (5) The regulations must provide for any offence to be triable either way and punishable –
 - (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both. 5
- (6) Before making regulations under this section the Secretary of State must consult any persons the Secretary of State considers it appropriate to consult.
- (7) Regulations under this section are subject to the affirmative resolution procedure. 10

14 Displays of products or prices in Wales

- (1) The Welsh Ministers may by regulations impose prohibitions, requirements or limitations on retailers in relation to –
 - (a) the display, in the course of business, of relevant products in a place in Wales where the products are offered for sale; 15
 - (b) the display, in the course of business, of empty retail packaging of relevant products in a place in Wales where the products are offered for sale;
 - (c) the display, in the course of business, of prices of relevant products in a place in Wales where the products are offered for sale. 20
- (2) In subsection (1) “relevant products” means –
 - (a) tobacco products,
 - (b) herbal smoking products,
 - (c) cigarette papers,
 - (d) vaping products, or 25
 - (e) nicotine products.
- (3) In subsection (1)(a) a reference to a product includes anything that represents the product and that is intended to be exchanged for it at the point of sale.
- (4) Regulations under this section may create offences in relation to a failure to comply with the regulations. 30
- (5) The regulations must provide for any offence to be triable either way and punishable –
 - (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both. 35
- (6) Before making regulations under this section the Welsh Ministers must consult any persons they consider it appropriate to consult.
- (7) Regulations under this section are subject to the affirmative resolution procedure. 40

*Free distribution and discounts***15 Free distribution and discount of products**

- (1) A person commits an offence if—
- (a) the person—
 - (i) gives away a product or coupon to a member of the public or sells a product or coupon at a substantial discount, or 5
 - (ii) causes or permits that to happen, and
 - (b) either—
 - (i) their purpose in doing so is to promote a relevant product, or
 - (ii) the effect of their doing so is to promote a relevant product and they know, or have reason to suspect, that will be the effect. 10
- (2) In subsection (1) “relevant product” means—
- (a) a tobacco product,
 - (b) a herbal smoking product, 15
 - (c) cigarette papers,
 - (d) a vaping product, or
 - (e) a nicotine product.
- (3) Where a person is charged with an offence under this section of giving away a vaping product or nicotine product, or a coupon for such a product, it is a defence for the person to prove that the product or coupon was given away in accordance with arrangements made by a public authority. 20
- (4) A person who commits an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both; 25
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.
- (5) In this section “coupon” means anything (whether in physical or electronic form) which, by itself or together with something else, can be redeemed for a product or service or for cash or any other benefit. 30

*Retail licensing: England***16 Prohibition of retail sales of tobacco products etc in England without a licence**

- (1) An individual must not do any of the following things in England except under the authority of and in accordance with a personal licence— 35
- (a) sell relevant products;
 - (b) expose relevant products for sale;
 - (c) possess relevant products for the purpose of their sale (by the individual or another person).

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- (2) A person must not use or permit the use of premises in England for any of the following things except under the authority of and in accordance with a premises licence –
- (a) the storage of relevant products for the purpose of their sale (by the person or another person); 5
 - (b) the exposure of relevant products for sale;
 - (c) the supply of relevant products to retail customers.
- (3) The Secretary of State may by regulations create exceptions to the prohibition in subsection (1) or (2).
- (4) The Secretary of State must by regulations make provision for and in connection with the grant of personal licences and premises licences. 10
- (5) Before making regulations under this section the Secretary of State making them must consult any persons that the Secretary of State considers it appropriate to consult.
- (6) Schedule 1 makes further provision about regulations under subsection (4). 15
- (7) Regulations under this section are subject to the affirmative resolution procedure.
- (8) In this section –
- “grant” includes variation or renewal;
 - “licensing authority” has the meaning given by paragraph 2 of Schedule 1; 20
 - “personal licence” means a licence that is granted by a licensing authority and authorises an individual to do the things mentioned in subsection (1)(a), (b) and (c);
 - “premises licence” means a licence that is granted by a licensing authority and authorises the use of premises by a person for the things mentioned in subsection (2)(a), (b) and (c); 25
 - “relevant products” means –
 - (a) tobacco products;
 - (b) herbal smoking products; 30
 - (c) cigarette papers;
 - (d) vaping products;
 - (e) nicotine products;
 - “supply” includes despatch.
- 17 Offences in connection with licences: England 35**
- (1) A person who breaches the prohibition in section 16(1) or (2) commits an offence.
- (2) A person commits an offence if –
- (a) the person provides information to a licensing authority –
 - (i) in, or in connection with, an application for the grant of a personal licence or a premises licence, or 40

- (ii) in pursuance of any other obligation imposed by or under regulations made under section 16(4),
 - (b) the information is false or misleading in a material respect, and
 - (c) the person knows, or ought reasonably to know, that the information is false or misleading in a material respect. 5
- (3) A person who commits an offence under this section is liable on summary conviction to a fine.
- (4) The court by which a person is convicted of an offence under subsection (1) may order the relevant products to which the offence relates, and any container for them, to be forfeited and either destroyed or dealt with in such other manner as the court may order. 10
- (5) In this section—
 - “grant” includes variation or renewal;
 - “licensing authority” has the meaning given by paragraph 2 of Schedule 1; 15
 - “personal licence” has the meaning given by section 16(8);
 - “premises licence” has the meaning given by section 16(8);
 - “relevant product” has the meaning given by section 16(8).

18 Financial penalties for breach of licence conditions: England

- (1) A local weights and measures authority in England may impose a financial penalty on a person if satisfied that— 20
 - (a) the person has breached a condition attached to a personal licence or a premises licence, and
 - (b) the breach of that condition does not constitute an offence under section 17. 25
- (2) The amount of the financial penalty must not exceed £2,500.
- (3) The Secretary of State may by regulations amend the amount specified in subsection (2) for the purpose of reflecting inflation.
- (4) Schedule 2 makes further provision about the imposition of financial penalties under this section. 30
- (5) Regulations under this section are subject to the negative resolution procedure.
- (6) In this section “personal licence” and “premises licence” have the meaning given by section 16(8).

Retail licensing: Wales

19 Prohibition of retail sales of tobacco products etc in Wales without a licence 35

- (1) An individual must not do any of the following things in Wales except under the authority of and in accordance with a personal licence—
 - (a) sell relevant products;

- (b) expose relevant products for sale;
 - (c) possess relevant products for the purpose of their sale (by the individual or another person).
- (2) A person must not use or permit the use of premises in Wales for any of the following things except under the authority of and in accordance with a premises licence— 5
 - (a) the storage of relevant products for the purpose of their sale (by the person or another person);
 - (b) the exposure of relevant products for sale;
 - (c) the supply of relevant products to retail customers. 10
- (3) The Welsh Ministers may by regulations create exceptions to the prohibition in subsection (1) or (2).
- (4) The Welsh Ministers must by regulations make provision for and in connection with the grant of personal licences and premises licences.
- (5) Before making regulations under this section the Welsh Ministers must consult any persons that the Welsh Ministers consider it appropriate to consult. 15
- (6) Schedule 3 makes further provision about regulations under subsection (4).
- (7) Regulations under this section are subject to the affirmative resolution procedure.
- (8) In this section— 20
 - “grant” includes variation or renewal;
 - “licensing authority”, in relation to the doing of things or the use of premises in a county or county borough in Wales, means the council of the county or county borough;
 - “personal licence” means a licence that is granted by a licensing authority and authorises an individual to do the things mentioned in subsection (1)(a), (b) and (c); 25
 - “premises licence” means a licence that is granted by a licensing authority and authorises the use of premises by a person for the things mentioned in subsection (2)(a), (b) and (c); 30
 - “relevant products” means—
 - (a) tobacco products;
 - (b) herbal smoking products;
 - (c) cigarette papers;
 - (d) vaping products; 35
 - (e) nicotine products;
 - “supply” includes despatch.

20 Offences in connection with licences: Wales

- (1) A person who breaches the prohibition in section 19(1) or (2) commits an offence. 40

- (2) A person commits an offence if –
- (a) the person provides information to a licensing authority –
 - (i) in, or in connection with, an application for the grant of a personal licence or a premises licence, or
 - (ii) in pursuance of any other obligation imposed by or under regulations made under section 19(4),
 - (b) the information is false or misleading in a material respect, and
 - (c) the person knows, or ought reasonably to know, that the information is false or misleading in a material respect.
- (3) A person who commits an offence under this section is liable on summary conviction to a fine. 5
- (4) The court by which a person is convicted of an offence under subsection (1) may order the relevant products to which the offence relates, and any container for them, to be forfeited and either destroyed or dealt with in such other manner as the court may order. 10
- (5) In this section –
- “grant” includes variation or renewal;
 - “licensing authority”, in relation to the doing of things or the use of premises in a county or county borough in Wales, means the council of the county or county borough; 20
 - “personal licence” has the meaning given by section 19(8);
 - “premises licence” has the meaning given by section 19(8);
 - “relevant product” has the meaning given by section 19(8).

21 Financial penalties for breach of licence conditions: Wales

- (1) A local weights and measures authority in Wales may impose a financial penalty on a person if satisfied that – 25
- (a) the person has breached a condition attached to a personal licence or a premises licence, and
 - (b) the breach of that condition does not constitute an offence under section 20. 30
- (2) The amount of the financial penalty must not exceed £2,500.
- (3) The Welsh Ministers may by regulations amend the amount specified in subsection (2) for the purpose of reflecting inflation.
- (4) Schedule 4 makes further provision about the imposition of financial penalties under this section. 35
- (5) Regulations under this section are subject to the negative resolution procedure.
- (6) In this section “personal licence” and “premises licence” have the meaning given by section 19(8).

22 Repeal of register of retailers of tobacco and nicotine products in Wales etc

In the Public Health (Wales) Act 2017 (anaw 2), in Part 3 (tobacco and nicotine products) omit Chapter 2 (retailers of tobacco and nicotine products).

Restricted premises orders

- 23 Restricted premises orders** 5
- (1) Where a person convicted of a relevant offence is a persistent offender, the person who brought the proceedings for the offence may by complaint to a magistrates' court apply for a restricted premises order to be made in respect of the premises in relation to which the offence was committed (“the relevant premises”). 10
- (2) A magistrates' court may make the restricted premises order only if satisfied that the applicant has complied with section 24(1) (notice to interested persons).
- (3) A “restricted premises order” is an order prohibiting the sale on the relevant premises of any one or more of the following – 15
- (a) tobacco products;
 - (b) herbal smoking products;
 - (c) cigarette papers;
 - (d) vaping products;
 - (e) nicotine products. 20
- (4) The prohibition imposed by a restricted premises order applies to sales whether made –
- (a) by the offender or any other person, or
 - (b) by means of any machine kept on the premises or any other means.
- (5) A restricted premises order has effect for the period specified in the order, which may not exceed one year. 25
- (6) A restricted premises order is a local land charge and in respect of that charge the applicant for the order is the originating authority for the purposes of the Local Land Charges Act 1975.
- (7) A person convicted of a relevant offence is a “persistent offender” for the purposes of this section if, on at least two other occasions within the period of two years ending with the date of the offence, the person committed a relevant offence in relation to the relevant premises. 30
- (8) In this section “relevant offence” means – 35
- (a) an offence under any of the following provisions of this Part –
 - (i) section 1 (sale of tobacco etc to people born on or after 1 January 2009);
 - (ii) section 3 (tobacco vending machines);
 - (iii) section 10 (sale of vaping or nicotine products to under 18s);

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- (iv) section 12 (vaping and nicotine product vending machines);
- (b) an offence under any of the following (which are repealed by this Act) –
- (i) section 7 of the Children and Young Persons Act 1933 (sale of tobacco, etc., to under 18s); 5
 - (ii) section 3A of the Children and Young Persons (Protection from Tobacco) Act 1991 (tobacco vending machines);
 - (iii) section 92 of the Children and Families Act 2014 (sale of nicotine products to under 18s).
- 24 Restricted premises orders: interested persons** 10
- (1) An applicant for a restricted premises order must, after making reasonable enquiries, give notice of the application to anyone appearing to the applicant to be an interested person.
- (2) An interested person may make representations to the court as to why the order should not be made. 15
- (3) If a restricted premises order is made without an interested person having been given a notice under subsection (1), and without them having made representations to the court, the person may by complaint apply to the court for an order varying or discharging the restricted premises order.
- (4) On an application under subsection (3) the court may, after hearing the interested person and the applicant for the restricted premises order, make such order varying or discharging the restricted premises order as it considers appropriate. 20
- (5) In this section “interested person”, in relation to an application for a restricted premises order, means – 25
- (a) the occupier of the premises, and
 - (b) any other person who has an interest in the premises.
- 25 Restricted premises orders: appeals**
- An appeal against an order made under section 23 or 24 may be brought to the Crown Court. 30
- 26 Breach of restricted premises orders**
- (1) A person commits an offence if the person –
- (a) sells anything in breach of a restricted premises order, and
 - (b) knows, or ought reasonably to know, that the sale is in breach of the order. 35
- (2) It is a defence for a person charged with an offence under this section to prove that the person took all reasonable steps to avoid the commission of the offence.

- (3) A person who commits an offence under this section is liable on summary conviction to a fine.

27 Power to extend restricted premises orders in Wales

- (1) The Welsh Ministers may by regulations amend section 23 so as to add an offence to the definition of “relevant offence” where that offence is committed on premises in Wales. 5
- (2) Regulations may be made under subsection (1) only if the additional offence relates to tobacco products, herbal smoking products, cigarette papers, vaping products or nicotine products.
- (3) Before making regulations under this section the Welsh Ministers must consult any persons that they consider it appropriate to consult. 10
- (4) Regulations under this section are subject to the affirmative resolution procedure.

Restricted sale orders

28 Restricted sale orders 15

- (1) Where a person convicted of a relevant offence is a persistent offender, the person who brought the proceedings for the offence may by complaint to a magistrates’ court apply for a restricted sale order against the offender.
- (2) A “restricted sale order” is an order prohibiting the offender – 20
- (a) from selling any one or more of the following –
 - (i) tobacco products,
 - (ii) herbal smoking products,
 - (iii) cigarette papers,
 - (iv) vaping products,
 - (v) nicotine products, 25
 - (b) from having any management functions in respect of any premises in so far as those functions relate to the sale of anything listed in paragraph (a)(i) to (v),
 - (c) from keeping any machine on any premises for the purpose of selling anything listed in paragraph (a)(i) to (v) or permitting any machine to be kept on any premises by any other person for that purpose, and 30
 - (d) from having any management functions in respect of any premises in so far as those functions relate to any machine kept on the premises for the purpose of selling anything listed in paragraph (a)(i) to (v).
- (3) A restricted sale order has effect for the period specified in the order, which may not exceed one year. 35
- (4) A person convicted of a relevant offence is a “persistent offender” for the purposes of this section if, on at least two other occasions within the period

of two years ending with the date of the offence, the person committed a relevant offence.

- (5) In this section “relevant offence” means—
- (a) an offence under any of the following provisions of this Part—
 - (i) section 1 (sale of tobacco etc to people born on or after 1 January 2009); 5
 - (ii) section 3 (tobacco vending machines);
 - (iii) section 10 (sale of vaping or nicotine products to under 18s);
 - (iv) section 12 (vaping and nicotine product vending machines);
 - (b) an offence under any of the following (which are repealed by this Act)— 10
 - (i) section 7 of the Children and Young Persons Act 1933 (sale of tobacco, etc., to under 18s);
 - (ii) section 3A of the Children and Young Persons (Protection from Tobacco) Act 1991 (tobacco vending machines); 15
 - (iii) section 92 of the Children and Families Act 2014 (sale of nicotine products to under 18s).

29 Restricted sale orders: appeals

An appeal against an order made under section 28 may be brought to the Crown Court. 20

30 Breach of restricted sale orders

- (1) A person who fails to comply with a restricted sale order commits an offence.
- (2) It is a defence for a person charged with an offence under this section to prove that the person took all reasonable steps to avoid the commission of the offence. 25
- (3) A person who commits an offence under this section is liable on summary conviction to a fine.

Offences by bodies

31 Liability of others for certain offences committed by bodies

- (1) Where an offence under section 26 is committed by a body and the offence is committed with the consent or connivance of a relevant person in relation to the body, or a person purporting to act in the capacity of a relevant person in relation to the body, the person (as well as the body) commits the offence and is liable to be proceeded against and punished accordingly. 30
- (2) Where any other offence under this Part, or under any regulations under section 13 and 14— 35

- (a) is committed with the consent or connivance of a relevant person in relation to the body, or a person purporting to act in the capacity of a relevant person in relation to the body, or
 - (b) is attributable to neglect on the part of such a person,
the person (as well as the body) commits the offence and is liable to be proceeded against and punished accordingly. 5
- (3) In this section –
- “body” means –
 - (a) a body corporate,
 - (b) a partnership, or 10
 - (c) an unincorporated association;
 - “relevant person” means –
 - (a) in relation to a body corporate other than one whose affairs are managed by its members, a director, manager, secretary or other similar officer of the body; 15
 - (b) in relation to a limited liability partnership or other body corporate whose affairs are managed by its members, a member who exercises functions of management with respect to it;
 - (c) in relation to a limited partnership, a general partner (within the meaning given by section 3 of the Limited Partnerships Act 1907); 20
 - (d) in relation to any other partnership, a partner;
 - (e) in relation to an unincorporated association, a person who exercises functions of management with respect to it.

Enforcement functions 25

32 Enforcement by local weights and measures authorities

- (1) *It is the duty of each local weights and measures authority to enforce within its area the provisions of this Part and any regulations under section 13 or 14.*
- (2) In Schedule 5 to the Consumer Rights Act 2015 (investigatory powers), in paragraph 10 (enforcer’s legislation), at the appropriate place (according to date of enactment) insert – 30
 - “section 32 of the Tobacco and Vapes Act 2024.”

33 Programme of enforcement action: England

- (1) Each local weights and measures authority in England must, at least once a year, consider – 35
 - (a) whether it is appropriate to carry out a programme of enforcement action in its area, and
 - (b) if so, what that programme should involve.
- (2) In subsection (1) “programme of enforcement action” means a programme involving one or more of the following – 40

- (a) the investigation of complaints in respect of an alleged offence under this Part or any regulations under section 13;
- (b) the bringing of prosecutions in respect of such an offence;
- (c) the taking of other measures intended to reduce the incidence of such offences.

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34 Programme of enforcement action: Wales

- (1) Each local weights and measures authority in Wales must, at least once a year, consider –
 - (a) whether it is appropriate to carry out a programme of enforcement action in its area, and
 - (b) if so, what that programme should involve.
- (2) In subsection (1) “programme of enforcement action” means a programme involving one or more of the following –
 - (a) the investigation of complaints in respect of an alleged offence that is a listed offence;
 - (b) the bringing of prosecutions in respect of a listed offence;
 - (c) the taking of other measures intended to reduce the incidence of listed offences.
- (3) In this section “listed offence” means –
 - (a) an offence under any provision of this Part or regulations under section 14, or
 - (b) an offence under either of the following provisions of the Public Health (Wales) Act 2017 (anaw 2) –
 - section 51A (offence of handing over tobacco etc. to people born on or after 1 January 2009);
 - section 52 (offence of handing over vaping or nicotine products to under 18s).

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Powers of ministers to take over enforcement

35 Power of ministers to take over enforcement functions

- (1) The Secretary of State may direct that, in relation to cases of a particular description or a particular case, the duty imposed by section 32(1) on a local weights and measures authority in England is to be discharged by the Secretary of State and not by the authority.
- (2) The Welsh Ministers may direct that, in relation to cases of a particular description or a particular case, the duty imposed by section 32(1) on a local weights and measures authority in Wales is to be discharged by the Welsh Ministers and not by the authority.

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36 Power of ministers to take over proceedings

- (1) The Secretary of State may take over the conduct of any proceedings from a local weights and measures authority in England in respect of an offence committed under this Part or any regulations under section 13.
- (2) The Welsh Ministers may take over the conduct of any proceedings from a local weights and measures authority in Wales in respect of an offence committed under this Part or any regulations under section 14. 5

Fixed penalties

37 Fixed penalty notices

- (1) A local weights and measures authority that has reason to believe that a person has committed an offence under, or under regulations made under, any of the following may give the person a fixed penalty notice in respect of the offence – 10
 - section 1 (sale of tobacco etc to people born on or after 1 January 2009);
 - section 2 (purchase of tobacco etc on behalf of others); 15
 - section 5 (age of sale notice at point of sale: England);
 - section 6 (age of sale notice at point of sale: Wales);
 - section 10 (sale of vaping or nicotine products to under 18s);
 - section 11 (purchase of vaping or nicotine products on behalf of under 18s); 20
 - section 13 (displays of products or prices: England);
 - section 14 (displays of products or prices: Wales);
 - section 15 (free distribution and discount of products);
 - section 17 (offences in connection with retail licences: England);
 - section 20 (offences in connection with retail licences: Wales). 25
- (2) A fixed penalty notice is a notice offering a person the opportunity to discharge any liability to conviction for the offence to which the notice relates by payment of an amount specified in the notice within the relevant period.
- (3) The amount specified in a fixed penalty notice in respect of an offence under section 17 or 20 must be an amount equal to level 4 on the standard scale of fines for summary offences. 30
- (4) The amount specified in a fixed penalty notice in respect of any other offence must be £200.
- (5) For the purposes of this section “the relevant period” is the period of 28 days beginning with the day on which the fixed penalty notice is given. 35
- (6) A fixed penalty notice must explain –
 - (a) that the local weights and measures authority has reason to believe that the person has committed the offence, and why,
 - (b) the effect of subsection (7), and
 - (c) when and how payment may be made. 40

- (7) Where a fixed penalty notice has been given to a person (and has not been withdrawn) –
- (a) no proceedings may be instituted for the offence before the end of the relevant period, and
 - (b) the person may not be convicted of the offence if the person pays – 5
 - (i) the full amount of the fixed penalty in the notice before the end of the relevant period, or
 - (ii) 50% of that amount before the end of the period of 14 days beginning with the day on which the relevant period starts.
- (8) Where proceedings are instituted for the offence after the end of the relevant period, that period is to be disregarded for the purposes of calculating the period mentioned in section 127(1) of the Magistrates’ Court Act 1980. 10
- (9) A fixed penalty notice given under this section may be withdrawn by the local weights and measures authority that gave it at any time before a payment is made in pursuance of the notice. 15

38 Fixed penalties: use of proceeds

- (1) *Any sums received by a local weights and measures authority in pursuance of fixed penalty notices given in respect of offences under section 17 or 20 must be paid into the relevant Consolidated Fund.*
- (2) But before paying such sums into the relevant Consolidated Fund the local weights and measures authority may deduct – 20
- (a) the costs of investigating offences to which the fixed penalty notices relate, and
 - (b) the costs of issuing the notices.
- (3) Any sums received by a local weights and measures authority in England in pursuance of a fixed penalty notice given in respect of any offence other than an offence under section 17 must be used in connection with their functions under or under regulations made under – 25
- (a) this Act;
 - (b) Part 1 of the Health Act 2006; 30
 - (c) the Tobacco and Related Products Regulations 2016 (S.I. 2016/507).
- (4) Any sums received by a local weights and measures authority in Wales in pursuance of a fixed penalty notice given in respect of any offence other than an offence under section 20 must be used in connection with their functions under or under regulations made under – 35
- (a) this Act;
 - (b) the Tobacco and Related Products Regulations 2016 (S.I. 2016/507);
 - (c) Part 3 of the Public Health (Wales) Act 2017.
- (5) In this section –
- “fixed penalty notice” means a fixed penalty notice given under section 37; 40
 - “relevant Consolidated Fund” means –

- (a) in relation to England, the Consolidated Fund;
- (b) in relation to Wales, the Welsh Consolidated Fund.

39 Power to change amount of fixed penalties

- (1) The Secretary of State may by regulations amend section 37 in relation to the giving of fixed penalty notices by local weights and measures authorities in England in respect of any offence other than an offence under section 17 so as to— 5
 - (a) change the amount which must be specified in notices, or
 - (b) change the percentage discount for early payment.
- (2) The Welsh Ministers may by regulations amend section 37 in relation to the giving of fixed penalty notices by local weights and measures authorities in Wales in respect of any offence other than an offence under section 20 so as to— 10
 - (a) change the amount which must be specified in notices, or
 - (b) change the percentage discount for early payment. 15
- (3) The amount mentioned in subsection (1)(a) or (2)(a) must not be changed to an amount that exceeds level 3 on the standard scale of fines for summary offences.
- (4) Regulations under this section are subject to the affirmative resolution procedure. 20

Handing over tobacco etc to underage people in Wales

40 Handing over tobacco etc to underage people in Wales

- Schedule 5 contains amendments to Chapter 4 of Part 3 of the Public Health (Wales) Act 2017 (anaw 2) (handing over tobacco, cigarettes and nicotine products to persons under 18), including— 25
- (a) amendments extending that Chapter to all vaping products,
 - (b) amendments conferring a power to extend the products to which that Chapter applies, and
 - (c) amendments that are consequential on this Part.

Consequential, transitional and transitory provision 30

41 Consequential amendments to do with Part 1

- (1) See Schedule 6 for consequential amendments coming into force at the end of the period of 6 months beginning with the day on which this Act is passed.
- (2) See Schedule 7 for consequential amendments coming into force on 1 January 2027. 35

42 Application of programmes of enforcement to old age of sale offences

Sections 33 and 34 have effect in relation to times before 1 January 2027 as if subsection (2) of each of those sections included a reference to—

- (a) an offence under section 7 of the Children and Young Persons Act 1933 (sale of tobacco, etc. to under 18s); 5
- (b) an offence under section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991 (age of sale notices).

43 Application of fixed penalty regime to old age of sale offences

- (1) Section 37 has effect in relation to times before 1 January 2027 as if subsection (1) of that section included a reference to— 10
 - (a) section 7 of the Children and Young Persons Act 1933 (sale of tobacco, etc. to persons under eighteen);
 - (b) section 91 of the Children and Families Act 2014 (purchase of tobacco etc. on behalf of under 18s).
- (2) Section 38 has effect in relation to times before 1 January 2027 as if it included a reference to section 91 of the Children and Families Act 2014 (purchase of tobacco etc. on behalf of under 18s). 15

44 Transitional provision: general

- (1) In relation to times before 1 January 2027— 20
 - (a) sections 23(8), 28(5) and 37(1) have effect as if they did not include a reference to section 1, 2, 5 or 6;
 - (b) a reference in section 31(2), 32(1), 33(2), 34(3) or 36(1) or (2) to “this Part” does not include a reference to section 1, 2, 5 or 6.
- (2) In relation to times before section 17 comes into force, section 37(1) and (3) have effect as if those provisions did not include a reference to that section. 25
- (3) In relation to times before section 20 comes into force, section 37(1) and (3) have effect as if those provisions did not include a reference to that section.
- (4) In relation to times before section 51A of the Public Health (Wales) Act 2017 (anaw 2) comes into force, section 34(3) has effect as if it did not include a reference to that section. 30
- (5) In relation to times before section 52 of the Public Health (Wales) Act 2017 (anaw 2) comes into force, section 34(3) has effect as if it did not include a reference to that section.
- (6) In relation to times before the repeal by this Act of the Tobacco Advertising and Promotion Act 2002 comes fully into force (see Schedule 21 to this Act), section 38 has effect as if it included a reference to that Act. 35

Powers to adjust scope

45 Power to extend Part 1 to other products

- (1) The Secretary of State may by regulations amend this Part for the purpose of extending any provision that applies in relation to a tobacco product to—
 - (a) a device of a specified description which enables a tobacco product to be consumed (for example, a heated tobacco device or pipe); 5
 - (b) an item which is intended to form part of such a device.
- (2) Before making regulations under this section the Secretary of State must consult any persons the Secretary of State considers it appropriate to consult.
- (3) Before making regulations under this section the Secretary of State must obtain the consent of the Welsh Ministers if the regulations contain provision which would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd. 10
- (4) Regulations under this section are subject to the affirmative resolution procedure. 15

46 Power to amend lists of identity documents

- (1) The appropriate national authority may by regulations amend sections 1 and 10 for the purpose of changing the meaning of “identity document” in subsection (3) of each of those sections.
- (2) In this section “appropriate national authority”— 20
 - (a) in relation to England, means the Secretary of State, and
 - (b) in relation to Wales, means the Welsh Ministers.
- (3) Regulations under this section are subject to the affirmative resolution procedure.

Crown application 25

47 Crown application

- (1) This Part and regulations made under it bind the Crown.
- (2) Nothing in this Part or regulations made under it makes the Crown criminally liable.
- (3) The High Court may declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (2). 30
- (4) Subsection (2) does not affect the criminal liability of persons in the service of the Crown.

*Interpretation etc***48 Interpretation of Part 1**

In this Part –

- “cigarette papers” includes anything intended to be used for encasing tobacco products or herbal smoking products for the purpose of enabling them to be smoked; 5
- “herbal smoking product” means a product consisting wholly or partly of vegetable matter and intended to be smoked but not containing tobacco;
- “medical device” has the meaning given by the Medical Devices Regulations 2002 (S.I. 2002/618); 10
- “medicinal product” has the meaning given by the Human Medicines Regulations 2012 (S.I. 2012/1916);
- “nicotine product” has the meaning given by section 49;
- “premises” means any place (including a vehicle or moveable structure); 15
- “retail packaging”, in relation to a product, means the packaging in which it is, or is intended to be, presented for sale by retail;
- “sell” means sell by retail;
- “tobacco product” means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked, chewed or consumed in any other way; 20
- “tobacco retailer” means a person who carries on a business involving the sale of tobacco products by retail;
- “UK driving licence” means –
- (a) a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988, or 25
 - (b) a licence to drive a motor vehicle granted under Part 2 of the Road Traffic (Northern Ireland) Order 1981 (S.I. 1981/154 (N.I. 1));
- “vape” means – 30
- (a) a device which –
 - (i) vaporises substances, other than tobacco, for the purpose of inhalation through a mouthpiece (whether or not it also vaporises tobacco), and
 - (ii) is not a medical device or a medicinal product, or 35
 - (b) an item which is intended to form part of a device within paragraph (a) (including anything intended to be attached to it with a view to imparting flavour);
- “vaping product” means –
- (a) a vape, or 40
 - (b) a vaping substance;
- “vaping substance” means a substance, other than tobacco, that is intended to be vaporised by a vape;

“vaporises” includes aerosolises (and “vaporised” is to be construed accordingly);

“vehicle” means every type of vehicle, including a vessel, aircraft and hovercraft.

49 Meaning of “nicotine product” 5

- (1) In this Part “nicotine product” means—
- (a) a device which is intended to enable nicotine to be delivered into the human body,
 - (b) an item which is intended to form part of a device within paragraph (a), 10
 - (c) nicotine, or any substance containing nicotine, which is intended to be delivered into the human body, or
 - (d) an item containing anything within paragraph (c).
- (2) But the following are not “nicotine products” for the purposes of this section—
- (a) a tobacco product; 15
 - (b) a herbal smoking product;
 - (c) cigarette papers;
 - (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products;
 - (e) a vaping product; 20
 - (f) a medical device;
 - (g) a medicinal product.

PART 2

SALE AND DISTRIBUTION: SCOTLAND

Sale of tobacco etc 25

50 Age of sale for tobacco products etc

- (1) The Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) is amended as follows.
- (2) In section 4 (sale of tobacco products to persons under 18)—
- (a) in subsection (1), for “under the age of 18” substitute “born on or after 1 January 2009”; 30
 - (b) in subsection (2)(a), for “under the age of 18 (“the customer”) to be aged 18 or over” substitute “born on or after 1 January 2009 (“the customer”) to have been born before that date”;
 - (c) after subsection (5) insert— 35
 - “(6) In this section “sell” means sell by retail.”;
 - (d) in the heading, for “under 18” substitute “born on or after 1 January 2009”.

- (3) In section 4B (age verification policy)–
- (a) for subsection (3) substitute–
- “(3) An “age verification policy”–
- (a) in relation to a tobacco business or herbal smoking product business, is a policy that steps are to be taken to establish the age of a person attempting to buy a tobacco product, herbal smoking product or cigarette papers on the premises (the “customer”) if it appears to the person selling the tobacco product, herbal smoking product or cigarette papers that the customer may have been born on or after 1 January 2009 (or such earlier date as may be specified in the policy);
- (b) in relation to a vaping product business or nicotine product business, is a policy that steps are to be taken to establish the age of a person attempting to buy a vaping product, or a nicotine product, on the premises (the “customer”) if it appears to the person selling the product that the customer may be under the age of 25 (or such older age as may be specified in the policy).
- (3A) In relation to times before the end of 2033, the reference in subsection (3)(a) to the customer being born on or after 1 January 2009 (or such earlier date as may be specified in the policy) has effect as a reference to the customer being under the age of 25 (or such older age as may be specified in the policy).”;
- (b) in subsection (4), for “(3)” substitute “(3)(b)”.
- (4) In section 6 (purchase of tobacco products on behalf of persons under 18)–
- (a) in subsection (1), for “under the age of 18” substitute “born on or after 1 January 2009”;
- (b) in the heading, for “under 18” substitute “born on or after 1 January 2009”.
- (5) In section 8 (display of warning statements), in subsection (2)(a), for “under the age of 18” substitute “born on or after 1 January 2009”.

51 Sale of unpackaged cigarettes

- (1) The Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) is amended as follows. 35
- (2) After section 4D insert–
- “4E Sale of unpackaged cigarettes**
- (1) A person who sells cigarettes that are not in their original packaging commits an offence. 40
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (3) In this section—
“original packaging” means the retail packaging in which the cigarettes were supplied to the person for the purpose of sale;
“sell” means sell by retail.”

- (3) In section 35(1), at the appropriate place insert— 5
““retail packaging”, in relation to a product, means the packaging in which it is, or is intended to be, presented for sale by retail;”.

52 Repeal of offence of purchasing tobacco products by under 18s

- (1) The Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) is amended as follows. 10
(2) Omit section 5 (purchase of tobacco products by people under 18).
(3) In section 33 (presumption as to contents of container), in subsection (1) omit “, 5”.

53 Repeal of power to confiscate tobacco products from persons under 18

- Omit section 7 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) (confiscation of tobacco products from people under 18). 15

54 Extension of tobacco legislation to herbal smoking products

- (1) The Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) is amended as follows.
(2) In section 4 (sale of tobacco products to persons under 18), in subsection (1), after “tobacco product” insert “, herbal smoking product”. 20
(3) In section 4C (sale of tobacco etc by persons under 18), in subsection (1), after “tobacco product” insert “, herbal smoking product”.
(4) In section 6 (purchase of tobacco products on behalf of persons under 18), in subsection (1), after “tobacco product” insert “, herbal smoking product”. 25
(5) In section 35 (interpretation), in subsection (1), at the appropriate place insert—
““herbal smoking product” means a product consisting wholly or partly of vegetable matter and intended to be smoked but not containing tobacco,”.

55 Power to make provision about warning statements 30

- (1) In section 8 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) (display of warning statements), for subsection (5) substitute—
“(5) The notice must comply with any requirements set out in regulations made by the Scottish Ministers as to the size or appearance of—

- (a) the statement on the notice to be displayed in accordance with this section, or
 - (b) any other aspect of the notice.”
- (2) For the italic heading before section 7 of that Act substitute “Age of sale notices”.

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*Snus etc***56 Ban on manufacture of snus etc**

After section 9 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) insert—

“Snus etc

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9A Ban on manufacture of snus etc

- (1) It is an offence to manufacture a relevant oral tobacco product.
- (2) In subsection (1) “relevant oral tobacco product” means a tobacco product that—
 - (a) is intended for oral use,
 - (b) is not intended to be inhaled or chewed, and
 - (c) consists wholly or partly of tobacco in powder or particulate form.
- (3) A person guilty of an offence under this section is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.”

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57 Ban on sales of snus etc

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After section 9A of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) (inserted by section 56 of this Act) insert—

“9B Ban on sales of snus etc

- (1) It is an offence to—
 - (a) sell a relevant oral tobacco product, or
 - (b) offer or expose a relevant oral tobacco product for sale.
- (2) In subsection (1) “relevant oral tobacco product” has the meaning given by section 9A(2).
- (3) It is a defence for a person charged with an offence under this section to prove that they took all reasonable steps to avoid the commission of the offence.

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- (4) A person guilty of an offence under this section is liable –
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.” 5

58 Possession of snus etc with intent to supply

- (1) After section 9B of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) (inserted by section 57 of this Act) insert –

“9C Possession of snus etc with intent to supply 10

- (1) It is an offence for a person to have a relevant oral tobacco product in their possession with intent to supply it to another in the course of business.
- (2) In subsection (1) “relevant oral tobacco product” has the meaning given by section 9A(2). 15
- (3) A person guilty of an offence under this section is liable –
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.” 20

Vaping and nicotine products

59 Extension of offences to vaping and nicotine products

- (1) The Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) is amended in accordance with subsections (2) to (7). 25
- (2) In the italic heading before section 4, for “and nicotine vapour” substitute “, vaping and nicotine”.
- (3) In section 4A (sale of nicotine vapour products to persons under 18) –
 - (a) in subsection (1), for “nicotine vapour” substitute “vaping product or nicotine”; 30
 - (b) in the heading, for “nicotine vapour” substitute “vaping and nicotine”.
- (4) In section 4B (age verification policy) –
 - (a) in subsection (1)(a) and (b), for “tobacco or nicotine vapour product business” substitute “relevant business”;
 - (b) after subsection (1) insert – 35
 - “(1A) In this section “relevant business” means a business which involves the sale of one or more of the following by retail –
 - (a) tobacco products;

- (b) herbal smoking products;
 - (c) vaping products;
 - (d) nicotine products.”;
 - (c) for subsection (2) substitute—
 - “(2) Subsection (1) does not apply in relation to premises from which—
 - (a) a product mentioned in subsection (1A) or cigarette papers are, in pursuance of a sale, despatched for delivery to different premises, and
 - (b) no other relevant business is carried on.”;
 - (d) in subsection (3)—
 - (i) for “tobacco product, cigarette papers or a nicotine vapour product” substitute “product mentioned in subsection (1A) or cigarette papers”;
 - (ii) for “the tobacco product, cigarette papers or nicotine vapour product” substitute “the product”;
 - (e) in subsection (5)(b) and (c), for “tobacco product, cigarette papers or a nicotine vapour product” substitute “product mentioned in subsection (1A) or cigarette papers”;
 - (f) in subsection (6), for “tobacco or nicotine vapour product business” substitute “relevant business”.
- (5) In section 4C (sale of tobacco or nicotine vapour products by persons under 18)—
- (a) in subsection (1), for “or a nicotine vapour” substitute “, a vaping product or a nicotine”;
 - (b) in the heading, for “or nicotine vapour” substitute “, vaping or nicotine”.
- (6) In section 6A (purchase of nicotine vapour products on behalf of persons under 18)—
- (a) in subsection (1), for “nicotine vapour” substitute “vaping or nicotine”;
 - (b) in the heading for “nicotine vapour” substitute “vaping or nicotine”.
- (7) For section 9 substitute—

“Vending machines

9 Prohibited vending machines

- (1) A person who has the management or control of premises on which a prohibited vending machine is available for use commits an offence. 35
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (3) In this section, “prohibited vending machine” means an automatic machine from which any of the following may be bought (regardless of whether the machine also sells other products)— 40

- (a) tobacco products;
 - (b) herbal smoking products;
 - (c) cigarette papers;
 - (d) vaping products;
 - (e) nicotine products.” 5
- (8) In the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (asp 14) omit section 7 (power to extend vending machine prohibition).

60 Meaning of “nicotine product”

Before section 36 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) insert— 10

“35B Meaning of “nicotine product” in this Part

- (1) In this Part, a “nicotine product” is—
- (a) a device which is intended to enable nicotine to be delivered into the human body,
 - (b) an item which is intended to form part of a device within paragraph (a), 15
 - (c) nicotine, or any substance containing nicotine, which is intended to be delivered into the human body, or
 - (d) an item containing anything within paragraph (c).
- (2) But the following are not nicotine products— 20
- (a) a tobacco product;
 - (b) a smoking related product;
 - (c) a herbal smoking product;
 - (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products; 25
 - (e) a vaping product;
 - (f) a medicinal product;
 - (g) a medical device.”

Displays of products or prices

61 Displays of vaping and nicotine products 30

- (1) The Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) is amended as follows.
- (2) After section 3 insert—

“3A Display of products or prices

- (1) The Scottish Ministers may by regulations impose prohibitions, requirements or limitations on retailers in relation to— 35
- (a) the display, in the course of business, of relevant products in a place where those products are offered for sale;

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- (b) the display, in the course of business, of empty retail packaging of relevant products in a place where those products are offered for sale;
- (c) the display, in the course of business, of prices of relevant products in a place where those products are offered for sale. 5
- (2) In subsection (1) “relevant products” means –
- (a) herbal smoking products,
- (b) vaping products, or
- (c) nicotine products.
- (3) In subsection (1)(a) a reference to a product includes anything that represents the product and that is intended to be exchanged for it at the point of sale. 10
- (4) Regulations under this section may create offences in relation to a failure to comply with the regulations.
- (5) The regulations must provide for any offence to be triable summarily and punishable with a fine not exceeding level 4 on the standard scale. 15
- (6) For the purposes of subsection (1), a website is not a place.
- (7) Before making regulations under this section the Scottish Ministers must consult any persons they consider it appropriate to consult.”
- (3) In each of the following provisions after “Chapter 1 or 2” insert “or any regulations made under those Chapters” – 20
- section 15(3)(d) and (4)(b);
- section 16(3)(a);
- section 26(2)(a);
- section 27(1); 25
- section 32(1) and (4).
- (4) In section 26(2)(b), after “Chapters” insert “or any regulations made under those Chapters”.
- (5) In section 33 (presumption as to contents of container), in subsection (1), at the end insert “or under regulations made under section 3A”. 30
- (6) In section 34 (offences by bodies corporate etc), in subsection (1)(a), after “this Act” insert “or regulations made under it”.
- (7) In section 40 (orders and regulations), in subsection (4), at the appropriate place insert –
- “section 3A(1)”. 35

Free distribution and discounts

62 Free distribution and discount of products

- (1) In the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3), after section 8 insert—

“Free distribution etc 5

8A Free distribution and discount of products

- (1) A person commits an offence if—
- (a) the person—
 - (i) gives away a product or coupon to a member of the public or sells by retail a product or coupon at a substantial discount, or 10
 - (ii) causes or permits that to happen, and
 - (b) either—
 - (i) their purpose in doing so is to promote a relevant product, or 15
 - (ii) the effect of their doing so is to promote a relevant product and they know, or have reason to suspect, that will be the effect.
- (2) In subsection (1) “relevant product” means—
- (a) a tobacco product, 20
 - (b) a herbal smoking product,
 - (c) a smoking related product,
 - (d) a vaping product, or
 - (e) a nicotine product.
- (3) A person who commits an offence under this section is liable— 25
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both. 30
- (4) In this section “coupon” means anything (whether in physical or electronic form) which, by itself or together with something else, can be redeemed for a product or service or for cash or any other benefit.

8B Free distribution of products: defences

- (1) Where a person is charged with an offence under section 8A of giving away a vaping product or nicotine product, or a coupon for such a product, it is a defence for the person to prove that the product or coupon was given away in accordance with arrangements made by a public authority. 35

- (2) The Scottish Ministers may by regulations create further defences to the offence under section 8A of giving away a vaping product or nicotine product or a coupon for such a product.
- (3) Regulations under this section may amend this Part.”
- (2) In section 40 of that Act (orders and regulations), in subsection (4), at the appropriate place insert—
- “section 8B”.
- (3) In the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 omit section 18.

Alignment of definitions 10

63 Alignment of definition of “tobacco product”

In the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3), in section 35 (interpretation of Part 1), in subsection (1), for the definition of “tobacco product” substitute—

““tobacco product” means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked, chewed or consumed in any other way,”.

64 Alignment of definition of “vaping product”

Schedule 8 contains provision for the purposes of aligning the definition of “vaping product” in the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) with that used elsewhere in this Act.

Extension of retailer register etc

65 Extension of retailer register etc

Schedule 9 contains amendments to the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) for the purposes of extending Chapter 2 of Part 1 of that Act (register of tobacco and nicotine vapour product retailers) so that it applies in relation to herbal smoking products and nicotine products.

Miscellaneous

66 Crown application of 2010 Act

In section 36 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) (Crown application), in subsection (3), after “on the application” insert “of the Scottish Ministers or”.

67 Power to extend 2010 Act to other products

(1) The Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) is amended as follows.

(2) After section 34 insert—

“34A Power to extend this Part to other products 5

(1) The Scottish Ministers may by regulations amend this Part for the purpose of extending any provision that applies in relation to a tobacco product to—

- (a) a device of a specified description which enables a tobacco product to be consumed otherwise than by being smoked (for example, a heated tobacco device); 10
- (b) an item which is intended to form part of such a device.

(2) Before making regulations under this section the Scottish Ministers must consult any persons they consider it appropriate to consult.

(3) The Scottish Ministers may by regulations amend this Part for the purpose of extending any provision that applies in relation to a tobacco product to some or all smoking related products.” 15

(3) In section 40 (orders and regulations), in subsection (4), at the appropriate place insert—

“section 34A”. 20

PART 3

SALE AND DISTRIBUTION: NORTHERN IRELAND

Sale of tobacco etc

68 Age of sale for tobacco products etc

For Article 3 of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) substitute— 25

“3 Sale of tobacco etc

(1) It is an offence to sell any of the following to a person born on or after 1 January 2009—

- (a) a tobacco product; 30
- (b) a herbal smoking product;
- (c) cigarette papers.

(2) It is a defence for a person charged with an offence under this Article to prove—

- (a) that they were shown what appeared to be an identity document belonging to the purchaser and that the date of birth shown on that document was before 1 January 2009, or 35

- (b) that they otherwise took all reasonable steps to avoid the commission of the offence.
- (3) In paragraph (2) “identity document” means –
- (a) a passport,
 - (b) a UK driving licence, 5
 - (c) a driving licence issued by any of the Channel Islands or the Isle of Man,
 - (d) a European Union photocard driving licence, or
 - (e) an identity card issued by the Proof of Age Standards Scheme and bearing its hologram (a PASS card). 10
- (4) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”

69 Purchase of tobacco on behalf of others

For Article 4A of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) substitute – 15

“4A Purchase of tobacco etc on behalf of persons born on or after 1 January 2009

- (1) It is an offence for a person aged 18 or over to buy, or attempt to buy, any of the following on behalf of a person born on or after 1 January 2009 – 20
- (a) a tobacco product;
 - (b) a herbal smoking product;
 - (c) cigarette papers.
- (2) It is a defence for a person charged with an offence under this Article to prove that they had no reason to suspect that the other person was born on or after 1 January 2009. 25
- (3) It is a defence for a person charged with an offence under this Article in respect of cigarette papers to prove that they had no reason to suspect that the other person intended to use the papers for smoking.
- (4) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.” 30

70 Tobacco vending machines

After Article 4A of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) (inserted by section 69 of this Act) insert –

“4B Tobacco vending machines 35

- (1) A person commits an offence if the person has the management or control of premises on which a tobacco vending machine is available for use.

- (2) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) In this Article “tobacco vending machine” means an automatic machine from which any of the following may be bought—
 - (a) tobacco products, 5
 - (b) herbal smoking products, or
 - (c) cigarette papers.”

71 Sale of unpackaged cigarettes

After Article 4B of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) (inserted by section 70 of this Act) insert— 10

“4C Sale of unpackaged cigarettes

- (1) It is an offence for a tobacco retailer to sell cigarettes that are not in their original packaging.
- (2) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 3 on the standard scale. 15
- (3) In this Article “original packaging” means the retail packaging in which the cigarettes were supplied to the tobacco retailer for the purpose of sale.”

72 Age of sale notice at point of sale

After Article 4C of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) (inserted by section 71 of this Act) insert— 20

“4D Age of sale notice at point of sale

- (1) A tobacco retailer must display an age of sale notice at any premises at which they sell tobacco products.
- (2) For the purposes of this Article an “age of sale notice” is a notice containing the following statement— 25
 - “It is illegal to sell tobacco products to anyone born on or after 1 January 2009”.
- (3) The notice must be displayed in a prominent position where it is readily visible to people at each point of sale of tobacco products. 30
- (4) The notice must comply with any requirements set out in regulations made by the Department as to the size or appearance of—
 - (a) the statement on the notice, or
 - (b) any other aspect of the notice.
- (5) Regulations under paragraph (4) are subject to negative resolution. 35
- (6) A person who fails to display an age of sale notice as required by this Article commits an offence.

- (7) It is a defence for a person charged with an offence under this Article to prove that they took all reasonable steps to avoid the commission of the offence.
- (8) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 3 on the standard scale.” 5

*Snus etc***73 Ban on manufacture of snus etc**

After Article 4D of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) (inserted by section 72 of this Act) insert—

“*Snus etc* 10

4E Ban on manufacture of snus etc

- (1) It is an offence to manufacture a relevant oral tobacco product.
- (2) In paragraph (1) “relevant oral tobacco product” means a tobacco product that— 15
- (a) is intended for oral use,
 - (b) is not intended to be inhaled or chewed, and
 - (c) consists wholly or partly of tobacco in powder or particulate form.
- (3) A person guilty of an offence under this Article is liable— 20
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.”

74 Ban of sales of snus etc 25

After Article 4E of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) (inserted by section 73 of this Act) insert—

“4F Ban on sales of snus etc

- (1) It is an offence to— 30
- (a) sell a relevant oral tobacco product, or
 - (b) offer or expose a relevant oral tobacco product for sale.
- (2) In paragraph (1) “relevant oral tobacco product” has the meaning given by Article 4E(2).
- (3) It is a defence for a person charged with an offence under this Article to prove that they took all reasonable steps to avoid the commission of the offence. 35

- (4) A person guilty of an offence under this Article is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.” 5

75 Possession of snus etc with intent to supply

- (1) After Article 4F of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) (inserted by section 74 of this Act) insert—
 - “4G Possession of snus etc with intent to supply 10**
 - (1) It is an offence for a person to have a relevant oral tobacco product in their possession with intent to supply it to another in the course of business.
 - (2) In paragraph (1) “relevant oral tobacco product” has the meaning given by Article 4E(2). 15
 - (3) A person guilty of an offence under this Article is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.” 20

Vaping and nicotine products

76 Sale of vaping or nicotine products to under 18s

- After Article 4G of Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) (inserted by section 75 of this Act) insert— 25
 - “Vaping and nicotine products*

4H Sale of vaping or nicotine products to under 18s

- (1) It is an offence to sell a vaping product or nicotine product to a person who is under the age of 18.
- (2) It is a defence for a person charged with an offence under this Article to prove— 30
 - (a) that they were shown what appeared to be an identity document belonging to the purchaser and it confirmed the purchaser’s age as at least 18 years old, or
 - (b) that they otherwise took all reasonable steps to avoid the commission of the offence. 35
- (3) In paragraph (2) “identity document” means—

-
- (a) a passport,
 - (b) a UK driving licence,
 - (c) a driving licence issued by any of the Channel Islands or the Isle of Man,
 - (d) a European Union photocard driving licence, or 5
 - (e) an identity card issued by the Proof of Age Standards Scheme and bearing its hologram (a PASS card).
- (4) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”
- 77 Purchase of vaping or nicotine products on behalf of under 18s** 10
- (1) The Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) is amended as follows.
- (2) After Article 4H (inserted by section 76 of this Act) substitute—
- “4I Purchase of vaping or nicotine products on behalf of under 18s**
- (1) It is an offence for a person aged 18 or over to buy, or attempt to buy, 15
a vaping product or nicotine product on behalf of a person who is under the age of 18.
- (2) It is a defence for a person charged with an offence under this Article to prove that they had no reason to suspect that the other person was under the age of 18. 20
- (3) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.”
- (3) In Article 4A (purchase of tobacco or nicotine products on behalf of persons under 18)—
- (a) in paragraph (1), for “tobacco, cigarette papers or a relevant nicotine product” substitute “tobacco products, herbal smoking products or cigarette papers”; 25
 - (b) in the heading, for “or nicotine products” substitute “etc”.
- 78 Vaping and nicotine product vending machines**
- After Article 4I of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) (inserted by section 77 of this Act) insert— 30
- “4J Vaping and nicotine product vending machines**
- (1) A person commits an offence if the person has the management or control of premises on which a vape vending machine or a nicotine product vending machine is available for use. 35
- (2) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) In this Article—

“nicotine product vending machine” means an automatic machine from which nicotine products may be bought;

“vape vending machine” means an automatic machine from which vaping products may be bought.”

Displays of products or prices

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79 Displays of products and prices in Northern Ireland

After Article 4J of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) (inserted by section 78) insert—

“Displays of products or prices

4K Displays of products or prices

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(1) The Department may by regulations impose prohibitions, requirements or limitations on retailers in relation to—

(a) the display, in the course of business, of relevant products in a place where those products are offered for sale;

(b) the display, in the course of business, of empty retail packaging of relevant products in a place where those products are offered for sale;

(c) the display, in the course of business, of prices of relevant products in a place where those products are offered for sale.

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(2) In paragraph (1) “relevant product” means—

(a) tobacco products,

(b) herbal smoking products,

(c) cigarette papers,

(d) vaping products, or

(e) nicotine products.

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(3) In paragraph (1)(a) a reference to a product includes anything that represents the product and that is intended to be exchanged for it at the point of sale.

(4) Regulations under paragraph (1) may create offences in relation to a failure to comply with the regulations.

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(5) The regulations must provide for any offence to be triable on indictment or summarily and punishable—

(a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

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(6) Before making regulations under this Article the Department must consult any persons it considers it appropriate to consult.

- (7) Regulations may not be made by the Department under this Article unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.”

Free distribution and discounts

80 Free distribution and discount of products 5

After Article 4K of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) (inserted by section 79) insert—

“Free distribution and discounts

4L Free distribution and discounts of products

- (1) A person commits an offence if— 10
- (a) the person—
 - (i) gives away a product or coupon to a member of the public or sells a product or coupon at a substantial discount, or
 - (ii) causes or permits that to happen, and 15
 - (b) either—
 - (i) their purpose in doing so is to promote a relevant product, or
 - (ii) the effect of their doing so is to promote a relevant product and they know, or have reason to suspect, that 20
will be the effect.
- (2) In paragraph (1) “relevant product” means—
- (a) a tobacco product,
 - (b) a herbal smoking product,
 - (c) cigarette papers, 25
 - (d) a vaping product, or
 - (e) a nicotine product.
- (3) Where a person is charged with an offence under this Article of giving away a vaping product or nicotine product, or a coupon for such a product, it is a defence for the person to prove that the product or coupon was given away in accordance with arrangements made by a public authority. 30
- (4) A person guilty of an offence under this Article is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both; 35
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

- (5) In this Article “coupon” means anything (whether in physical or electronic form) which, by itself or together with something else, can be redeemed for a product or service or for cash or any other benefit.”

Enforcement

81 Programme of enforcement action by district councils 5

Before Article 7 of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) insert –

“Enforcement

6A Programme of enforcement action by district councils

- (1) Each district council must, at least once a year, consider – 10
- (a) whether it is appropriate to carry out a programme of enforcement action in its area, and
 - (b) if so, what that programme should involve.
- (2) In paragraph (1) “programme of enforcement action” means a programme involving one or more of the following – 15
- (a) the investigation of complaints in respect of an alleged offence under –
 - (i) this Part or regulations under Article 4K, or
 - (ii) the Tobacco Retailers Act (Northern Ireland) 2014;
 - (b) the bringing of prosecutions in respect of such an offence; 20
 - (c) the taking of other measures intended to reduce the incidence of such offences.”

Power to amend lists of identity documents

82 Power to amend lists of identity documents

After Article 6B of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) (inserted by section 86 of this Act) insert – 25

“6C Power to amend lists of identity documents

- (1) The Department may by regulations amend Articles 3 and 4H for the purpose of changing the meaning of “identity document” in paragraph (2) of each of those Articles. 30
- (2) Regulations may not be made by the Department under this Article unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.”

*Interpretation of 1978 Order***83 Interpretation of 1978 Order**

For Article 7 of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) substitute—

“Interpretation” 5

7 Interpretation of Part 2

In this Part—

“cigarette papers” includes anything intended to be used for encasing tobacco products or herbal smoking products for the purpose of enabling them to be smoked; 10

“herbal smoking product” means a product consisting wholly or partly of vegetable matter and intended to be smoked but not containing tobacco;

“medical device” has the meaning given by the Medical Devices Regulations 2002 (S.I. 2002/618); 15

“medicinal product” has the meaning given by the Human Medicines Regulations 2012 (S.I. 2012/1916);

“nicotine product” has the meaning given by Article 7A;

“premises” means any place (including a vehicle or moveable structure); 20

“retail packaging”, in relation to a thing, means the packaging in which it is, or is intended to be, presented for sale by retail;

“sell” means sell by retail;

“tobacco product” means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked, chewed or consumed in any other way; 25

“tobacco retailer” means a person who carries on a business involving the sale of tobacco products by retail;

“UK driving licence” means—

(a) a licence to drive a motor vehicle granted under Part 3 of the Road Traffic Act 1988, or 30

(b) a licence to drive a motor vehicle granted under Part 2 of the Road Traffic (Northern Ireland) Order 1981;

“vape” means—

(a) a device which— 35

(i) vaporises substances, other than tobacco, for the purpose of inhalation through a mouthpiece (whether or not it also vaporises tobacco), and

(ii) is not a medical device or a medicinal product, or 40

- (b) an item which is intended to form part of a device within paragraph (a) (including anything intended to be attached to it with a view to imparting flavour);
- “vaping product” means –
- (a) a vape, or 5
 - (b) a vaping substance;
- “vaping substance” means a substance, other than tobacco, that is intended to be vaporised by a vape;
- “vaporises” includes aerosolises;
- “vehicle” means every type of vehicle, including a vessel, aircraft and hovercraft. 10

7A Meaning of nicotine product

- (1) In this Part “nicotine product” means –
 - (a) a device which is intended to enable nicotine to be delivered into the human body, 15
 - (b) an item which is intended to form part of a device within sub-paragraph (a),
 - (c) nicotine, or any substance containing nicotine, which is intended to be delivered into the human body, or
 - (d) an item containing anything within sub-paragraph (c). 20
- (2) But the following are not “nicotine products” for the purposes of this Article –
 - (a) a tobacco product;
 - (b) a herbal smoking product;
 - (c) cigarette papers; 25
 - (d) any device which is intended to be used for the consumption of tobacco products;
 - (e) a vaping product;
 - (f) a medical device;
 - (g) a medicinal product.” 30

Retailer register and licensing

84 Extension of retailer register

Schedule 10 amends the Tobacco Retailers Act (Northern Ireland) 2014 (c. 4 (N.I.)) to extend certain provisions about the registration of tobacco retailers so that they apply in relation to retailers of vaping products and nicotine products. 35

85 Prohibition of retail sales of tobacco products etc without a licence

- (1) After section 4 of the Tobacco Retailers Act (Northern Ireland) 2014 (c. 4 (N.I.)) insert—

“Licensing of retail sales of tobacco products etc

4A Prohibition of retail sales of tobacco products etc without a licence

5

- (1) An individual must not do any of the following things except under the authority of and in accordance with a personal licence—
- (a) sell relevant products;
 - (b) expose relevant products for sale;
 - (c) possess relevant products for the purpose of their sale (by the individual or another person).
- (2) A person must not use or permit the use of premises for any of the following things except under the authority of and in accordance with a premises licence—
- (a) the storage of relevant products for the purpose of their sale (by the person or another person);
 - (b) the exposure of relevant products for sale;
 - (c) the supply of relevant products to retail customers.
- (3) Regulations may create exceptions to the prohibition in subsection (1) or (2).
- (4) Regulations must make provision for and in connection with the grant of personal licences and premises licences.
- (5) Before making regulations under this section the Department must consult any persons the Department considers it appropriate to consult.
- (6) Schedule 1 makes further provision about regulations under subsection (4).
- (7) In this section—
- “grant” includes variation or renewal;
 - “licensing authority” has the meaning given by paragraph 2 of Schedule 1;
 - “personal licence” means a licence that is granted by a licensing authority and authorises an individual to do the things mentioned in subsection (1)(a), (b) and (c);
 - “premises licence” means a licence that is granted by a licensing authority and authorises the use of premises by a person for the things mentioned in subsection (2)(a), (b) and (c);
 - “relevant products” means—
- (a) tobacco products;
 - (b) herbal smoking products;
 - (c) cigarette papers;

- (d) vaping products;
 - (e) nicotine products;
- “sell” means sell by retail;
“supply” includes despatch.

4B Offences in connection with licences

- (1) A person who breaches the prohibition in section 4A(1) or (2) commits an offence.
- (2) A person commits an offence if—
 - (a) the person provides information to a licensing authority—
 - (i) in, or in connection with, an application for the grant of a personal licence or a premises licence, or
 - (ii) in pursuance of any other obligation imposed by or under regulations made under section 4A(4),
 - (b) the information is false or misleading in a material respect, and
 - (c) the person knows, or ought reasonably to know, that the information is false or misleading in a material respect.
- (3) A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) The court by which a person is convicted of an offence under subsection (1) may order the relevant products to which the offence relates, and any container for them, to be forfeited and either destroyed or dealt with in such other manner as the court may order.
- (5) In this section—
 - “grant” includes variation or renewal;
 - “licensing authority” has the meaning given by paragraph 2 of Schedule 1;
 - “personal licence” has the meaning given by section 4A(7);
 - “premises licence” has the meaning given by section 4A(7);
 - “relevant product” has the meaning given by section 4A(7).

4C Financial penalties for breach of licence conditions

- (1) A council may impose a financial penalty on a person if satisfied that—
 - (a) the person has breached a condition attached to a personal licence or a premises licence, and
 - (b) the breach of that condition does not constitute an offence under section 4B.
- (2) The amount of the financial penalty must not exceed £2,500.
- (3) Regulations may amend the amount specified in subsection (2) for the purpose of reflecting inflation.

- (4) Schedule 2 makes further provision about the imposition of financial penalties under this section.
- (5) In this section “personal licence” and “premises licence” have the meaning given by section 4A(7).”
- (2) Schedule 11 inserts new Schedule 1 to the Tobacco Retailers Act (Northern Ireland) 2014, relating to the grant of personal licences and premises licences.
- (3) Schedule 12 inserts new Schedule 2 to the Tobacco Retailers Act (Northern Ireland) 2014, relating to the imposition of financial penalties.
- (4) Schedule 13 contains consequential amendments relating to the licensing of retail sales of tobacco products etc.

Powers to extend legislation

86 Power to extend legislation to other products

- (1) After Article 6A of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) (inserted by section 81 of this Act) insert—

“Power to extend this Part

6B Power to extend this Part to other products

- (1) The Department may by regulations amend this Part for the purpose of extending any provision that applies in relation to a tobacco product to—
 - (a) a device of a specified description which enables a tobacco product to be consumed (for example, a heated tobacco device or pipe);
 - (b) an item which is intended to form part of such a device.
- (2) Before making regulations under this Article the Department must consult any persons it considers it appropriate to consult.
- (3) Regulations may not be made by the Department under this Article unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.”
- (2) After section 21 of the Tobacco Retailers Act (Northern Ireland) 2014 (c. 4 (N.I.)) insert—

“21A Power to extend Act to other products

- (1) The Department may by regulations amend this Act for the purpose of extending any provision that applies in relation to a tobacco product to—
 - (a) a device of a specified description which enables a tobacco product to be consumed (for example, a heated tobacco device or pipe);
 - (b) an item which is intended to form part of such a device.

- (2) Before making regulations under this section the Department must consult any persons the Department considers it appropriate to consult.”
- (3) In section 24 of that Act, in subsection (2), for “or 21(4) or (5)” substitute “, 21(4) or (5) or 21A”.

Consequential etc, transitional and transitory provision

87 Consequential and other amendments

- (1) See Schedule 14 for consequential amendments coming into force at the end of the period of 6 months beginning with the day on which this Act is passed.
- (2) See Schedule 15 for consequential amendments coming into force on 1 January 2027.

88 Transitional provision

- (1) In relation to times before 1 January 2027, Article 6A(2) of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) (inserted by section 81 of this Act) has effect as if it included a reference to an offence under Article 5 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (S.I. 1991/2872 (N.I. 25)) (display of warning statements).
- (2) In relation to times before 1 January 2027, Article 6C(1) of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) (inserted by section 82 of this Act) has effect as if it did not include a reference to Article 3 of that Order (which is substituted by section 68 of this Act).

PART 4

SNUS ETC: SEIZURE AND DETENTION POWERS

89 Power of officer of Revenue and Customs to seize and detain snus etc

- (1) An officer of Revenue and Customs may, for the purpose of facilitating the exercise by an enforcement authority of any of its functions in relation to the enforcement of a relevant offence, seize any relevant oral tobacco products that have been imported and detain them for not more than 48 hours.
- (2) Any products seized and detained under this section must be dealt with during their period of detention in such manner as the Commissioners for His Majesty’s Revenue and Customs may direct.
- (3) For the purposes of calculating the 48-hour period mentioned in subsection (1) any period falling on a non-working day is to be disregarded.
- (4) In this section –
“enforcement authority” –

- (a) in relation to England or Wales, means a local weights and measures authority;
 - (b) in relation to Scotland, means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;
 - (c) in relation to Northern Ireland, means a district council;
- “non-working day” means –
- (a) a Saturday or Sunday, or
 - (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom;
- “relevant offence” means an offence under any of the following (which relate to possession of relevant oral tobacco products with intent to supply) –
- (a) section 9 (England and Wales);
 - (b) section 9C of the Tobacco and Primary Medical Services (Scotland) Act 2010 (Scotland);
 - (c) Article 4G of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26));
- “relevant oral tobacco product” means a tobacco product that –
- (a) is intended for oral use,
 - (b) is not intended to be inhaled or chewed, and
 - (c) consists wholly or partly of tobacco in powder or particulate form.

PART 5

PRODUCT AND INFORMATION REQUIREMENTS ETC

Product requirements etc

90 Retail packaging

- (1) The Secretary of State may by regulations make provision about the retail packaging of –
 - (a) tobacco products;
 - (b) tobacco related devices;
 - (c) herbal smoking products;
 - (d) cigarette papers;
 - (e) vaping products;
 - (f) nicotine products.
- (2) The regulations may, in particular, impose prohibitions, requirements or limitations in relation to the production, importation or supply of such products in the course of business.
- (3) Provision made by the regulations may, in particular, include provision about –

- (a) the markings on packaging (including the use of branding, trademarks or logos);
 - (b) the information provided on packaging or otherwise supplied with a product;
 - (c) the appearance of packaging;
 - (d) the materials used for packaging;
 - (e) the texture of packaging;
 - (f) the size of packaging;
 - (g) the shape of packaging;
 - (h) the means by which packaging is opened;
 - (i) any features of packaging which could be used to distinguish between different brands;
 - (j) the number of individual products contained in an individual packet;
 - (k) the quantity of a product contained in an individual packet.
- (4) Regulations under this section are subject to the affirmative resolution procedure.

91 Features of products

- (1) The Secretary of State may by regulations make provision about—
- (a) the markings on—
 - (i) tobacco products,
 - (ii) tobacco related devices,
 - (iii) herbal smoking products,
 - (iv) cigarette papers,
 - (v) vaping products, or
 - (vi) nicotine products,including the use of branding, trademarks or logos;
 - (b) the information provided on such products;
 - (c) the appearance of such products;
 - (d) the size of such products or their components;
 - (e) the shape of such products;
 - (f) any features of such products which could be used to distinguish between different brands.
- (2) The regulations may, in particular, impose prohibitions, requirements or limitations in relation to the production, importation or supply of such products in the course of business.
- (3) Regulations under this section are subject to the affirmative resolution procedure.

92 Contents and flavour

- (1) The Secretary of State may by regulations make provision about—

- (a) the substances that may be included in a relevant product or the amount of any given substance that may be included;
 - (b) the flavour of relevant products;
 - (c) any product intended to be used in connection with a relevant product with a view to imparting flavour.
- (2) In this section “relevant products” means –
 - (a) tobacco products,
 - (b) tobacco related devices,
 - (c) herbal smoking products,
 - (d) cigarette papers,
 - (e) vaping products, or
 - (f) nicotine products.
- (3) The regulations may, in particular, impose prohibitions, requirements or limitations in relation to the production, importation or supply of such products in the course of business.
- (4) The regulations may, in particular, make provision about how the flavour of a product is to be determined, including provision for a determination to be made by a person authorised for the purpose by the Secretary of State.
- (5) Regulations under this section are subject to the affirmative resolution procedure.

93 Substances released into human body and emissions

- (1) The Secretary of State may by regulations make provision about the nature and amount of the substances that may be released into the body of a person using or of the emissions that may be released by –
 - (a) tobacco products;
 - (b) tobacco related devices;
 - (c) herbal smoking products;
 - (d) cigarette papers;
 - (e) vaping products;
 - (f) nicotine products.
- (2) The regulations may, in particular, impose prohibitions, requirements or limitations in relation to the production, importation or supply of such products in the course of business.
- (3) The regulations may, in particular, make provision about how the nature and amount of substances or emissions released by a product are to be determined, including provision for a determination to be made by a person authorised for the purpose by the Secretary of State.
- (4) Regulations under this section are subject to the affirmative resolution procedure.

Non-compliant images

94 Non-compliant images

- (1) The Secretary of State may by regulations prohibit a person from doing the following in the course of business—
 - (a) publishing an image of the retail packaging of a relevant product from which it is possible to tell that the requirements of regulations under section 90 have not been complied with;
 - (b) publishing an image of a relevant product from which it is possible to tell that the requirements of regulations under section 91 have not been complied with;
 - (c) causing the publication of an image of the kind mentioned in paragraph (a) or (b).
- (2) In this section “relevant product” means—
 - (a) a tobacco product,
 - (b) a tobacco related device,
 - (c) a herbal smoking product,
 - (d) cigarette papers,
 - (e) a vaping product, or
 - (f) a nicotine product.
- (3) Regulations under this section are subject to the affirmative resolution procedure.

Registration and information requirements

95 Registration

- (1) The Secretary of State may by regulations make provision for the establishment of a register of—
 - (a) tobacco products;
 - (b) tobacco related devices;
 - (c) herbal smoking products;
 - (d) cigarette papers;
 - (e) vaping products;
 - (f) nicotine products.
- (2) The regulations may impose prohibitions or limitations on the supply of an unregistered product in the course of business.
- (3) The regulations may, in particular, make provision—
 - (a) about who is to keep the register;
 - (b) about eligibility for registration or continued registration;
 - (c) requiring a person to provide the registrar with information that relates to the product or producer;
 - (d) about the content of the register;

- (e) about the expiry, renewal, cancellation or suspension of a product's registration;
 - (f) about the publication of the register;
 - (g) *for fees to be payable in respect of registration or continued registration (which may be set at a level that takes into account the cost of exercising functions under or in connection with any regulations under this Part).*
- (4) Regulations made by virtue of subsection (3)(c) may, in particular, require the provision of—
- (a) the reasons for an ingredient's inclusion in the product;
 - (b) images (for example, an image of the product or its label or packaging);
 - (c) information relevant to any risks or suspected risks to human health or safety posed by the product;
 - (d) information about substances released into the body of a person using the product or about the emissions released by the product;
 - (e) information about the producer's operations;
 - (f) information about any individual nominated by the producer in accordance with regulations under section 98 (responsible person).
- (5) Regulations made by virtue of subsection (3)(g) may include provision about the use of fee income (including provision authorising its retention or payment into the Consolidated Fund).
- (6) Regulations under this section are subject to the affirmative resolution procedure.

96 Information

- (1) The Secretary of State may by regulations—
- (a) require a producer or importer of any of the following products to provide information that relates to the product or its producer to a person specified in the regulations—
 - (i) tobacco products;
 - (ii) tobacco related devices;
 - (iii) herbal smoking products;
 - (iv) cigarette papers;
 - (v) vaping products;
 - (vi) nicotine products;
 - (b) make provision about the publication of information provided under the regulations.
- (2) The regulations may, in particular, require the provision of—
- (a) any information of a kind mentioned in section 95(4)(a) to (f);
 - (b) sales data or market research relating to the product.
- (3) The regulations may, in particular, make provision about when and how information must be provided.

- (4) Regulations under this section are subject to the affirmative resolution procedure.

97 Studies

- (1) The Secretary of State may by regulations require a producer of a relevant product –
 - (a) to carry out a study in relation to the product or an ingredient in it, and
 - (b) to submit a report on the results of the study to a person specified in the regulations.
- (2) In this section “relevant product” means –
 - (a) a tobacco product,
 - (b) a tobacco related device,
 - (c) a herbal smoking product,
 - (d) cigarette papers,
 - (e) a vaping product, or
 - (f) a nicotine product.
- (3) The regulations may, in particular, make provision about –
 - (a) when and how a study is to be carried out and a report submitted;
 - (b) the questions that a study must address;
 - (c) the content and structure of a report.
- (4) Regulations under this section are subject to the affirmative resolution procedure.

98 Responsible person

- (1) The Secretary of State may by regulations require a producer of any of the following to nominate an individual to be responsible for information that is, or that has to be, provided to a person in accordance with regulations under sections 95 to 97 –
 - (a) tobacco products;
 - (b) tobacco related devices;
 - (c) herbal smoking products;
 - (d) cigarette papers;
 - (e) vaping products; or
 - (f) nicotine products.
- (2) The regulations may, in particular, make provision about who is eligible to be nominated, including provision requiring a nominee to be resident in, or to have another connection to, the United Kingdom.
- (3) The regulations must prohibit a producer from nominating an individual without the individual’s consent.

- (4) Regulations under this section are subject to the affirmative resolution procedure.

Quality control and safety

99 Testing

- (1) The Secretary of State may by regulations require a person specified in the regulations to carry out tests with a view to determining whether a product complies with a requirement imposed by regulations under this Part.
- (2) The regulations may, in particular, make provision—
 - (a) about how and when tests are to be carried out;
 - (b) about who may carry out tests on behalf of the person specified under subsection (1);
 - (c) about the selection of products for testing;
 - (d) about the provision of samples by producers;
 - (e) *for charges to be payable in respect of tests (which may be set at a level that takes into account the cost of exercising functions under or in connection with any regulations under this Part).*
- (3) Regulations made by virtue of subsection (2)(e) may include provision about the use of charges received (including provision authorising its retention or payment into the Consolidated Fund).
- (4) Regulations under this section are subject to the affirmative resolution procedure.

100 Product safety

- (1) The Secretary of State may, for the purpose of minimising the risks to human health and safety posed by relevant products, make regulations—
 - (a) requiring producers or importers to have processes in place for collecting information about the effect of their products on human health and safety;
 - (b) conferring power on the Secretary of State, in circumstances specified in the regulations, to—
 - (i) impose a prohibition or limitation on the supply of a product by a producer or importer;
 - (ii) require a producer or importer to recall a product.
- (2) In this section “relevant products” means—
 - (a) tobacco products,
 - (b) tobacco related devices,
 - (c) herbal smoking products,
 - (d) cigarette papers,
 - (e) vaping products, or
 - (f) nicotine products.

- (3) Regulations under this section are subject to the affirmative resolution procedure.

Matters dealt with by 2016 Regulations

101 Matters dealt with by 2016 Regulations

- (1) *The Secretary of State may by regulations make provision –*
 - (a) *that is similar to or that corresponds to any provision of the Tobacco and Related Products Regulations 2016 (S.I. 2016/507), other than Part 7 of those Regulations, or*
 - (b) *that applies a provision of those Regulations, with or without modifications, to any of the following to which it would not otherwise apply –*
 - (i) *tobacco products,*
 - (ii) *tobacco related devices,*
 - (iii) *herbal smoking products,*
 - (iv) *cigarette papers,*
 - (v) *vaping products, or*
 - (vi) *nicotine products,*

so far as that provision could not otherwise be made under this Part.
- (2) The reference in subsection (1) to the Tobacco and Related Products Regulations 2016 (S.I. 2016/507) is to that instrument as it has effect on the day on which this Act is passed.
- (3) Regulations under this section are subject to the affirmative resolution procedure.

102 Treatment of 2016 Regulations

The Tobacco and Related Products Regulations 2016 (S.I. 2016/507), so far as they contain provision that could be made under a regulation-making power conferred by this Part, are treated for the purposes of section 14 of the Interpretation Act 1978 (implied power to amend or revoke) as having been made under that power.

Supplementary and miscellaneous

103 Offences

- (1) Regulations under this Part may create an offence in relation to a failure to comply with the regulations.
- (2) Regulations under sections 95 to 97 may create an offence in relation to the provision of false or misleading information to a person in purported compliance with an obligation under the regulations.
- (3) Regulations under section 98 may provide that, if a producer commits an offence by reason of –

- (a) a failure to provide information required by regulations under sections 95 to 97, or
 - (b) the provision of false or misleading information to a person in purported compliance with an obligation under such regulations, the offence is also committed by the person nominated by the producer in accordance with regulations under section 98.
- (4) Subsection (3) does not limit the power to create offences by virtue of subsections (1) and (2) (and, in particular, to make others liable for offences committed by a body).
- (5) Regulations under this Part must provide for any offence to be triable either way and punishable—
- (a) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.

104 Enforcement

- (1) Regulations under this Part may include provision about enforcement, including—
- (a) *provision conferring functions on the relevant enforcement authorities;*
 - (b) provision for the appropriate national authority to—
 - (i) direct, in relation to cases of a particular description or a particular case, that any duty imposed on a relevant enforcement authority by virtue of provision under paragraph (a) is to be discharged by the appropriate national authority and not by the relevant enforcement authority;
 - (ii) take over the conduct of any proceedings from a relevant enforcement authority in respect of an offence committed under the regulations.
- (2) Regulations under this Part may, in particular, include—
- (a) provision applying, with or without modifications, any of the enforcement provisions of the Consumer Protection Act 1987;
 - (b) provision similar or corresponding to any of those provisions.
- (3) The reference in subsection (2) to the “enforcement provisions” of the Consumer Protection Act 1987 is to the following provisions of that Act—
- (a) in Part 2 (consumer safety)—

- sections 14 and 15 (suspension notices);
 - sections 16 and 17 (forfeiture);
 - section 18 (power to obtain information);
 - (b) Part 4 (enforcement);
 - (c) Part 5 (miscellaneous and supplemental) so far as relating to the provisions mentioned in paragraphs (a) and (b) above.
- (4) In this section –
- “appropriate national authority” means –
 - (a) in relation to England, the Secretary of State,
 - (b) in relation to Wales, the Welsh Ministers,
 - (c) in relation to Scotland, the Scottish Ministers, and
 - (d) in relation to Northern Ireland, the Department of Health;
 - “relevant enforcement authorities” means –
 - (a) in relation to England and Wales, local weights and measures authorities,
 - (b) in relation to Scotland, local weights and measures authorities, and
 - (c) in relation to Northern Ireland, district councils.

105 Sub-delegation

Regulations under this Part may confer discretions.

106 Power to make provision binding the Crown

- (1) Regulations under this Part may include provision binding the Crown.
- (2) Regulations under this Part which include provision binding the Crown –
 - (a) must provide that the Crown is not criminally liable as a result of any such provision, and
 - (b) may confer power on the High Court in England and Wales or Northern Ireland, or the Court of Session in Scotland, to declare unlawful any act or omission for which the Crown would be criminally liable if it were not for provision made by virtue of paragraph (a).
- (3) Provision made by virtue of subsection (2)(b) which confers power on the Court of Session to make a declaration must provide that such a declaration may only be made on an application by the Scottish Ministers or a local weights and measures authority in Scotland.
- (4) Provision made by virtue of this section does not affect the application of regulations under this Part in relation to persons in the public service of the Crown.

107 Power to amend legislation

The consequential provision that may be made by regulations under this Part by virtue of section 165(1)(a) includes provision amending, repealing or revoking any legislation (whenever passed or made).

108 Consequential repeal

In the Children and Families Act 2014 omit section 94.

109 Enforcement of 2016 Regulations

In Schedule 15 to the Digital Markets, Competition and Consumers Act 2024 (consumer protection enactments), in Part 1 –

- (a) in the second part of the Table (secondary legislation) at the appropriate place insert –

<p>“The Tobacco and Related Products Regulations 2016 (S.I. 2016/507)</p>	<p>(1) All public designated enforcers, other than –</p> <p>(a) the Department for the Economy in Northern Ireland;</p> <p>(b) the Department of Health in Northern Ireland;</p> <p>(c) the Department for Infrastructure in Northern Ireland;</p> <p>(d) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);</p> <p>(e) the Maritime and Coastguard Agency;</p> <p>(f) the Office for the Traffic Commissioner;</p> <p>(g) the Secretary of State.</p> <p>(2) All private enforcers.”;</p>
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- (b) in the fifth part of the Table (saved legislation) omit the entry for the Tobacco Products (Manufacture, Presentation and Sale) (Safety) Regulations 2002 (S.I. 2002/3041).

*Consultation and consent***110 Consultation**

Before making regulations under this Part the Secretary of State must consult any persons the Secretary of State considers it appropriate to consult.

111 Consent to regulations under Part 5

Before making regulations under this Part the Secretary of State must obtain the consent of—

- (a) the Welsh Ministers, if the regulations contain provision which would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd;
- (b) the Scottish Ministers, if the regulations contain provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of the Scottish Parliament;
- (c) the Executive Office in Northern Ireland, if the regulations contain provision which—
 - (i) would be within the legislative competence of the Northern Ireland Assembly if contained in an Act of the Assembly, and
 - (ii) would not, if it were contained in a Bill for an Act of the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.

Interpretation

112 Interpretation of Part 5

In this Part—

- “cigarette papers” includes anything intended to be used for encasing tobacco products or herbal smoking products for the purpose of enabling them to be smoked;
- “herbal smoking product” means a product consisting wholly or partly of vegetable matter and intended to be smoked but not containing tobacco;
- “importer”, in relation to a product, means a person who imports the product into the United Kingdom in the course of business;
- “medical device” has the meaning given by the Medical Devices Regulations 2002 (S.I. 2002/618);
- “medicinal product” has the meaning given by the Human Medicines Regulations 2012 (S.I. 2012/1916);
- “nicotine product” has the meaning given by section 113;
- “packaging”, in relation to a product, means—
 - (a) the external packaging of the product (including any wrapper),
 - (b) the internal packaging of the product, or
 - (c) any other material attached to or included with the product or anything within paragraph (a) or (b);
- “production”, in relation to a product, means—
 - (a) the manufacture of the product, or
 - (b) the putting of a name, trademark or other distinguishing mark on the product by a person, the effect of which is to hold the person out as being the manufacturer of the product

(whether in the United Kingdom or elsewhere);

“retail packaging”, in relation to a product, means the packaging in which it is, or is intended to be, presented for sale by retail;

“supply”, in relation to a product, includes –

- (a) offering or agreeing to supply it, or
- (b) exposing or possessing it for supply;

“tobacco product” means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked, chewed or consumed in any other way;

“tobacco related device” means –

- (a) a device, other than a vape, which enables a tobacco product to be consumed, or
- (b) an item which is intended to form part of a device within paragraph (a);

“vape” means –

- (a) a device which –
 - (i) vaporises substances, other than tobacco, for the purpose of inhalation through a mouthpiece (whether or not it also vaporises tobacco), and
 - (ii) is not a medical device or a medicinal product, or
- (b) an item which is intended to form part of a device within paragraph (a) (including anything intended to be attached to it with a view to imparting flavour);

“vaping product” means –

- (a) a vape, or
- (b) a vaping substance;

“vaping substance” means a substance, other than tobacco, that is intended to be vaporised by a vape;

“vaporises” includes aerosolises (and “vaporised” is to be construed accordingly).

113 Meaning of “nicotine product”

- (1) In this Part “nicotine product” means –
 - (a) a device which is intended to enable nicotine to be delivered into the human body,
 - (b) an item which is intended to form part of a device within paragraph (a),
 - (c) nicotine, or any substance containing nicotine, which is intended to be delivered into the human body, or
 - (d) an item containing anything within paragraph (c).
- (2) But the following are not “nicotine products” for the purposes of this section –
 - (a) a tobacco product;
 - (b) a herbal smoking product;
 - (c) cigarette papers;

- (d) any device which is intended to be used for the consumption of tobacco products or herbal smoking products;
- (e) a vaping product;
- (f) a medical device;
- (g) a medicinal product.

PART 6

ADVERTISING AND SPONSORSHIP

Advertising

114 Publishing advertisements

- (1) A person commits an offence if—
 - (a) the person, acting in the course of business, publishes an advertisement in the United Kingdom whose purpose or effect is to promote—
 - (i) a tobacco product,
 - (ii) a herbal smoking product,
 - (iii) cigarette papers,
 - (iv) a vaping product, or
 - (v) a nicotine product, and
 - (b) the person knows or has reason to suspect—
 - (i) that what they are publishing is or contains the advertisement, and
 - (ii) that the advertisement has that purpose or will have that effect.
- (2) A person who commits an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both;
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court, or a fine, or both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.

115 Designing advertisements

- (1) A person commits an offence if—
 - (a) the person, acting in the course of business, designs an advertisement whose purpose or effect is to promote—
 - (i) a tobacco product,

- (ii) a herbal smoking product,
 - (iii) cigarette papers,
 - (iv) a vaping product, or
 - (v) a nicotine product, and
 - (b) the person knows or has reason to suspect –
 - (i) that the advertisement has that purpose or will have that effect, and
 - (ii) that the advertisement will be published in the United Kingdom.
- (2) A person who commits an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both;
 - (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.

116 Printing advertisements

- (1) A person commits an offence if –
- (a) the person, acting in the course of business, prints an advertisement whose purpose or effect is to promote –
 - (i) a tobacco product,
 - (ii) a herbal smoking product,
 - (iii) cigarette papers,
 - (iv) a vaping product, or
 - (v) a nicotine product, and
 - (b) the person knows or has reason to suspect –
 - (i) that what they are printing is or contains the advertisement,
 - (ii) that the advertisement has that purpose or will have that effect, and
 - (iii) that the advertisement will be published in the United Kingdom.
- (2) A person who commits an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both;
 - (b) on summary conviction –

- (i) in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court, or a fine, or both;
- (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;
- (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.

117 Distributing advertisements

- (1) A person commits an offence if—
 - (a) the person, acting in the course of business, distributes an advertisement in the United Kingdom whose purpose or effect is to promote—
 - (i) a tobacco product,
 - (ii) a herbal smoking product,
 - (iii) cigarette papers,
 - (iv) a vaping product, or
 - (v) a nicotine product, and
 - (b) the person knows or has reason to suspect—
 - (i) that what they are distributing is or contains the advertisement, and
 - (ii) that the advertisement has that purpose or will have that effect.
- (2) A person who commits an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both;
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court, or a fine, or both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.

118 Causing publication, designing, printing or distribution

- (1) A person commits an offence if—
 - (a) the person, acting in the course of business, causes the publication or distribution in the United Kingdom of an advertisement whose purpose or effect is to promote—
 - (i) a tobacco product,

-
- (ii) a herbal smoking product,
 - (iii) cigarette papers,
 - (iv) a vaping product, or
 - (v) a nicotine product, and
 - (b) the person knows or has reason to suspect—
 - (i) that they are causing the publication or distribution of the advertisement,
 - (ii) that the advertisement has that purpose or will have that effect, and
 - (iii) that the advertisement will be published or distributed in the United Kingdom.
- (2) A person commits an offence if—
- (a) the person, acting in the course of business, causes the designing or printing of an advertisement whose purpose or effect is to promote—
 - (i) a tobacco product,
 - (ii) a herbal smoking product,
 - (iii) cigarette papers,
 - (iv) a vaping product, or
 - (v) a nicotine product, and
 - (b) the person knows or has reason to suspect—
 - (i) that they are causing the designing or printing of the advertisement,
 - (ii) that the advertisement has that purpose or will have that effect, and
 - (iii) that the advertisement will be published in the United Kingdom.
- (3) A person who commits an offence under this section is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both;
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court, or a fine, or both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.

119 Internet services

- (1) A person who carries on any business in the United Kingdom commits an offence if—

- (a) the person, acting in the course of business, provides an internet service by means of which an advertisement is published or distributed in the United Kingdom,
 - (b) the advertisement’s purpose or effect is to promote –
 - (i) a tobacco product,
 - (ii) a herbal smoking product,
 - (iii) cigarette papers,
 - (iv) a vaping product, or
 - (v) a nicotine product, and
 - (c) the person knows or has reason to suspect –
 - (i) that the advertisement will be published or distributed in the United Kingdom by means of the service that they provide, and
 - (ii) that the advertisement has that purpose or will have that effect.
- (2) A person who carries on any business in the United Kingdom commits an offence if –
- (a) the person, acting in the course of business, provides an internet service by means of which an advertisement is published or distributed in the United Kingdom,
 - (b) the advertisement’s purpose or effect is to promote –
 - (i) a tobacco product,
 - (ii) a herbal smoking product,
 - (iii) cigarette papers,
 - (iv) a vaping product, or
 - (v) a nicotine product,
 - (c) the person becomes aware of the circumstances set out in paragraphs (a) and (b), and
 - (d) the person fails to take all reasonable steps to prevent the advertisement from being further viewed by or distributed to the public in the United Kingdom.
- (3) A person who commits an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both;
 - (b) on summary conviction –
 - (i) in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.

- (4) In this section “internet service” means a service that is made available by means of the internet.
- (5) For the purposes of subsection (4) a service is “made available by means of the internet” even where it is made available by means of a combination of—
 - (a) the internet, and
 - (b) an electronic communications service.
- (6) “Electronic communications service” has the same meaning as in the Communications Act 2003 (see section 32(2) of that Act).

120 Advertising: defences

- (1) Where a person is charged with an offence under any of sections 114 to 119 in relation to an advertisement it is a defence for the person to show that—
 - (a) it is, or is contained in, a communication that is made in the course of business which is part of a relevant trade and it is made for the purpose of that trade and directed solely at relevant persons involved in that trade (see subsection (2)),
 - (b) it is, or is contained in, a reply to a particular request by an individual for information about a tobacco product, a herbal smoking product, cigarette papers, a vaping product or a nicotine product, or
 - (c) it is contained in a publication, other than in an in-flight magazine—
 - (i) which is printed outside the United Kingdom, and
 - (ii) whose principal market is not the United Kingdom (or any part of the United Kingdom).
- (2) For the purposes of subsection (1)(a)—

“relevant person”: a person is a “relevant person” involved in a relevant trade if the person is engaged in, or employed by, a business which is part of that trade and the person—

 - (a) is responsible for making decisions on behalf of that business about the purchase of tobacco products, herbal smoking products, cigarette papers, vaping products or nicotine products which are to be sold in the course of the business,
 - (b) occupies a position in the management structure of the business which is equivalent in seniority to, or of greater seniority than, that of a person who is responsible as mentioned in paragraph (a), or
 - (c) is responsible for the conduct of the business or is a member of the board of directors or other body of persons (however described) that is responsible for the conduct of the business;

“relevant trade” means—

 - (a) the tobacco products trade,
 - (b) the herbal smoking products trade,
 - (c) the cigarette papers trade,
 - (d) the vaping products trade, or
 - (e) the nicotine products trade.

- (3) Where in accordance with subsection (1) it is a defence for a person charged with an offence to show a particular matter, the person is taken to show that matter if –
 - (a) sufficient evidence of the matter is adduced to raise an issue with respect to it, and
 - (b) the contrary is not proved beyond reasonable doubt.

121 Specialist tobacconists

- (1) A person does not commit an offence under any of sections 114 to 118 in relation to an advertisement whose purpose or effect is to promote a tobacco product if the advertisement –
 - (a) is in a specialist tobacconist,
 - (b) is not visible from outside the specialist tobacconist,
 - (c) is not for cigarettes or hand-rolling tobacco, and
 - (d) complies with the requirements (if any) specified by the appropriate national authority in regulations as to the inclusion of health warnings and information.
- (2) Regulations under subsection (1) are subject to the negative resolution procedure.
- (3) In this section –
 - “appropriate national authority” –
 - (a) in relation to specialist tobacconists in England, means the Secretary of State,
 - (b) in relation to specialist tobacconists in Wales, means the Welsh Ministers,
 - (c) in relation to specialist tobacconists in Scotland, means the Scottish Ministers, and
 - (d) in relation to specialist tobacconists in Northern Ireland, means the Department of Health in Northern Ireland;
 - “shop” includes a self-contained part of a shop (and, in relation to a self-contained part of a shop, “premises” means that self-contained part);
 - “specialist tobacconist” means a shop selling tobacco products by retail (whether or not it also sells other things) more than half of whose sales on the premises in question derive from the sale of cigars, snuff, pipe tobacco and smoking accessories.
- (4) For the purposes of determining whether a shop is a specialist tobacconist, the sales are to be measured by sale price –
 - (a) during the most recent period of 12 months for which accounts are available, or
 - (b) during the period for which the shop has been established, if it has not been established long enough for 12 months’ accounts to be available.

122 Exclusion for advertisements that are displays

- (1) No offence is committed under this Part by the display of something that amounts to an advertisement if the display of that thing is subject to the law relating to displays.
- (2) For this purpose, the display of something is “subject to the law relating to displays” if—
 - (a) regulations could be made in respect of the display under section 13 (England);
 - (b) the display falls within section 1(1) of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) (whether or not an offence is committed under that section in respect of it) or regulations could be made in respect of the display under section 3A of that Act (Scotland);
 - (c) regulations could be made in respect of the display under section 14 (Wales);
 - (d) regulations could be made in respect of the display under Article 4K of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26)) (Northern Ireland).

*Brandsharing***123 Brandsharing**

- (1) The Secretary of State may by regulations make provision prohibiting or restricting brandsharing in relation to—
 - (a) tobacco products;
 - (b) herbal smoking products;
 - (c) cigarette papers;
 - (d) vaping products;
 - (e) nicotine products.
- (2) In subsection (1) “brandsharing”, in relation to such a product (a “relevant product”), means—
 - (a) the use in connection with a service or product (other than the relevant product) of anything which is the same as, or similar to, a name, emblem or any other feature identified with the relevant product, or
 - (b) the use in connection with the relevant product of anything which is the same as, or similar to, a name, emblem or other feature identified with a service or product other than the relevant product,where the purpose or effect of the use is to promote the relevant product.
- (3) Regulations under this section may create offences in relation to a failure to comply with the regulations.
- (4) The regulations must provide for any offence to be triable either way and punishable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both;

- (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court, or a fine, or both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.
- (5) Before making regulations under this section the Secretary of State must obtain the consent of—
 - (a) the Scottish Ministers, if the regulations contain provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of the Scottish Parliament;
 - (b) the Department of Health in Northern Ireland, if the regulations contain provision which—
 - (i) would be within the legislative competence of the Northern Ireland Assembly if contained in an Act of the Assembly, and
 - (ii) would not, if it were contained in a Bill for an Act of the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.
- (6) Regulations under this section are subject to the affirmative resolution procedure.

Sponsorship

124 Sponsorship: tobacco products

- (1) A person commits an offence if—
 - (a) the person is party to an agreement (entered into at any time),
 - (b) under the agreement, a party to it, acting in the course of business, makes a contribution towards something,
 - (c) the purpose or effect of anything done as a result of the agreement is to promote a tobacco product in the United Kingdom, and
 - (d) the person knew or had reason to suspect—
 - (i) that the contribution referred to in paragraph (b) was made in the course of business, and
 - (ii) that the action referred to in paragraph (c) had that purpose or would have that effect.
- (2) A person who commits an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both;
 - (b) on summary conviction—

- (i) in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court, or a fine, or both;
- (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;
- (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.

125 Sponsorship: vaping and nicotine and other products

- (1) A person commits an offence if—
 - (a) the person is party to an agreement entered into on or after the day on which this section comes into force,
 - (b) under the agreement, a party to it, acting in the course of business, makes a contribution towards something,
 - (c) the purpose or effect of anything done on or after the specified date as a result of the agreement is to promote in the United Kingdom—
 - (i) a herbal smoking product,
 - (ii) cigarette papers,
 - (iii) a vaping product, or
 - (iv) a nicotine product, and
 - (d) the person knew or had reason to suspect—
 - (i) that the contribution referred to in paragraph (b) was made in the course of business, and
 - (ii) that the action referred to in paragraph (c) had that purpose or would have that effect.
- (2) A person who commits an offence under this section is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both;
 - (b) on summary conviction—
 - (i) in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court, or a fine, or both;
 - (ii) in Scotland, to imprisonment for a term not exceeding 12 months, or a fine not exceeding the statutory maximum, or both;
 - (iii) in Northern Ireland, to imprisonment for a term not exceeding 6 months, or a fine not exceeding the statutory maximum, or both.
- (3) In subsection (1) “specified date” means a date specified by the Secretary of State by regulations.

Audiovisual services and radio broadcasting

126 Audiovisual services and radio broadcasting

This Part does not apply in relation to anything included in—

- (a) a service falling within section 211(1) of the Communications Act 2003 (independent television services regulated by the Office of Communications) which is not an additional television service (within the meaning of Part 3 of that Act),
- (b) a service which—
 - (i) falls within section 245(1) of the Communications Act 2003 (independent radio services regulated by the Office of Communications), and
 - (ii) is not a digital additional sound service (within the meaning of Part 3 of that Act),
- (c) an on-demand programme service (within the meaning given by section 368A of the Communications Act 2003),
- (d) a non-UK on-demand programme service that is a Tier 1 service (within the meaning given by sections 368AA and 368HA of the Communications Act 2003 respectively), or
- (e) a service provided by the British Broadcasting Corporation or Sianel Pedwar Cymru (the body corporate so named by section 56 of the Broadcasting Act 1990).

127 Extension of provisions about audiovisual and radio broadcasting

Schedule 16 contains—

- (a) amendments to extend certain provisions of the Communications Act 2003 to all vaping products and to herbal smoking products, cigarette papers and nicotine products, and
- (b) other amendments to that Act made in consequence of this Part.

Offences by bodies

128 Liability of others for offences committed by bodies

- (1) Where an offence under this Part or under regulations made under it—
 - (a) is committed with the consent or connivance of a relevant person in relation to the body, or a person purporting to act in the capacity of a relevant person in relation to the body, or
 - (b) is attributable to neglect on the part of such a person,the person (as well as the body) commits the offence and is liable to be proceeded against and punished accordingly.
- (2) In this section—
 - “body” means—
 - (a) a body corporate,

- (b) a partnership, or
 - (c) an unincorporated association;
- “relevant person” means –
- (a) in relation to a body corporate other than one whose affairs are managed by its members, a director, manager, secretary or other similar officer of the body;
 - (b) in relation to a limited liability partnership or other body corporate whose affairs are managed by its members, a member who exercises functions of management with respect to it;
 - (c) in relation to a limited partnership, a general partner (within the meaning given by section 3 of the Limited Partnerships Act 1907);
 - (d) in relation to any other partnership, a partner;
 - (e) in relation to an unincorporated association, a person who exercises functions of management with respect to it.

Enforcement

129 Enforcement authorities

- (1) *It is the duty of an enforcement authority to enforce within its area the provisions of this Part.*
- (2) In this Part “enforcement authority” means –
 - (a) in relation to England and Wales, local weights and measures authorities,
 - (b) in relation to Scotland, local weights and measures authorities, and
 - (c) in relation to Northern Ireland, district councils.

130 Power of ministers etc to take over enforcement functions

- (1) The appropriate national authority may direct that, in relation to cases of a particular description or in a particular case, the duty imposed on an enforcement authority by section 129 is to be discharged by the appropriate national authority and not by the enforcement authority.
- (2) In subsection (1) “appropriate national authority” –
 - (a) in relation to the giving of a direction to an enforcement authority in England, means the Secretary of State,
 - (b) in relation to the giving of a direction to an enforcement authority in Wales, means the Welsh Ministers,
 - (c) in relation to the giving of a direction to an enforcement authority in Scotland, means the Scottish Ministers, and
 - (d) in relation to the giving of a direction to an enforcement authority in Northern Ireland, means the Department of Health in Northern Ireland.

131 Power of ministers etc to take over proceedings

- (1) The Secretary of State may take over the conduct of any proceedings from an enforcement authority in England in respect of an offence committed under this Part.
- (2) The Welsh Ministers may take over the conduct of any proceedings from an enforcement authority in Wales in respect of an offence committed under this Part.
- (3) The Department of Health in Northern Ireland may take over the conduct of any proceedings from an enforcement authority in Northern Ireland in respect of an offence committed under this Part.

Alignment of definition in old advertising legislation pending replacement

132 Alignment of definition of “tobacco product” in old legislation

In section 1 of the Tobacco Advertising and Promotion Act 2002 (interpretation), for the definition of “tobacco product” substitute—

““tobacco product” means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked, chewed or consumed in any other way.”

Power to extend advertising legislation

133 Power to extend Part 6 and Communications Act 2003 to other products

- (1) The Secretary of State may by regulations amend this Part or any provision of the Communications Act 2003 for the purpose of extending any provision that applies in relation to a tobacco product to—
 - (a) a device of a specified description which enables a tobacco product to be consumed (for example, a heated tobacco device or pipe);
 - (b) an item which is intended to form part of such a device.
- (2) Before making regulations under this section the Secretary of State must consult any persons the Secretary of State considers it appropriate to consult.
- (3) Before making regulations under this section the Secretary of State must obtain the consent of—
 - (a) the Welsh Ministers, if the regulations contain provision which would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd;
 - (b) the Scottish Ministers, if the regulations contain provision which would be within the legislative competence of the Scottish Parliament if contained in an Act of the Scottish Parliament;
 - (c) the Department of Health in Northern Ireland, if the regulations contain provision which—

- (i) would be within the legislative competence of the Northern Ireland Assembly if contained in an Act of the Assembly, and
 - (ii) would not, if it were contained in a Bill for an Act of the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.
- (4) Regulations under this section are subject to the affirmative resolution procedure.

Crown application

134 Crown application

- (1) This Part and regulations made under it bind the Crown.
- (2) Nothing in this Part or regulations made under it makes the Crown criminally liable.
- (3) The High Court in England and Wales or Northern Ireland, or the Court of Session in Scotland, may declare unlawful any act or omission for which the Crown would be criminally liable if it were not for subsection (2).
- (4) The power of the Court of Session to make a declaration under subsection (3) may only be made on an application by –
 - (a) the Scottish Ministers, or
 - (b) a local weights and measures authority in Scotland.
- (5) Subsection (2) does not affect the criminal liability of persons in the service of the Crown.

Interpretation

135 Interpretation of Part 6

In this Part –

- “cigarette papers” has the meaning given by section 112;
- “distributes” includes making available;
- “enforcement authority” has the meaning given by section 129(2);
- “herbal smoking product” has the meaning given by section 112;
- “nicotine product” has the meaning given by section 113;
- “tobacco product” has the meaning given by section 112;
- “vaping product” has the meaning given by section 112.

PART 7

SMOKE-FREE PLACES, VAPE-FREE PLACES AND OTHER FREE-FROM PLACES

England

136 Addition of smoke-free places in England

- (1) The Health Act 2006 is amended as follows.
- (2) For section 4 substitute –

“4 Additional smoke-free places

- (1) *The Secretary of State may make regulations designating as smoke-free any place in England that –*
 - (a) *is a workplace, or*
 - (b) *is open to the public,**and is not smoke-free under section 2.*
 - (2) If the place is used as a place of work or open to the public only some of the time the regulations must provide for it to be smoke-free only when so used.
 - (3) The regulations may, in particular –
 - (a) provide for places or vehicles to be smoke-free, in specified circumstances, at specified times or if specified conditions are satisfied (or any combination of those);
 - (b) provide for exceptions, which may be framed by reference to the designation by a person of areas which are not smoke-free.
 - (4) Before making regulations under this section the Secretary of State must consult any persons the Secretary of State considers it appropriate to consult.”
- (3) In section 5 (vehicles) –
 - (a) in subsection (2), for paragraph (d) substitute –

“(d) for exceptions, which may be framed by reference to the designation by a person of areas which are not smoke-free.”;
 - (b) after subsection (3) insert –

“(3A) Before making regulations under this section the Secretary of State must consult any persons the Secretary of State considers it appropriate to consult.”

137 Smoke-free premises: recasting of power to exempt performers

- (1) In the Health Act 2006 –
 - (a) in section 3, omit subsections (5) and (8) (power to exempt premises by references to performers);

- (b) in section 6, in subsection (9) omit from “(and references” to the end;
 - (c) in section 7 –
 - (i) in subsection (1), in paragraph (a) omit “(including premises which” to the end;
 - (ii) for subsection (3) substitute –
 - “(3) The Secretary of State may by regulations create defences to the offence under subsection (2) for the purpose of allowing a performer to smoke during a performance where that is justified in order to preserve the artistic integrity of the performance.”
 - (iii) in subsection (5), for “in subsection” substitute “under or by virtue of subsection (3) or”;
 - (d) in section 8 –
 - (i) omit subsection (2);
 - (ii) after subsection (5) insert –
 - “(5A) The Secretary of State may by regulations create defences to the offence under subsection (4) for the purpose of allowing a performer to smoke during a performance where that is justified in order to preserve the artistic integrity of the performance.”;
 - (iii) in subsection (6), after “subsection (5)” insert “or (5A)”;
 - (iv) in subsection (8) omit from “(and references” to the end;
 - (e) in section 79, for “ 7(6), 8(7)” substitute “7(3) or (6), 8(5A) or (7)”.
- (2) Regulation 6 of the Smoke-free (Exemptions and Vehicles) Regulations (S.I. 2007/765) is revoked.

138 No-smoking signs in England

- (1) Section 6 of the Health Act 2006 (no-smoking signs) is amended as follows.
- (2) For subsection (1) substitute –
 - “(1) A person who occupies or is concerned in the management of smoke-free premises must make sure that no-smoking signs are displayed in or near those premises in accordance with any requirements imposed by regulations made by the Secretary of State for the purposes of this subsection.
- (1A) The regulations may, in particular, impose requirements about –
 - (a) the content or appearance of a sign (for example, requirements as to its size, design, colour, or wording);
 - (b) how and where signs are to be displayed.”
- (3) After subsection (2) insert –
 - “(2A) Regulations under subsection (2) may, in particular, include any provision that may be made by regulations under subsection (1).”

- (4) Omit subsections (3) and (4).

139 Vape-free places in England

- (1) The Health Act 2006 is amended as follows.
(2) After section 8 insert –

“CHAPTER 1A

VAPE-FREE PLACES IN ENGLAND

8A Introduction

This Chapter makes provision for the prohibition of the use of certain vapes in places and vehicles in England that are designated vape-free under section 8B.

8B Vape-free places and vehicles

- (1) *The Secretary of State may make regulations designating places or vehicles in England as vape-free.*
- (2) Only smoke-free places may be designated as vape-free.
- (3) The regulations may, in particular –
- (a) provide for places or vehicles to be vape-free, in specified circumstances, at specified times or if specified conditions are satisfied (or any combination of those);
 - (b) provide for exceptions, which may be framed by reference to the designation by a person of areas which are not vape-free.
- (4) The regulations may, in particular, frame the circumstances in which a vehicle is vape-free by reference to –
- (a) whether a person under the age of 18 is present;
 - (b) its location.
- (5) The power to make regulations under this section is not exercisable in relation to –
- (a) any ship or hovercraft in relation to which regulations could be made under section 85 of the Merchant Shipping Act 1995 (safety and health on ships), including that section as applied by any Order in Council under section 1(1)(h) of the Hovercraft Act 1968, or
 - (b) persons on any such ship or hovercraft.
- (6) Before making regulations under this section the Secretary of State must consult any persons the Secretary of State considers it appropriate to consult.

- (7) References in this Part, however expressed, to places or vehicles that are vape-free, are to places or vehicles so far as they are vape-free by virtue of regulations under this section.
- (8) In this section “smoke-free place” has the meaning given by section 7(1).

8C Offence of vaping in vape-free places or vehicles

- (1) A person who uses a relevant vape in a vape-free place or vehicle commits an offence.
- (2) It is a defence for a person charged with an offence under this section to show that they did not know, and could not reasonably have been expected to know, that it was a vape-free place or vehicle.
- (3) The Secretary of State may by regulations create defences to the offence under this section for the purpose of allowing a performer to use a vape during a performance where that is justified in order to preserve the artistic integrity of the performance.
- (4) If a person charged with an offence under this section relies on a defence under or by virtue of subsection (2) or (3), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (5) A person guilty of an offence under this section is liable on summary conviction to fine not exceeding level 1 on the standard scale.
- (6) In this Part “relevant vape” means a vape that is not a heated tobacco device.

8D Offence of failing to prevent vaping

- (1) A person who controls or is concerned in the management of a vape-free place must cause a person using a relevant vape there to stop using the vape.
- (2) The driver of a vape-free vehicle, and any other person specified in regulations made by the Secretary of State, must cause a person using a relevant vape in the vehicle to stop using the vape.
- (3) A person who fails to comply with the duty in subsection (1) or (2) commits an offence.
- (4) It is a defence for a person charged with an offence under subsection (3) to show –
 - (a) that they took reasonable steps to cause the person in question to stop using the vape,
 - (b) that they did not know, and could not reasonably have been expected to know, that the person in question was using a vape, or

- (c) that on other grounds it was reasonable for them not to comply with the duty.
- (5) The Secretary of State may by regulations create defences to the offence under subsection (3) for the purpose of allowing a performer to use a vape during a performance where that is justified in order to preserve the artistic integrity of the performance.
- (6) If a person charged with an offence under this section relies on a defence under or by virtue of subsection (4) or (5), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

8E No-vaping signs

- (1) A person who occupies or is concerned in the management of a vape-free place must make sure that no-vaping signs are displayed in or near that place in accordance with any requirements imposed by regulations made by the Secretary of State for the purposes of this subsection.
- (2) A person who has management responsibilities for a vape-free vehicle must make sure that no-vaping signs are displayed in that vehicle in accordance with any requirements imposed by regulations made by the Secretary of State for the purposes of this subsection.
- (3) Regulations under subsection (1) or (2) may, in particular, impose requirements about—
 - (a) the content or appearance of a sign (for example, requirements as to its size, design, colour, or wording);
 - (b) how and where signs are to be displayed.
- (4) The Secretary of State may by regulations create exceptions to the duty in subsection (2).
- (5) A person who fails to comply with the duty in subsection (1) or (2) commits an offence.
- (6) It is a defence for a person charged with an offence under subsection (5) to show—
 - (a) that they did not know, and could not reasonably have been expected to know, that the place or vehicle was vape-free,
 - (b) that they did not know, and could not reasonably have been expected to know, that no-vaping signs complying with the requirements of this section were not being displayed in accordance with the requirements of this section, or
 - (c) that on other grounds it was reasonable for them not to comply with the duty.

- (7) If a person charged with an offence under subsection (5) relies on a defence in subsection (6), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (8) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”
- (3) Sections 9 to 11 (and the italic heading before section 9) become a new Chapter 1C of Part 1, with the heading “Enforcement”.
- (4) Section 12 becomes a new Chapter 1D of Part 1, with the heading “General”.
- (5) In section 79 (orders and regulations), in subsection (4)(a), after “8(5A) or (7)” (inserted by section 137) insert “, 8B, 8C(3), 8D(5)”.

140 Heated tobacco-free places in England

- (1) The Health Act 2006 is amended as follows.
- (2) After section 8E (inserted by section 139 of this Act) insert—

“CHAPTER 1B

HEATED TOBACCO-FREE PLACES IN ENGLAND

8F Introduction

This Chapter makes provision for the prohibition of the use of heated tobacco devices in places and vehicles in England that are designated heated tobacco-free under section 8G.

8G Heated tobacco-free places and vehicles

- (1) *The Secretary of State may make regulations designating places or vehicles in England as heated tobacco-free.*
- (2) Only smoke-free places may be designated as heated tobacco-free.
- (3) The regulations may, in particular—
 - (a) provide for places or vehicles to be heated tobacco-free, in specified circumstances, at specified times or if specified conditions are satisfied (or any combination of those);
 - (b) provide for exceptions, which may be framed by reference to the designation by a person of areas which are not heated tobacco-free.
- (4) The regulations may, in particular, frame the circumstances in which a vehicle is heated tobacco-free by reference to—
 - (a) whether a person under the age of 18 is present;
 - (b) its location.

- (5) The power to make regulations under this section is not exercisable in relation to—
 - (a) any ship or hovercraft in relation to which regulations could be made under section 85 of the Merchant Shipping Act 1995 (safety and health on ships), including that section as applied by any Order in Council under section 1(1)(h) of the Hovercraft Act 1968, or
 - (b) persons on any such ship or hovercraft.
- (6) Before making regulations under this section the Secretary of State must consult any persons the Secretary of State considers it appropriate to consult.
- (7) References in this Part, however expressed, to places or vehicles that are heated tobacco-free, are to places or vehicles so far as they are heated tobacco-free by virtue of regulations under this section.
- (8) In this section “smoke-free place” has the meaning given by section 7(1).

8H Offence of using a heated tobacco device

- (1) A person who uses a heated tobacco device in a heated tobacco-free place or vehicle commits an offence.
- (2) It is a defence for a person charged with an offence under this section to show that they did not know, and could not reasonably have been expected to know, that it was a heated tobacco-free place or vehicle.
- (3) The Secretary of State may by regulations create defences to the offence under this section for the purpose of allowing a performer to use a heated tobacco device during a performance where that is justified in order to preserve the artistic integrity of the performance.
- (4) If a person charged with an offence under this section relies on the defence under or by virtue of subsection (2) or (3), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (5) A person guilty of an offence under this section is liable on summary conviction to fine not exceeding level 1 on the standard scale.

8I Offence of failing to prevent use of heated tobacco device

- (1) A person who controls or is concerned in the management of a heated tobacco-free place must cause a person using a heated tobacco device there to stop using the device.
- (2) The driver of a heated tobacco-free vehicle, and any other person specified in regulations made by the Secretary of State, must cause a

person using a heated tobacco device in the vehicle to stop using the device.

- (3) A person who fails to comply with the duty in subsection (1) or (2) commits an offence.
- (4) It is a defence for a person charged with an offence under subsection (3) to show –
 - (a) that they took reasonable steps to cause the person in question to stop using the heated tobacco device,
 - (b) that they did not know, and could not reasonably have been expected to know, that the person in question was using a heated tobacco device, or
 - (c) that on other grounds it was reasonable for them not to comply with the duty.
- (5) The Secretary of State may by regulations create defences to the offence under subsection (3) for the purpose of allowing a performer to use a heated tobacco device during a performance where that is justified in order to preserve the artistic integrity of the performance.
- (6) If a person charged with an offence under this section relies on a defence under or by virtue of subsection (4) or (5), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

8J Heated tobacco-free places and vehicles: signs

- (1) A person who occupies or is concerned in the management of a heated tobacco-free place must make sure that signs are displayed in or near that place in accordance with any requirements imposed by regulations made by the Secretary of State for the purposes of this subsection.
- (2) A person who has management responsibilities for a heated tobacco-free vehicle must make sure that signs are displayed in that vehicle in accordance with any requirements imposed by regulations made by the Secretary of State for the purposes of this subsection.
- (3) The signs must indicate that the use of heated tobacco devices is prohibited in the place or vehicle.
- (4) Regulations under subsection (1) or (2) may, in particular, impose requirements about –
 - (a) the content or appearance of a sign (for example, requirements as to its size, design, colour, or wording);
 - (b) how and where signs are to be displayed.

- (5) The Secretary of State may by regulations create exceptions to the duty in subsection (2).
- (6) A person who fails to comply with the duty in subsection (1) or (2) commits an offence.
- (7) It is a defence for a person charged with an offence under subsection (6) to show –
 - (a) that they did not know, and could not reasonably have been expected to know, that the place or vehicle was heated tobacco-free, or
 - (b) that they did not know, and could not reasonably have been expected to know, that signs complying with the requirements of this section were not being displayed in accordance with the requirements of this section, or
 - (c) that on other grounds it was reasonable for them not to comply with the duty.
- (8) If a person charged with an offence under subsection (6) relies on a defence in subsection (7), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (9) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”
- (3) In section 79 (orders and regulations), in subsection (4)(a), after “, 8D(5),” (inserted by section 139 of this Act) insert “, 8G, 8H(3), 8I(5)”.

141 Amendments consequential on sections 136 to 140

Schedule 17 contains amendments consequential on sections 136 to 140.

Scotland

142 No-smoking premises in Scotland

- (1) In the Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) –
 - (a) in section 4 (meaning of “no-smoking premises” etc), for subsections (2) to (9) substitute –
 - “(2) In this Part, “no-smoking premises” means such premises as are prescribed by regulations made by the Scottish Ministers.
 - (3) Premises other than vehicles may be prescribed as no-smoking premises only if they are –
 - (a) wholly or substantially enclosed,
 - (b) workplaces, or
 - (c) open to the public.

-
- (4) If premises that are not wholly or substantially enclosed are used as a place of work, or open to the public, only some of the time, regulations prescribing them as no-smoking premises must provide for them to be no-smoking premises only when so used.
- (5) The power to prescribe no-smoking premises may not be used to prescribe a ship or hovercraft in relation to which regulations could be made under section 85 of the Merchant Shipping Act 1995 (safety and health on ships), including that section as applied by any Order in Council under section 1(1)(h) of the Hovercraft Act 1968.
- (6) Regulations prescribing premises as no smoking-premises may, in particular –
- (a) provide for them to be no-smoking premises, in specified circumstances, at specified times or if specified conditions are satisfied (or any combination of those);
 - (b) provide for exceptions, which may be framed by reference to the designation by a person of areas in which smoking is permitted.
- (7) The Scottish Ministers must consult such persons as they consider appropriate before making any regulations under this section.
- (8) The Scottish Ministers may by regulations define or elaborate the meaning of “wholly or substantially enclosed” in subsection (3)(a).
- (9) In this section –
- “open to the public”: premises are open to the public if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not;
 - “premises” includes any place, including a moveable structure or vehicle, other than an aircraft;
 - “vehicle” means every type of vehicle, including a vessel;
 - “work” includes voluntary work;
 - “workplace” means –
 - (a) a place of work used by more than one person (even if the persons who work there do so at different times, or only intermittently), or
 - (b) a place of work where members of the public might attend for the purpose of seeking or receiving goods or services from the person or persons working there (even if members of the public are not always present).”;
- (b) omit sections 4A to 4D (provision about smoking outside hospitals).

- (2) In regulation 3 of the Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 (S.S.I. 2006/90) (“no-smoking premises”) –
 - (a) in paragraph (1), for the words from “the premises or classes of premises specified” to the end substitute “premises or classes of premises that are –
 - (a) specified in Schedule 1 to these Regulations, and
 - (b) wholly or substantially enclosed,subject to paragraph (2).”;
 - (b) for paragraph (2) substitute –

“(2) But “no smoking-premises” does not include anything specified in Schedule 2 to these Regulations.”;
 - (c) in paragraph (3) –
 - (i) for the words before paragraph (a) substitute “In this regulation”;
 - (ii) omit paragraph (a);
 - (iii) omit paragraph (f).

143 No-smoking signs in Scotland

- (1) The Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) is amended as follows.
- (2) For section 3 substitute –

“3 No-smoking signs

 - (1) A person who has management or control of no-smoking premises must make sure that no-smoking signs are displayed in or near those premises in accordance with any requirements imposed by regulations made by the Scottish Ministers for the purposes of this subsection.
 - (2) The regulations may, in particular, impose requirements about –
 - (a) the content or appearance of a sign (for example, requirements as to its size, design, colour, or wording);
 - (b) how and where signs are to be displayed.
 - (3) The Scottish Ministers may by regulations create exceptions to subsection (1).
 - (4) A person who fails to comply with the duty in subsection (1) commits an offence.
 - (5) It is a defence for an accused charged with an offence under this section to prove that the accused (or any employee or agent of the accused) took all reasonable precautions and exercised all due diligence not to commit the offence.
 - (6) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”

- (3) In section 40 (regulations or orders), in subsection (3), for “ 3(3)” substitute “3”.

144 Vape-free premises in Scotland

- (1) The Smoking, Health and Social Care (Scotland) Act 2005 (asp 3) is amended as follows.
- (2) For the heading of Part 1 substitute “Smoking, vaping and similar activities”.
- (3) Sections 1 to 4 become a new Chapter 1 of Part 1, with the heading “Smoking: prohibition and control”.
- (4) Before section 5 insert –

“CHAPTER 2

VAPING: PROHIBITION AND CONTROL

4E Offence of permitting others to vape in vape-free premises

- (1) A person who, having the management or control of vape-free premises, knowingly permits another to use a relevant vape there commits an offence.
- (2) A person accused of an offence under this section is to be regarded as having knowingly permitted another to use a relevant vape in vape-free premises if that person ought to have known that the other person was using a vape there.
- (3) It is a defence for an accused charged with an offence under this section to prove –
 - (a) that the accused (or any employee or agent of the accused) took all reasonable precautions and exercised all due diligence not to commit the offence; or
 - (b) that there were no lawful and reasonably practicable means by which the accused could prevent the other person from using a relevant vape in the vape-free premises.
- (4) It is a defence for a person charged with an offence under this section to show –
 - (a) that the person permitted to use the vape was using it when performing in a performance,
 - (b) that the use of the vape was justified to preserve the artistic integrity of the performance, and
 - (c) that the vape was not being used to vaporise a substance containing nicotine.
- (5) A person guilty of an offence under this section is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

- (6) In this Part “relevant vape” means a vape that is not a heated tobacco device.

4F Offence of vaping in vape-free premises

- (1) A person who uses a relevant vape in vape-free premises commits an offence.
- (2) It is a defence for an accused charged with an offence under this section to prove—
- (a) that the accused did not know, and could not reasonably be expected to have known, that the place in which it is alleged that the accused was using a relevant vape was vape-free premises, or
 - (b) that—
 - (i) the person was using the vape when performing in a performance,
 - (ii) that the use of the vape was justified to preserve the artistic integrity of the performance, and
 - (iii) that the vape was not being used to vaporise a substance containing nicotine.
- (3) A person guilty of an offence under this section is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

4G No-vaping signs

- (1) A person who has management or control of vape-free premises must make sure that no-vaping signs are displayed in or near those premises in accordance with any requirements imposed by regulations made by the Scottish Ministers for the purposes of this subsection.
- (2) The regulations may, in particular, impose requirements about—
- (a) the content or appearance of a sign (for example, requirements as to its size, design, colour, or wording);
 - (b) how and where signs are to be displayed.
- (3) The Scottish Ministers may by regulations create exceptions to the duty in subsection (1).
- (4) A person who fails to comply with the duty in subsection (1) commits an offence.
- (5) It is a defence for an accused charged with an offence under this section to prove that the accused (or any employee or agent of the accused) took all reasonable precautions and exercised all due diligence not to commit the offence.
- (6) A person guilty of an offence under subsection (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

4H Vape-free premises

- (1) In this Part “vape-free premises” means such premises as are prescribed by regulations made by the Scottish Ministers as vape-free.
- (2) Only no-smoking places may be prescribed as vape-free.
- (3) The power to prescribe premises as vape-free may not be used to prescribe a ship or hovercraft in relation to which regulations could be made under section 85 of the Merchant Shipping Act 1995 (safety and health on ships), including that section as applied by any Order in Council under section 1(1)(h) of the Hovercraft Act 1968.
- (4) Regulations prescribing premises as vape-free may, in particular—
 - (a) provide for them to be vape-free, in specified circumstances, at specified times or if specified conditions are satisfied (or any combination of those);
 - (b) provide for exceptions, which may be framed by reference to the designation by a person of areas which are not vape-free.
- (5) The Scottish Ministers must consult such persons as they consider appropriate before making any regulations under this section.
- (6) In this section—

“no-smoking place” means—

 - (a) no smoking premises (within the meaning of section 4(2)), and
 - (b) a vehicle smoking in which is an offence under the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016;

“premises” has the meaning given by section 4(9).”
- (5) Sections 5 to 10 become a new Chapter 4 of Part 1, with the heading “Enforcement and general”.
- (6) In section 40 (regulations or orders), in subsection (3)(a), before “or paragraph 2” insert “, 4G, 4H(1)”.

145 Heated tobacco-free premises in Scotland

- (1) The Smoking, Health and Social Care (Scotland) Act 2005 (asp 3) is amended as follows.

- (2) After section 4H (inserted by section 144 of this Act) insert –

“CHAPTER 3

USE OF HEATED TOBACCO DEVICES: PROHIBITION AND CONTROL

4I Offence of permitting breaches in heated tobacco-free premises

- (1) A person who, having the management or control of heated tobacco-free premises, knowingly permits another to use a heated tobacco device there commits an offence.
- (2) A person accused of an offence under this section is to be regarded as having knowingly permitted another to use a heated tobacco device in heated tobacco-free premises if that person ought to have known that the other person was using a heated tobacco device there.
- (3) It is a defence for an accused charged with an offence under this section to prove –
 - (a) that the accused (or any employee or agent of the accused) took all reasonable precautions and exercised all due diligence not to commit the offence; or
 - (b) that there were no lawful and reasonably practicable means by which the accused could prevent the other person from using a heated tobacco device in the heated tobacco-free premises.
- (4) A person guilty of an offence under this section is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

4J Offence of using heated tobacco device

- (1) A person who uses a heated tobacco device in heated tobacco-free premises commits an offence.
- (2) It is a defence for an accused charged with an offence under this section to prove that the accused did not know, and could not reasonably be expected to have known, that the place in which it is alleged that the accused was using a heated tobacco device was heated tobacco-free premises.
- (3) A person guilty of an offence under this section is liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

4K Heated tobacco-free premises: signs

- (1) A person who occupies or is concerned in the management of heated tobacco-free premises must make sure that signs are displayed in or near those premises in accordance with any requirements imposed by regulations made by the Scottish Ministers for the purposes of this subsection.

- (2) The signs must indicate that the use of heated tobacco devices is prohibited in the premises.
- (3) Regulations under subsection (1) may, in particular, impose requirements about—
 - (a) the content or appearance of a sign (for example, requirements as to its size, design, colour, or wording);
 - (b) how and where signs are to be displayed.
- (4) The Scottish Ministers may by regulations create exceptions to the duty in subsection (1).
- (5) A person who fails to comply with the duty in subsection (1) commits an offence.
- (6) It is a defence for an accused charged with an offence under this section to prove that the accused (or any employee or agent of the accused) took all reasonable precautions and exercised all due diligence not to commit the offence.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

4L Heated tobacco-free premises

- (1) In this Part “heated tobacco-free premises” means such premises as are prescribed by regulations made by the Scottish Ministers as heated tobacco-free.
- (2) Only no-smoking places may be prescribed as heated tobacco-free.
- (3) The power to prescribe premises as heated tobacco-free premises may not be used to prescribe a ship or hovercraft in relation to which regulations could be made under section 85 of the Merchant Shipping Act 1995 (safety and health on ships), including that section as applied by any Order in Council under section 1(1)(h) of the Hovercraft Act 1968.
- (4) Regulations prescribing premises as heated tobacco-free may, in particular—
 - (a) provide for them to be heated tobacco-free, in specified circumstances, at specified times or if specified conditions are satisfied (or any combination of those);
 - (b) provide for exceptions, which may be framed by reference to the designation by a person of areas which are not heated tobacco-free.
- (5) The Scottish Ministers must consult such persons as they consider appropriate before making any regulations under this section.
- (6) In this section—

“no-smoking place” means—

- (a) no smoking premises (within the meaning of section 4(2)), and
 - (b) a vehicle smoking in which is an offence under the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016;
- “premises” has the meaning given by section 4(9).”
- (3) In section 40 (regulations or orders), in subsection (3)(a), after “4H(1)” (inserted by section 144 of this Act) insert “, 4K or 4L(1)”.

146 Amendments consequential on sections 142 to 145

Schedule 18 contains amendments consequential on sections 142 to 145.

Wales

147 Smoke-free places and vehicles in Wales: duty to consult

- (1) The Public Health (Wales) Act 2017 (anaw 2) is amended as follows.
- (2) In the Welsh language text of section 13 (additional smoke-free places), after subsection (7) insert –
 - “(8) Cyn gwneud rheoliadau o dan yr adran hon, rhaid i Weinidogion Cymru ymgynghori ag unrhyw bersonau y mae Gweinidogion Cymru yn ystyried ei bod yn briodol ymgynghori â hwy.”
- (3) In the English language text of section 13 (additional smoke-free places), after subsection (7) insert –
 - “(8) Before making regulations under this section, the Welsh Ministers must consult any persons the Welsh Ministers consider it appropriate to consult.”
- (4) In the Welsh language text of section 15 (smoke-free vehicles), after subsection (5) insert –
 - “(6) Cyn gwneud rheoliadau o dan yr adran hon, rhaid i Weinidogion Cymru ymgynghori ag unrhyw bersonau y mae Gweinidogion Cymru yn ystyried ei bod yn briodol ymgynghori â hwy.”
- (5) In the English language text of section 15 (smoke-free vehicles), after subsection (5) insert –
 - “(6) Before making regulations under this section, the Welsh Ministers must consult any persons the Welsh Ministers consider it appropriate to consult.”

148 Smoke-free vehicles in Wales

- (1) The Public Health (Wales) Act 2017 (anaw 2) is amended as follows.

- (2) In the Welsh language text of section 15 (smoke-free vehicles), in subsection (3), for paragraph (d) substitute –

“(d) ar gyfer eithriadau, y gellir eu llunio drwy gyfeirio at y dynodiad gan berson o ardaloedd nad ydynt yn ddi-fwg.”

- (3) In the English language text of section 15 (smoke-free vehicles), in subsection (3), for paragraph (d) substitute –

“(d) for exceptions, which may be framed by reference to the designation by a person of areas which are not smoke-free.”

149 No-smoking signs in Wales

- (1) Section 17 of the Public Health (Wales) Act 2017 (anaw 2) (no-smoking signs) is amended as follows.

- (2) In the Welsh language text –

- (a) for subsections (1) and (2) substitute –

“(1) Rhaid i berson sy’n meddiannu mangre ddi-fwg neu sy’n ymwneud â rheoli mangre ddi-fwg sicrhau bod arwyddion dim ysmygu yn cael eu harddangos yn y fangre honno neu’n agos ati yn unol ag unrhyw ofynion a osodir gan reoliadau.

- (2) Caiff y rheoliadau, ymhlith pethau eraill, osod gofynion ynghylch –

(a) cynnwys neu ymddangosiad arwydd (er enghraifft, gofynion o ran ei faint, ei ddyluniad, ei liw neu ei eiriad);

(b) sut a ble y mae arwyddion i gael eu harddangos.”

- (b) after subsection (3) insert –

“(3A) Caiff rheoliadau o dan is-adran (3), ymhlith pethau eraill, gynnwys unrhyw ddarpariaeth y caniateir ei gwneud gan reoliadau o dan is-adran (1).”

- (3) In the English language text –

- (a) for subsections (1) and (2) substitute –

“(1) A person who occupies or is concerned in the management of smoke-free premises must make sure that no-smoking signs are displayed in or near those premises in accordance with any requirements imposed by regulations.

- (2) The regulations may, among other things, impose requirements about –

(a) the content or appearance of a sign (for example, requirements as to its size, design, colour, or wording);

(b) how and where signs are to be displayed.”

(b) after subsection (3) insert –

“(3A) Regulations under subsection (3) may, among other things, include any provision that may be made by regulations under subsection (1).”

150 Vape-free places in Wales

- (1) The Public Health (Wales) Act 2017 (anaw 2) is amended as follows.
- (2) In the Welsh language text, before section 18 (enforcement authorities) insert –

“PENNOD 1A

FEPIO

17B Mannau a cherbydau di-fêp

- (1) Caiff rheoliadau ddynodi manau neu gerbydau yng Nghymru yn ddi-fêp.
- (2) Dim ond mangreoedd di-fwg neu cherbydau di-fwg y caniateir eu dynodi’n ddi-fêp.
- (3) Caiff y rheoliadau, ymhlith pethau eraill –
 - (a) darparu i fannau neu gerbydau fod yn ddi-fêp, o dan amgylchiadau penodedig, ar adegau penodedig neu os yw amodau penodedig wedi eu bodloni (neu unrhyw gyfuniad o’r rhain);
 - (b) darparu ar gyfer eithriadau, y gellir eu llunio drwy gyfeirio at y dynodiad gan berson o ardaloedd nad ydynt yn ddi-fêp.
- (4) Caiff y rheoliadau, yn benodol, lunio’r amgylchiadau lle mae cerbyd yn ddi-fêp drwy gyfeirio at –
 - (a) a oes person o dan 18 oed yn bresennol;
 - (b) ei leoliad.
- (5) Nid yw’r pŵer i wneud rheoliadau o dan yr adran hon yn arferadwy mewn perthynas ag –
 - (a) awyren,
 - (b) hofrenfad, nac
 - (c) llong y gellid gwneud rheoliadau mewn perthynas â hi o dan adran 85 o Ddeddf Llongau Masnach 1995 (diogelwch ac iechyd ar longau).
- (6) Cyn gwneud rheoliadau o dan yr adran hon, rhaid i Weinidogion Cymru ymgynghori ag unrhyw bersonau y mae Gweinidogion Cymru yn ystyried ei bod yn briodol ymgynghori â hwy.
- (7) Yn yr adran hon –

mae i “cerbyd di-fwg” (“*smoke-free vehicle*”) yr un ystyr ag ym Mhennod 1 (gweler adran 15);

mae i “mangre di-fwg” (“*smoke-free premises*”) yr un ystyr ag ym Mhennod 1 (gweler adrannau 7 i 14).

17C Y drosedd o fepio mewn mannau neu gerbydau di-fêp

- (1) Mae person yn cyflawni trosedd os yw'r person yn defnyddio fêp perthnasol –
 - (a) mewn man di-fêp;
 - (b) mewn cerbyd di-fêp.
- (2) Mae'n amddiffyniad i berson sydd wedi ei gyhuddo o drosedd o dan yr adran hon –
 - (a) dangos nad oedd y person yn gwybod, ac na ellid bod wedi disgwyl yn rhesymol iddo wybod, fod y man neu'r cerbyd o dan sylw yn fan di-fêp neu'n gerbyd di-fêp, neu
 - (b) dangos –
 - (i) bod y person a oedd yn defnyddio'r fêp yn ei ddefnyddio wrth berfformio mewn perfformiad,
 - (ii) bod cyfiawnhad i'r defnydd o'r fêp i gynnal uniondeb artistig y perfformiad, a
 - (iii) nad oedd y fêp yn cael ei ddefnyddio i anweddu sylwedd yn cynnwys nicotin.
- (3) Os yw person sydd wedi ei gyhuddo o drosedd o dan yr adran hon yn dibynnu ar amddiffyniad yn is-adran (2), ac y dygir tystiolaeth sy'n ddigonol i godi mater mewn cysylltiad â'r amddiffyniad hwnnw, rhaid i'r llys gymryd bod yr amddiffyniad wedi ei fodloni oni bai bod yr erlyniad yn profi y tu hwnt i amheuaeth resymol nad yw wedi ei fodloni.
- (4) Mae person sy'n euog o drosedd o dan yr adran hon yn agored ar euogfarn ddiannod i ddirwy nad yw'n uwch na lefel 1 ar y raddfa safonol.
- (5) Yn y Bennod hon, ystyr “fêp perthnasol” yw fêp nad yw'n ddyfais cynhesu tybaco.

17D Y drosedd o fethu ag atal fepio

- (1) Rhaid i berson a chanddo reolaeth dros fan sy'n ddi-fêp neu sy'n ymwneud â rheoli man sy'n ddi-fêp gymryd camau rhesymol i beri i berson sy'n defnyddio fêp perthnasol yno beidio â defnyddio'r fêp.
- (2) Rhaid i yrrwr cerbyd di-fêp, ac unrhyw berson arall a bennir mewn rheoliadau, gymryd camau rhesymol i beri i berson sy'n defnyddio fêp perthnasol yn y cerbyd beidio â defnyddio'r fêp.
- (3) Mae person sy'n methu â chydymffurfio â'r ddyletswydd yn is-adran (1) neu (2) yn cyflawni trosedd.

- (4) Mae'n amddiffyniad i berson sydd wedi ei gyhuddo o drosedd o dan yr adran hon ddangos nad oedd yn gwybod, ac na ellid bod wedi disgwyl yn rhesymol iddo wybod, fod y person o dan sylw yn defnyddio fêp.
- (5) Mae'n amddiffyniad i berson sydd wedi ei gyhuddo o drosedd o dan yr adran hon ddangos –
 - (a) bod y person a oedd yn defnyddio'r fêp yn ei ddefnyddio wrth berfformio mewn perfformiad,
 - (b) bod cyfiawnhad i'r defnydd o'r fêp i gynnal uniondeb artistig y perfformiad, ac
 - (c) nad oedd y fêp yn cael ei ddefnyddio i anweddu sylwedd yn cynnwys nicotin.
- (6) Os yw person sydd wedi ei gyhuddo o drosedd o dan yr adran hon yn dibynnu ar yr amddiffyniad yn is-adran (4) neu (5), ac y dygir tystiolaeth sy'n ddigonol i godi mater mewn cysylltiad â'r amddiffyniad hwnnw, rhaid i'r llys gymryd bod yr amddiffyniad wedi ei fodloni oni bai bod yr erlyniad yn profi y tu hwnt i amheuaeth resymol nad yw wedi ei fodloni.
- (7) Mae person sy'n euog o drosedd o dan yr adran hon yn agored ar euogfarn ddiannod i ddirwy nad yw'n uwch na lefel 4 ar y raddfa safonol.

17E Arwyddion: manau a cherbydau di-fêp

- (1) Rhaid i berson sy'n meddiannu man di-fêp neu sy'n ymwneud â rheoli man di-fêp sicrhau bod arwyddion dim fepio yn cael eu harddangos yn y man hwnnw neu'n agos ato yn unol ag unrhyw ofynion a osodir gan reoliadau.
- (2) Rhaid i berson sydd â chyfrifoldebau rheoli am gerbyd di-fêp sicrhau bod arwyddion dim fepio yn cael eu harddangos yn y cerbyd hwnnw yn unol ag unrhyw ofynion a osodir gan reoliadau.
- (3) Caiff rheoliadau o dan is-adran (1) neu (2), ymhlith pethau eraill, osod gofynion ynghylch –
 - (a) cynnwys neu ymddangosiad arwydd (er enghraifft, gofynion o ran ei faint, ei ddyluniad, ei liw neu ei eiriad);
 - (b) sut a ble y mae arwyddion i gael eu harddangos.
- (4) Caiff rheoliadau greu eithriadau i'r ddyletswydd yn is-adran (2).
- (5) Mae person sy'n methu â chydymffurfio â'r ddyletswydd yn is-adran (1) neu (2) yn cyflawni trosedd.
- (6) Mae'n amddiffyniad i berson sydd wedi ei gyhuddo o drosedd o dan yr adran hon ddangos –
 - (a) nad oedd y person yn gwybod, ac na ellid bod wedi disgwyl yn rhesymol iddo wybod, fod y man neu'r cerbyd yn ddi-fêp,

- (b) nad oedd y person yn gwybod, ac na ellid bod wedi disgwyl yn rhesymol iddo wybod, nad oedd arwyddion sy'n cydymffurfio â gofynion yr adran hon yn cael eu harddangos yn unol â gofynion yr adran hon, neu
 - (c) ei bod, ar seiliau eraill, yn rhesymol i'r person beidio â chydymffurfio â'r ddyletswydd.
- (7) Os yw person sydd wedi ei gyhuddo o drosedd o dan yr adran hon yn dibynnu ar amddiffyniad yn is-adran (6), ac y dygir tystiolaeth sy'n ddigonol i godi mater mewn cysylltiad â'r amddiffyniad hwnnw, rhaid i'r llys gymryd bod yr amddiffyniad wedi ei fodloni oni bai bod yr erlyniad yn profi y tu hwnt i amheuaeth resymol nad yw wedi ei fodloni.
- (8) Mae person sy'n euog o drosedd o dan yr adran hon yn agored ar euogfarn ddiannod i ddirwy nad yw'n uwch na lefel 3 ar y raddfa safonol.
- (9) Nid yw'r adran hon yn gymwys mewn cysylltiad ag unrhyw fangre a ddefnyddir i unrhyw raddau fel annedd.

17F Dehongli'r Bennod hon

Yn y Bennod hon—

mae i “anweddu” yr ystyr a roddir i “vaporises” gan adran 48 o Ddeddf Tybaco a Fêps 2024;

ystyr “dyfais cynhesu tybaco” (“*heated tobacco device*”) yw dyfais sy'n cynhesu tybaco i gynhyrchu anwedd neu erosol at ddiben mewnanadlu drwy ddarn a roddir yn y geg (pa un a yw hefyd yn gallu cynhesu sylwedd arall i gynhyrchu anwedd neu erosol ai peidio);

mae i “fêp” yr ystyr a roddir i “vape” gan adran 48 o Ddeddf Tybaco a Fêps 2024;

mae i “fêp perthnasol” (“*relevant vape*”) yr ystyr a roddir gan adran 17C(5);

mae “perfformiad” (“*performance*”) yn cynnwys—

- (a) perfformio drama neu berfformiad a roddir mewn cysylltiad â gwneud ffilm neu raglen deledu, a
- (b) ymarfer.”

- (3) In the English language text, before section 18 (enforcement authorities) insert—

“CHAPTER 1A

VAPING

17B Vape-free places and vehicles

- (1) Regulations may designate places or vehicles in Wales as vape-free.

- (2) Only smoke-free premises or smoke-free vehicles may be designated as vape-free.
- (3) The regulations may, among other things—
 - (a) provide for places or vehicles to be vape-free, in specified circumstances, at specified times or if specified conditions are satisfied (or any combination of those);
 - (b) provide for exceptions, which may be framed by reference to the designation by a person of areas which are not vape-free.
- (4) The regulations may, in particular, frame the circumstances in which a vehicle is vape-free by reference to—
 - (a) whether a person under the age of 18 is present;
 - (b) its location.
- (5) The power to make regulations under this section is not exercisable in relation to—
 - (a) an aircraft,
 - (b) a hovercraft, or
 - (c) a ship in relation to which regulations could be made under section 85 of the Merchant Shipping Act 1995 (safety and health on ships).
- (6) Before making regulations under this section the Welsh Ministers must consult any persons the Welsh Ministers consider it appropriate to consult.
- (7) In this section—
 - “smoke-free premises” (“*mangre di-fwg*”) has the same meaning as in Chapter 1 (see sections 7 to 14);
 - “smoke-free vehicle” (“*cerbyd di-fwg*”) has the same meaning as in Chapter 1 (see section 15).

17C Offence of vaping in vape-free places or vehicles

- (1) A person commits an offence if the person uses a relevant vape—
 - (a) in a vape-free place;
 - (b) in a vape-free vehicle.
- (2) It is a defence for a person charged with an offence under this section to show—
 - (a) that the person did not know, and could not reasonably have been expected to know, that the place or vehicle concerned was a vape-free place or a vape-free vehicle, or
 - (b) that—
 - (i) the person using the vape was using it when performing in a performance,
 - (ii) that the use of the vape was justified to preserve the artistic integrity of the performance, and

- (iii) that the vape was not being used to vaporise a substance containing nicotine.
- (3) If a person charged with an offence under this section relies on a defence in subsection (2), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 1 on the standard scale.
- (5) In this Chapter “relevant vape” means a vape that is not a heated tobacco device.

17D Offence of failing to prevent vaping

- (1) A person who controls or is concerned in the management of place that is vape-free must take reasonable steps to cause a person using a relevant vape there to stop using the vape.
- (2) The driver of a vape-free vehicle, and any other person specified in regulations, must take reasonable steps to cause a person using a relevant vape in the vehicle to stop using the vape.
- (3) A person who fails to comply with the duty in subsection (1) or (2) commits an offence.
- (4) It is a defence for a person charged with an offence under this section to show that they did not know, and could not reasonably have been expected to know, that the person in question was using a vape.
- (5) It is a defence for a person charged with an offence under this section to show –
 - (a) that the person using the vape was using it when performing in a performance,
 - (b) that the use of the vape was justified to preserve the artistic integrity of the performance, and
 - (c) that the vape was not being used to vaporise a substance containing nicotine.
- (6) If a person charged with an offence under this section relies on the defence in subsection (4) or (5), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (7) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

17E Signs: vape-free places and vehicles

- (1) A person who occupies or is concerned in the management of a vape-free place must make sure that no-vaping signs are displayed in or near that place in accordance with any requirements imposed by regulations.
- (2) A person who has management responsibilities for a vape-free vehicle must make sure that no-vaping signs are displayed in that vehicle in accordance with any requirements imposed by regulations.
- (3) Regulations under subsection (1) or (2) may, among other things, impose requirements about –
 - (a) the content or appearance of a sign (for example, requirements as to its size, design, colour, or wording);
 - (b) how and where signs are to be displayed.
- (4) Regulations may create exceptions to the duty in subsection (2).
- (5) A person who fails to comply with the duty in subsection (1) or (2) commits an offence.
- (6) It is a defence for a person charged with an offence under this section to show –
 - (a) that the person did not know, and could not reasonably have been expected to know, that the place or vehicle was vape-free,
 - (b) that the person did not know, and could not reasonably have been expected to know, that signs complying with the requirements of this section were not being displayed in accordance with the requirements of this section, or
 - (c) that on other grounds it was reasonable for the person not to comply with the duty.
- (7) If a person charged with an offence under this section relies on a defence in subsection (6), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (8) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) This section does not apply in respect of any premises used to any extent as a dwelling.

17F Interpretation of this Chapter

In this Chapter –

“heated tobacco device” (“*dyfais cynhesu tybaco*”) means a device that heats tobacco to generate a vapour or an aerosol for the purpose of inhalation through a mouthpiece (whether or not it can also heat other matter to produce a vapour or aerosol);

“performance” (“*perfformiad*”) includes –

- (a) the performance of a play or a performance given in connection with the making of a film or television programme, and
- (b) a rehearsal;

“relevant vape” (“*fêp perthnasol*”) has the meaning given by section 17C(5);

“vape” (“*fêp*”) has the meaning given by section 48 of the Tobacco and Vapes Act 2024;

“vaporises” (“*anweddu*”) has the meaning given by section 48 of the Tobacco and Vapes Act 2024.”

- (4) In the Welsh language text and the English language text of section 123, in subsection (2)(a), before “or 50(2)” insert “17B(1),”.

151 Heated tobacco-free places in Wales

- (1) The Public Health (Wales) Act 2017 (anaw 2) is amended as follows.
- (2) In the Welsh language text, after section 17F (inserted by section 150) insert –

“PENNOD 1B

DEFENYDDIO DYFEISIAU CYNHESU TYBACO

17G Mannau a cherbydau dim tybaco wedi ei gynhesu

- (1) Caiff rheoliadau ddynodi manau neu gerbydau yng Nghymru yn rhai dim tybaco wedi ei gynhesu.
- (2) Dim ond mangreoedd di-fwg neu cherbydau di-fwg y caniateir eu dynodi’n rhai dim tybaco wedi ei gynhesu.
- (3) Caiff y rheoliadau, ymhlith pethau eraill –
 - (a) darparu i fannau neu gerbydau fod yn rhai dim tybaco wedi ei gynhesu, o dan amgylchiadau penodedig, ar adegau penodedig neu os yw amodau penodedig wedi eu bodloni (neu unrhyw gyfuniad o’r rhain);
 - (b) darparu ar gyfer eithriadau, y gellir eu llunio drwy gyfeirio at y dynodiad gan berson o ardaloedd nad ydynt yn rhai dim tybaco wedi ei gynhesu.
- (4) Caiff y rheoliadau, yn benodol, lunio’r amgylchiadau lle mae cerbyd yn un dim tybaco wedi ei gynhesu drwy gyfeirio at –
 - (a) a oes person o dan 18 oed yn bresennol;
 - (b) ei leoliad.
- (5) Nid yw’r pŵer i wneud rheoliadau o dan yr adran hon yn arferadwy mewn perthynas ag –
 - (a) awyren,
 - (b) hofrenfad, nac

- (c) llong y gellid gwneud rheoliadau mewn perthynas â hi o dan adran 85 o Ddeddf Llongau Masnach 1995 (diogelwch ac iechyd ar longau).
- (6) Cyn gwneud rheoliadau o dan yr adran hon, rhaid i Weinidogion Cymru ymgynghori ag unrhyw bersonau y mae Gweinidogion Cymru yn ystyried ei bod yn briodol ymgynghori â hwy.
- (7) Yn yr adran hon –
 - mae i “cerbyd di-fwg” (“*smoke-free vehicle*”) yr un ystyr ag ym Mhennod 1 (gweler adran 15);
 - mae i “mangre di-fwg” (“*smoke-free premises*”) yr un ystyr ag ym Mhennod 1 (gweler adrannau 7 i 14).

17H Y drosedd o ddefnyddio dyfais cynhesu tybaco

- (1) Mae person yn cyflawni trosedd os yw'r person yn defnyddio dyfais cynhesu tybaco –
 - (a) mewn man dim tybaco wedi ei gynhesu;
 - (b) mewn cerbyd dim tybaco wedi ei gynhesu.
- (2) Mae'n amddiffyniad i berson sydd wedi ei gyhuddo o drosedd o dan yr adran hon ddangos nad oedd y person yn gwybod, ac na ellid bod wedi disgwyl yn rhesymol iddo wybod, fod y man neu'r cerbyd o dan sylw yn fan dim tybaco wedi ei gynhesu neu'n gerbyd dim tybaco wedi ei gynhesu.
- (3) Os yw person sydd wedi ei gyhuddo o drosedd o dan yr adran hon yn dibynnu ar yr amddiffyniad yn is-adran (2), ac y dygir tystiolaeth sy'n ddigonol i godi mater mewn cysylltiad â'r amddiffyniad hwnnw, rhaid i'r llys gymryd bod yr amddiffyniad wedi ei fodloni oni bai bod yr erlyniad yn profi y tu hwnt i amheuaeth resymol nad yw wedi ei fodloni.
- (4) Mae person sy'n euog o drosedd o dan yr adran hon yn agored ar euogfarn ddiannod i ddirwy nad yw'n uwch na lefel 1 ar y raddfa safonol.

17I Y drosedd o fethu ag atal defnydd o ddyfais cynhesu tybaco

- (1) Rhaid i berson a chanddo reolaeth dros fan dim tybaco wedi ei gynhesu neu sy'n ymwneud â rheoli man dim tybaco wedi ei gynhesu gymryd camau rhesymol i beri i berson sy'n defnyddio dyfais cynhesu tybaco yno beidio â defnyddio'r ddyfais.
- (2) Rhaid i yrrwr cerbyd dim tybaco wedi ei gynhesu, ac unrhyw berson arall a bennir mewn rheoliadau, gymryd camau rhesymol i beri i berson sy'n defnyddio dyfais cynhesu tybaco yn y cerbyd beidio â defnyddio'r ddyfais.
- (3) Mae person sy'n methu â chydymffurfio â'r ddyletswydd yn is-adran (1) neu (2) yn cyflawni trosedd.

- (4) Mae'n amddiffyniad i berson sydd wedi ei gyhuddo o drosedd o dan yr adran hon ddangos nad oedd yn gwybod, ac na ellid bod wedi disgwyl yn rhesymol iddo wybod, fod y person o dan sylw yn defnyddio dyfais cynhesu tybaco.
- (5) Os yw person sydd wedi ei gyhuddo o drosedd o dan yr adran hon yn dibynnu ar yr amddiffyniad yn is-adran (4), ac y dygir tystiolaeth sy'n ddigonol i godi mater mewn cysylltiad â'r amddiffyniad hwnnw, rhaid i'r llys gymryd bod yr amddiffyniad wedi ei fodloni oni bai bod yr erlyniad yn profi y tu hwnt i amheuaeth resymol nad yw wedi ei fodloni.
- (6) Mae person sy'n euog o drosedd o dan yr adran hon yn agored ar euogfarn ddiannod i ddirwy nad yw'n uwch na lefel 4 ar y raddfa safonol.

17J Mannau a cherbydau dim tybaco wedi ei gynhesu: arwyddion

- (1) Rhaid i berson sy'n meddiannu man dim tybaco wedi ei gynhesu neu sy'n ymwneud â rheoli man dim tybaco wedi ei gynhesu sicrhau bod arwyddion yn cael eu harddangos yn y man hwnnw neu'n agos ato yn unol ag unrhyw ofynion a osodir gan reoliadau.
- (2) Rhaid i berson sydd â chyfrifoldebau rheoli am gerbyd di-gynhesu tybaco sicrhau bod arwyddion yn cael eu harddangos yn y cerbyd hwnnw yn unol ag unrhyw ofynion a osodir gan reoliadau.
- (3) Rhaid i'r arwyddion ddynodi bod y defnydd o ddyfeisiau cynhesu tybaco wedi ei wahardd yn y man neu'r cerbyd.
- (4) Caiff rheoliadau o dan is-adran (1) neu (2), ymhlith pethau eraill, osod gofynion ynghylch—
 - (a) cynnwys neu ymddangosiad arwydd (er enghraifft, gofynion o ran ei faint, ei ddyluniad, ei liw neu ei eiriad);
 - (b) sut a ble y mae arwyddion i gael eu harddangos.
- (5) Caiff rheoliadau greu eithriadau i'r ddyletswydd yn is-adran (2).
- (6) Mae person sy'n methu â chydymffurfio â'r ddyletswydd yn is-adran (1) neu (2) yn cyflawni trosedd.
- (7) Mae'n amddiffyniad i berson sydd wedi ei gyhuddo o drosedd o dan yr adran hon ddangos—
 - (a) nad oedd y person yn gwybod, ac na ellid bod wedi disgwyl yn rhesymol iddo wybod, fod y man neu'r cerbyd yn un dim tybaco wedi ei gynhesu,
 - (b) nad oedd y person yn gwybod, ac na ellid bod wedi disgwyl yn rhesymol iddo wybod, nad oedd arwyddion sy'n cydymffurfio â gofynion yr adran hon yn cael eu harddangos yn unol â gofynion yr adran hon, neu
 - (c) ei bod, ar seiliau eraill, yn rhesymol i'r person beidio â chydymffurfio â'r ddyletswydd.

- (8) Os yw person sydd wedi ei gyhuddo o drosedd o dan yr adran hon yn dibynnu ar amddiffyniad yn is-adran (7), ac y dygir tystiolaeth sy'n ddigonol i godi mater mewn cysylltiad â'r amddiffyniad hwnnw, rhaid i'r llys gymryd bod yr amddiffyniad wedi ei fodloni oni bai bod yr erlyniad yn profi y tu hwnt i amheuaeth resymol nad yw wedi ei fodloni.
- (9) Mae person sy'n euog o drosedd o dan yr adran hon yn agored ar euogfarn ddiannod i ddirwy nad yw'n uwch na lefel 3 ar y raddfa safonol.
- (10) Nid yw'r adran hon yn gymwys mewn cysylltiad ag unrhyw fangre a ddefnyddir i unrhyw raddau fel annedd.

17K “Dyfais cynhesu tybaco”

Yn y Bennod hon, ystyr “dyfais cynhesu tybaco” yw dyfais sy'n cynhesu tybaco i gynhyrchu anwedd neu erosol at ddiben mewnanadlu drwy ddarn i'w roi yn y geg (pa un a yw hefyd yn gallu cynhesu sylwedd arall i gynhyrchu anwedd neu erosol ai peidio).”

- (3) In the English language text, after section 17F (inserted by section 150) insert—

“CHAPTER 1B

USING HEATED TOBACCO DEVICES

17G Heated tobacco-free places and vehicles

- (1) Regulations may designate places or vehicles in Wales as heated tobacco-free.
- (2) Only smoke-free premises or smoke-free vehicles may be designated as heated tobacco-free.
- (3) The regulations may, among other things—
 - (a) provide for places or vehicles to be heated tobacco-free, in specified circumstances, at specified times or if specified conditions are satisfied (or any combination of those);
 - (b) provide for exceptions, which may be framed by reference to the designation by a person of areas which are not heated tobacco-free.
- (4) The regulations may, in particular, frame the circumstances in which a vehicle is heated tobacco-free by reference to—
 - (a) whether a person under the age of 18 is present;
 - (b) its location.
- (5) The power to make regulations under this section is not exercisable in relation to—
 - (a) an aircraft,
 - (b) a hovercraft, or

- (c) a ship in relation to which regulations could be made under section 85 of the Merchant Shipping Act 1995 (safety and health on ships).
- (6) Before making regulations under this section the Welsh Ministers must consult any persons the Welsh Ministers consider it appropriate to consult.
- (7) In this section –
 - “smoke-free premises” (*“mangre di-fwg”*) has the same meaning as in Chapter 1 (see sections 7 to 14);
 - “smoke-free vehicle” (*“cerbyd di-fwg”*) has the same meaning as in Chapter 1 (see section 15).

17H Offence of using heated tobacco device

- (1) A person commits an offence if the person uses a heated tobacco device –
 - (a) in a heated tobacco-free place;
 - (b) in a heated tobacco-free vehicle.
- (2) It is a defence for a person charged with an offence under this section to show that the person did not know, and could not reasonably have been expected to know, that the place or vehicle concerned was a heated tobacco-free place or a heated tobacco-free vehicle.
- (3) If a person charged with an offence under this section relies on the defence in subsection (2), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

17I Offence of failing to prevent use of heated tobacco device

- (1) A person who controls or is concerned in the management of place that is heated tobacco-free must take reasonable steps to cause a person using a heated tobacco device there to stop using the device.
- (2) The driver of a heated tobacco-free vehicle, and any other person specified in regulations, must take reasonable steps to cause a person using a heated tobacco device in the vehicle to stop using the device.
- (3) A person who fails to comply with the duty in subsection (1) or (2) commits an offence.
- (4) It is a defence for a person charged with an offence under this section to show that they did not know, and could not reasonably have been expected to know, that the person in question was using a heated tobacco device.

- (5) If a person charged with an offence under this section relies on the defence in subsection (4), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

17J Heated tobacco-free places and vehicles: signs

- (1) A person who occupies or is concerned in the management of a heated tobacco-free place must make sure that signs are displayed in or near that place in accordance with any requirements imposed by regulations.
- (2) A person who has management responsibilities for a heated tobacco-free vehicle must make sure that signs are displayed in that vehicle in accordance with any requirements imposed by regulations.
- (3) The signs must indicate that the use of heated tobacco devices is prohibited in the place or vehicle.
- (4) Regulations under subsection (1) or (2) may, among other things, impose requirements about—
 - (a) the content or appearance of a sign (for example, requirements as to its size, design, colour, or wording);
 - (b) how and where signs are to be displayed.
- (5) Regulations may create exceptions to the duty in subsection (2).
- (6) A person who fails to comply with the duty in subsection (1) or (2) commits an offence.
- (7) It is a defence for a person charged with an offence under this section to show—
 - (a) that the person did not know, and could not reasonably have been expected to know, that the place or vehicle was heated tobacco-free,
 - (b) that the person did not know, and could not reasonably have been expected to know, that signs complying with the requirements of this section were not being displayed in accordance with the requirements of this section, or
 - (c) that on other grounds it was reasonable for the person not to comply with the duty.
- (8) If a person charged with an offence under this section relies on a defence in subsection (7), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

- (9) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) This section does not apply in respect of any premises used to any extent as a dwelling.

17K “Heated tobacco device”

In this Chapter, “heated tobacco device” means a device that heats tobacco to generate a vapour or an aerosol for the purpose of inhalation through a mouthpiece (whether or not it can also heat other matter to produce a vapour or aerosol).”

- (4) In the Welsh language text and the English language text of section 123, in subsection (2)(a), after “17B(1),” (inserted by section 150 of this Act) insert “17G(1)”.

152 Amendments consequential on sections 147 to 151

Schedule 19 contains amendments consequential on sections 147 to 151.

Northern Ireland

153 Additional smoke-free places in Northern Ireland

- (1) The Smoking (Northern Ireland) Order 2006 (S.I. 2006/2957 (N.I. 20)) is amended as follows.
- (2) For Article 5 substitute—

“5 Additional smoke-free places

- (1) The Department may make regulations designating as smoke-free any place that—
 - (a) is a workplace, or
 - (b) is open to the public,
 and is not smoke-free under Article 3.
- (2) If the place is used as a place of work or open to the public only some of the time the regulations must provide for it to be smoke-free only when so used.
- (3) The regulations may, in particular—
 - (a) provide for places to be smoke-free, in specified circumstances, at specified times or if specified conditions are satisfied (or any combination of those);
 - (b) provide for exceptions, which may be framed by reference to the designation by a person of areas which are not smoke-free.
- (4) Before making regulations under this Article the Department must consult any persons that the Department considers it appropriate to consult.”

- (3) In Article 6 (vehicles) –
 - (a) in paragraph (2), for sub-paragraph (d) substitute –
 - “(d) for exceptions, which may be framed by reference to the designation by a person of areas which are not smoke-free.”;
 - (b) after paragraph (2) insert –
 - “(3) Before making regulations under this Article the Department must consult any persons the Department considers it appropriate to consult.”

154 No-smoking signs in Northern Ireland

- (1) Article 7 of the Smoking (Northern Ireland) Order 2006 (S.I. 2006/2957 (N.I. 20)) (no-smoking signs) is amended as follows.
- (2) For paragraph (1) substitute –
 - “(1) A person who occupies or is concerned in the management of smoke-free premises must make sure that no-smoking signs are displayed in or near those premises in accordance with any requirements imposed by regulations.
 - (1A) The regulations may, in particular, impose requirements about –
 - (a) the content or appearance of a sign (for example, requirements as to its size, design, colour, or wording);
 - (b) how and where signs are to be displayed.”
- (3) After paragraph (2) insert –
 - “(2A) Regulations under paragraph (2) may, in particular, include any provision that may be made by regulations under paragraph (1).”
- (4) Omit paragraphs (3) and (4).

155 Vape-free places in Northern Ireland

- (1) The Smoking (Northern Ireland) Order 2006 (S.I. 2006/2957 (N.I. 20)) is amended as follows.
- (2) Articles 1 and 2 become Part 1, with the heading “Introductory”, and the italic heading before Article 1 is omitted.
- (3) In Article 2 (interpretation), in paragraph (3) insert at the appropriate place –
 - ““vape-free place”: see Article 9A;
 - “vape-free vehicle”: see Article 9A;”
- (4) Articles 3 to 9 (and the italic heading before Article 3) become Part 2, with the heading “Smoking”.

- (5) After Article 9 insert –

“PART 3

VAPING

Vape-free places and vehicles

9A Vape-free places and vehicles

- (1) Regulations may designate places or vehicles as vape-free.
- (2) Only smoke-free places may be designated as vape-free.
- (3) The regulations may, in particular –
 - (a) provide for places or vehicles to be vape-free, in specified circumstances, at specified times or if specified conditions are satisfied (or any combination of those);
 - (b) provide for exceptions, which may be framed by reference to the designation by a person of areas which are not vape-free.
- (4) The regulations may, in particular, frame the circumstances in which a vehicle is vape-free by reference to –
 - (a) whether a person under the age of 18 is present;
 - (b) its location.
- (5) Before making regulations under this Article the Department must consult any persons it considers it appropriate to consult.
- (6) References in this Order, however expressed, to places or vehicles which are vape-free are to those places or vehicles so far as they are vape-free by virtue of regulations under this Article.
- (7) In this Article “smoke-free place” has the meaning given by Article 8(1).

No-vaping signs

9B No-vaping signs

- (1) A person who occupies or is concerned in the management of a vape-free place must make sure that no-vaping signs are displayed in or near that place in accordance with any requirements imposed by regulations.
- (2) A person who has management responsibilities for a vape-free vehicle must make sure that no-vaping signs are displayed in that vehicle in accordance with any requirements imposed by regulations.
- (3) Regulations under paragraph (1) or (2) may, in particular, impose requirements about –

- (a) the content or appearance of a sign (for example, requirements as to its size, design, colour, or wording);
 - (b) how and where signs are to be displayed.
- (4) Regulations may create exceptions to the duty in paragraph (2).
- (5) A person who fails to comply with the duty in paragraph (1) or (2) commits an offence.
- (6) It is a defence for a person charged with an offence under paragraph (5) to show –
 - (a) that they did not know, and could not reasonably have been expected to know, that the place or vehicle was vape-free,
 - (b) that they did not know, and could not reasonably have been expected to know, that no-vaping signs complying with the requirements of this Article were not being displayed in accordance with the requirements of this Article, or
 - (c) that on other grounds it was reasonable for them not to comply with the duty.
- (7) If a person charged with an offence under paragraph (5) relies on a defence in paragraph (6), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (8) A person guilty of an offence under paragraph (5) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences relating to vaping

9C Offence of vaping in vape-free place

- (1) A person who uses a relevant vape in a vape-free place or vehicle commits an offence.
- (2) It is a defence for a person charged with an offence under paragraph (1) to show –
 - (a) that they did not know, and could not reasonably have been expected to know, that it was a vape-free place or vehicle, or
 - (b) that –
 - (i) the person was using the vape when performing in a performance,
 - (ii) that the use of the vape was justified to preserve the artistic integrity of the performance, and
 - (iii) that the vape was not being used to vaporise a substance containing nicotine.
- (3) If a person charged with an offence under this Article relies on a defence in paragraph (2), and evidence is adduced which is sufficient

to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.

- (4) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

9D Offence of failing to prevent vaping

- (1) A person who controls or is concerned in the management of a vape-free place must cause a person using a relevant vape there to stop using the vape.
- (2) The driver of a vape-free vehicle, and any other person specified in regulations, must cause a person using a relevant vape in the vehicle to stop using the vape.
- (3) A person who fails to comply with the duty in paragraph (1) or (2) commits an offence.
- (4) It is a defence for a person charged with an offence under paragraph (3) to show –
- (a) that they took reasonable steps to cause the person in question to stop using the vape,
 - (b) that they did not know, and could not reasonably have been expected to know, that the person in question was using a vape, or
 - (c) that on other grounds it was reasonable for them not to comply with the duty.
- (5) It is a defence for a person charged with an offence under paragraph (3) to show –
- (a) that the person using the vape was using it when performing in a performance,
 - (b) that the use of the vape was justified to preserve the artistic integrity of the performance, and
 - (c) that the vape was not being used to vaporise a substance containing nicotine.
- (6) If a person charged with an offence under this Article relies on a defence in paragraph (4) or (5), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (7) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 4 on the standard scale.”
- (6) Articles 10 to 13 become Part 5, with the heading “Enforcement”, and the italic heading before Article 10 is omitted.

- (7) Articles 14 to 17 (and the italic heading before Article 14) become Part 6, with the heading “Miscellaneous and supplementary”.
- (8) In Article 15 (regulations), in paragraph (3)(a), after “6” insert “, 9A”.

156 Heated tobacco-free places in Northern Ireland

- (1) The Smoking (Northern Ireland) Order 2006 (S.I. 2006/2957 (N.I. 20)) is amended as follows.
- (2) In Article 2 (interpretation), in paragraph (3) insert at the appropriate place –
““heated tobacco-free place”: see Article 9E;
“heated tobacco-free vehicle”: see Article 9E;”
- (3) After Article 9D (inserted by section 155 of this Act) insert –

“PART 4

USING HEATED TOBACCO DEVICES

Heated tobacco-free places and vehicles

9E Heated tobacco-free places and vehicles

- (1) Regulations may designate places or vehicles as heated tobacco-free.
- (2) Only smoke-free places may be designated as heated tobacco-free.
- (3) The regulations may, in particular –
 - (a) provide for places or vehicles to be heated tobacco-free, in specified circumstances, at specified times or if specified conditions are satisfied (or any combination of those);
 - (b) provide for exceptions, which may be framed by reference to the designation by a person of areas which are not heated tobacco-free.
- (4) The regulations may, in particular, frame the circumstances in which a vehicle is heated tobacco-free by reference to –
 - (a) whether a person under the age of 18 is present;
 - (b) its location.
- (5) Before making regulations under this Article the Department must consult any persons it considers it appropriate to consult.
- (6) References in this Order, however expressed, to places or vehicles which are heated tobacco-free are to those places or vehicles so far as they are heated tobacco-free by virtue of regulations under this Article.
- (7) In this Article “smoke-free place” has the meaning given by Article 8(1).

*Heated tobacco-free places and vehicles: signs***9F Heated tobacco-free places and vehicles: signs**

- (1) A person who occupies or is concerned in the management of a heated tobacco-free place must make sure that signs are displayed in or near that place in accordance with any requirements imposed by regulations.
- (2) A person who has management responsibilities for a heated tobacco-free vehicle must make sure that signs are displayed in that vehicle in accordance with any requirements imposed by regulations.
- (3) The signs must indicate that the use of heated tobacco devices is prohibited in the place or vehicle.
- (4) Regulations under paragraph (1) or (2) may, in particular, impose requirements about—
 - (a) the content or appearance of a sign (for example, requirements as to its size, design, colour, or wording);
 - (b) how and where signs are to be displayed.
- (5) Regulations may create exceptions to the duty in paragraph (2).
- (6) A person who fails to comply with the duty in paragraph (1) or (2) commits an offence.
- (7) It is a defence for a person charged with an offence under paragraph (6) to show—
 - (a) that they did not know, and could not reasonably have been expected to know, that the place or vehicle was heated tobacco-free,
 - (b) that they did not know, and could not reasonably have been expected to know, that signs complying with the requirements of this Article were not being displayed in accordance with the requirements of this Article, or
 - (c) that on other grounds it was reasonable for them not to comply with the duty.
- (8) If a person charged with an offence under paragraph (6) relies on a defence in paragraph (7), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (9) A person guilty of an offence under paragraph (6) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences relating to use of heated tobacco devices

9G Offence of using heated tobacco device

- (1) A person who uses a heated tobacco device in a heated tobacco-free place or vehicle commits an offence.
- (2) It is a defence for a person charged with an offence under paragraph (1) to show that they did not know, and could not reasonably have been expected to know, that it was a heated tobacco-free place or vehicle.
- (3) If a person charged with an offence under this Article relies on the defence in paragraph (2), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (4) A person guilty of an offence under this Article is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

9H Offence of failing to prevent use of heated tobacco device

- (1) A person who controls or is concerned in the management of a heated tobacco-free place must cause a person using a heated tobacco device there to stop using the device.
- (2) The driver of a heated tobacco-free vehicle, and any other person specified in regulations, must cause a person using a heated tobacco device in the vehicle to stop using the device.
- (3) A person who fails to comply with the duty in paragraph (1) or (2) commits an offence.
- (4) It is a defence for a person charged with an offence under paragraph (3) to show –
 - (a) that they took reasonable steps to cause the person in question to stop using the heated tobacco device,
 - (b) that they did not know, and could not reasonably have been expected to know, that the person in question was using a heated tobacco device, or
 - (c) that on other grounds it was reasonable for them not to comply with the duty.
- (5) If a person charged with an offence under paragraph (3) relies on a defence in paragraph (4), and evidence is adduced which is sufficient to raise an issue with respect to that defence, the court must assume that the defence is satisfied unless the prosecution proves beyond reasonable doubt that it is not.
- (6) A person guilty of an offence under paragraph (3) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.”

- (4) In Article 15 (regulations), in paragraph (3)(a), after “, 9A” (inserted by section 155 of this Act) insert “, 9E”.

157 Amendments consequential on sections 153 to 156

Schedule 20 contains amendments consequential on sections 153 to 156.

Ships

158 Power to prohibit vaping etc on ships

- (1) Section 85 of the Merchant Shipping Act 1995 (safety and health on ships) is amended as follows.
- (2) In subsection (8) –
- (a) in the words before paragraph (a) –
 - (i) after “prohibition of smoking” insert “or the use of relevant vapes or heated tobacco devices”;
 - (ii) for “smoking provisions” substitute “relevant provisions”;
 - (b) in paragraph (a), for “smoking provisions” substitute “relevant provisions”;
 - (c) in paragraph (b), at the end insert “in relation to the relevant provisions”;
 - (d) in paragraph (c) –
 - (i) after “enforcement functions” insert “in relation to the relevant provisions”;
 - (ii) after “authorised officers have” insert “in relation to smoking”;
 - (iii) for “(which confers powers of entry, etc., on authorised officers of enforcement authorities in relation to the enforcement of the provisions of that Act in relation to smoking)” substitute “(powers of entry)”;
 - (e) for paragraph (d) substitute –

“(d) in relation to an offence of smoking or using a relevant vape or heated tobacco device in a place where to do so is prohibited under the relevant provisions, for purposes corresponding to those of section 9 and Schedule 1 to the Health Act 2006 (fixed penalties).”;
 - (f) omit the words after paragraph (d).
- (3) After subsection (8) insert –
- “(9) In subsection (8) –
- “relevant vape” means a vape that is not a heated tobacco device;

“smoking” has the same meaning as in Chapter 1 of Part 1 of the Health Act 2006;

“vape” has the meaning given by section 48 of the Tobacco and Vapes Act 2024.”

PART 8

GENERAL

159 Application to Parliament

To the extent that this Act or regulations made under it would not (but for this section) apply in relation to the Parliamentary Estate, they do so apply.

160 Further consequential amendments

Schedule 21 contains further consequential amendments.

161 Power of Secretary of State to make consequential provision

- (1) The Secretary of State may by regulations make provision that is consequential on this Act.
- (2) Regulations under this section may amend, repeal or revoke legislation passed or made before, or in the same Session as, this Act (including provision made by this Act).
- (3) Regulations under this section that amend, repeal or revoke primary legislation are subject to the affirmative resolution procedure.
- (4) Any other regulations under this section are subject to the negative resolution procedure.
- (5) In this section “primary legislation” means—
 - (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) an Act or Measure of Senedd Cymru, or
 - (d) Northern Ireland legislation.

162 Power of Scottish Ministers to make consequential provision

- (1) The Scottish Ministers may by regulations make provision that is consequential on any of the following—
 - (a) Part 2 (sale and distribution);
 - (b) sections 142 to 146 and Schedule 18 (smoke-free places, vape-free places and other free-from places: Scotland).
- (2) Regulations under this section may amend, repeal or revoke provision made by or under—
 - (a) an Act passed—

- (i) before this Act, or
 - (ii) later in the same session of Parliament as this Act, or
 - (b) an Act of the Scottish Parliament passed before this Act.
- (3) Regulations under this section that amend or repeal provision made by an Act of the Scottish Parliament, or an Act, are subject to the affirmative resolution procedure.
- (4) Any other regulations under this section are subject to the negative resolution procedure.

163 Power of Welsh Ministers to make consequential provision

- (1) The Welsh Ministers may by regulations make provision that is consequential on any of the following—
- (a) Part 1 (sale and distribution);
 - (b) sections 147 to 152 and Schedule 19 (smoke-free places, vape-free places and other free-from places: Wales).
- (2) The only provision that may be made by virtue of this section is provision that would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd.
- (3) Regulations under this section may amend, repeal or revoke provision made by or under—
- (a) an Act passed—
 - (i) before this Act, or
 - (ii) later in the same session of Parliament as this Act, or
 - (b) an Act or Measure of Senedd Cymru passed before this Act.
- (4) Regulations under this section amend or repeal provision made by an Act or Measure of Senedd Cymru, or an Act, are subject to the affirmative resolution procedure.
- (5) Any other regulations under this section are subject to the negative resolution procedure.

164 Power of Northern Ireland department to make consequential provision

- (1) A Northern Ireland department may by regulations make provision that is consequential on any of the following—
- (a) Part 3 (sale and distribution);
 - (b) sections 153 to 157 and Schedule 20 (smoke-free places, vape-free places and other free-from places: Northern Ireland).
- (2) Regulations under this section may amend, repeal or revoke provision made by or under—
- (a) an Act passed—
 - (i) before this Act, or
 - (ii) later in the same session of Parliament as this Act, or

- (b) Northern Ireland legislation passed or made before this Act.
- (3) Regulations under this section that amend, repeal or revoke any provision of an Act or Northern Ireland legislation are subject to the affirmative resolution procedure.
- (4) Any other regulations under this section are subject to the negative resolution procedure.

165 Regulations: general

- (1) A power to make regulations under any provision of this Act includes power to make –
 - (a) consequential, supplementary, incidental, transitional or saving provision;
 - (b) different provision for different purposes;
 - (c) different provision for different parts of the United Kingdom.
- (2) This section does not apply to regulations under section 168, 169 or 170.

166 Regulations and orders: procedure

- (1) Regulations or orders made by the Secretary of State or the Welsh Ministers under this Act are to be made by statutory instrument.
- (2) For regulations made under this Act by the Scottish Ministers, see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) (definition of “Scottish statutory instrument”).
- (3) Any power of a Northern Ireland department to make regulations or orders under this Act is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (4) Where regulations under this Act are “subject to the affirmative resolution procedure”, the regulations –
 - (a) if made by the Secretary of State, may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament;
 - (b) if made by the Welsh Ministers, may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, Senedd Cymru;
 - (c) if made by the Scottish Ministers, are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10));
 - (d) if made by a Northern Ireland department, may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (5) Where regulations under this Act are “subject to the negative resolution procedure” –

-
- (a) if made by the Secretary of State, the statutory instrument containing them is subject to annulment in pursuance of a resolution of either House of Parliament;
 - (b) if made by the Welsh Ministers, the statutory instrument containing them is subject to annulment in pursuance of a resolution of Senedd Cymru;
 - (c) if made by the Scottish Ministers, the regulations are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10));
 - (d) if made by a Northern Ireland department, the regulations are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)) as if they were a statutory instrument within the meaning of that Act.
- (6) Any provision that may be made in regulations under this Act subject to the negative resolution procedure may be made in regulations subject to the affirmative resolution procedure.

167 Extent

- (1) An amendment or repeal made by this Act has the same extent as the provision amended or repealed.
- (2) Subject to that—
 - (a) Part 1 extends to England and Wales only;
 - (b) Part 2 extends to Scotland only;
 - (c) Part 3 extends to Northern Ireland only;
 - (d) Parts 4, 5 and 6 and this Part extend to England and Wales, Scotland and Northern Ireland.

168 Commencement: Parts 1 to 4

- (1) Parts 1 to 4 of this Act (sale and distribution etc) come into force at the end of the period of 6 months beginning with the day on which it is passed, except as provided by subsections (2) to (8).
- (2) Any provision of, or amendment made by, Parts 1 to 3 so far as it confers a power to make regulations or relates to the exercise of the power, comes into force on the day on which this Act is passed.
- (3) The following (which relate to the age of sale of tobacco etc) come into force on 1 January 2027 (so far as not in force by virtue of subsection (2))—
 - (a) sections 1, 2, 5, 6 and 41(2) and Schedule 7;
 - (b) section 50;
 - (c) sections 68, 69, 72 and 87(2) and Schedule 15.
- (4) Sections 16 to 18 and Schedules 1 and 2 (licensing of retail sales of tobacco products etc in England) come into force (so far as not in force by virtue of subsection (2)) on such day as the Secretary of State may by regulations appoint.

- (5) The following provisions come into force on such day as the Welsh Ministers may by order appoint –
 - (a) sections 19 to 22 and Schedule 3 and 4 (licensing of retail sales of tobacco products etc in Wales);
 - (b) section 40 and Schedule 5 (handing over tobacco etc to underage people in Wales).
- (6) Section 63 (alignment of definition of “tobacco product” in Scottish legislation) comes into force at the end of the period of 2 months beginning with the day on which this Act is passed.
- (7) Section 65 and Schedule 9 (extension of retailer register etc in Scotland) come into force on such day as the Scottish Ministers may by regulations appoint.
- (8) The following come into force on such day as the Department of Health in Northern Ireland may by order appoint –
 - (a) section 84 and Schedule 10 (extension of retailer register in Northern Ireland);
 - (b) section 85 and Schedules 11 to 13 (licensing of retail sales of tobacco products etc in Northern Ireland).
- (9) Regulations or orders under this section may appoint different days for different purposes.

169 Commencement: Parts 5 to 8

- (1) Part 5 (product and information requirements etc) comes into force on the day on which this Act is passed.
- (2) In Part 6 (advertising and sponsorship) –
 - (a) sections 125, 132, 134 and 135 come into force at the end of the period of 2 months beginning with the day on which this Act is passed;
 - (b) the other provisions come into force on such day as the Secretary of State may by regulations appoint.
- (3) In Part 7 (smoke-free places, vape-free places and other free-from places) –
 - (a) sections 136 to 141 and 158 and Schedule 17 come into force on such day as the Secretary of State may by regulations appoint;
 - (b) sections 142 to 146 and Schedule 18 come into force on such day as the Scottish Ministers may by regulations appoint;
 - (c) sections 147 to 152 and Schedule 19 come into force on such day as the Welsh Ministers may by order appoint;
 - (d) sections 153 to 157 and Schedule 20 come into force on such day as the Department of Health in Northern Ireland may by order appoint.
- (4) This Part comes into force on the day on which this Act is passed, apart from section 160 and Schedule 21 which come into force on such day as the Secretary of State may by regulations appoint.
- (5) Regulations or orders under this section may appoint different days for different purposes.

170 Transitional provision

- (1) The Welsh Ministers may by regulations make transitional or saving provision in connection with the coming into force of—
 - (a) section 40 and Schedule 5 (handing over tobacco etc to underage people);
 - (b) sections 147 to 152 and Schedule 19 (smoke-free places, vape-free places and other free-from places: Wales).
- (2) The Scottish Ministers may by regulations make transitional or saving provision in connection with the coming into force of—
 - (a) Part 2 (sale and distribution: Scotland);
 - (b) sections 142 to 146 and Schedule 18 (smoke-free places, vape-free places and other free-from places: Scotland).
- (3) The Department of Health in Northern Ireland may by regulations make transitional or saving provision in connection with the coming into force of—
 - (a) Part 3 (sale and distribution: Northern Ireland);
 - (b) sections 153 to 157 and Schedule 20 (smoke-free places, vape-free places and other free-from places: Northern Ireland).
- (4) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (5) Transitional provision and savings made under this section are additional, and without prejudice, to those made by or under any other provision of this Act.
- (6) A power conferred by subsections (1) to (4) includes power to make different provision for different purposes.
- (7) A requirement imposed under or by virtue of this Act to consult any persons may be satisfied by consultation carried out before this Act comes into force.

171 Short title

This Act may be cited as the Tobacco and Vapes Act 2024.

SCHEDULES

SCHEDULE 1

Section 16(6)

RETAIL LICENSING SCHEME: ENGLAND

Introduction

- 1 This Schedule is about the provision that may be made by regulations under section 16(4).

Licensing authority

- 2 The regulations must specify a description of local authority (a “licensing authority”) which is to grant licences.

Grant of licence

- 3 (1) The regulations may –
 - (a) prohibit a licensing authority from granting a licence unless satisfied as to a matter specified in the regulations;
 - (b) require a licensing authority to have regard, in deciding whether to grant a licence, to a matter specified in the regulations.
- (2) The provision that may be made under sub-paragraph (1)(a) includes –
 - (a) provision prohibiting a licensing authority from granting a premises licence in respect of premises within an area of a description specified in the regulations;
 - (b) provision limiting the number of licensed premises within an area of a description specified in the regulations.
- (3) The regulations may make provision requiring a licensing authority not to grant a premises licence unless the premises have been inspected in accordance with the regulations.

Licence fee

- 4 (1) The regulations may authorise a licensing authority to charge a fee in respect of an application for the grant of a licence (which may be set at a level that takes into account the cost of exercising functions under or in connection with sections 16 to 18 or the regulations).
- (2) Any such fee must not exceed an amount specified in, or determined in accordance with, the regulations.
- (3) The regulations may require a licensing authority to pay a proportion of any amount received by virtue of sub-paragraph (1) to any other person with functions under or in connection with sections 16 to 18 or the regulations.

Licence conditions

- 5 (1) The regulations may make provision for the grant of a licence subject to conditions.
- (2) Provision of the kind mentioned in sub-paragraph (1) may –
- (a) enable a licensing authority to attach conditions to a licence;
 - (b) require a licensing authority to attach to a licence a condition specified in the regulations.
- (3) The provision that may be made under sub-paragraph (1) includes provision prohibiting or restricting the sale of relevant products within an area of a description specified in the regulations.

Duration etc of licence

- 6 (1) The regulations may make provision about the duration, renewal, variation, suspension or revocation of licences.
- (2) The provision that may be made under sub-paragraph (1) includes provision conferring power on a court by which a person is convicted of an offence under section 17 to vary, suspend or revoke a licence.

Publication of licence information

- 7 The regulations may make provision for the publication by a licensing authority of information relating to licences granted by the licensing authority.

Reviews and appeals

- 8 (1) The regulations must specify the circumstances in which a person may request a review of a decision taken under the regulations.
- (2) The regulations must confer a right of appeal to the magistrates' court against a decision taken on a review.
- (3) The regulations may contain provision about time limits for requesting reviews or initiating appeals.

Guidance

- 9 The regulations may require a licensing authority, in carrying out functions under the regulations, to have regard to guidance published by the Secretary of State.

Sub-delegation

- 10 The regulations may confer discretions.

Interpretation

- 11 In this Schedule –

- “grant” includes vary or renew;
- “licence” means a personal licence or a premises licence;
- “licensing authority” has the meaning given by paragraph 2;
- “local authority” means –
- (a) a county council in England;
 - (b) a district council in England;
 - (c) a London borough council;
 - (d) a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009;
 - (e) a combined county authority established under section 9(1) of the Levelling-up and Regeneration Act 2023;
 - (f) the Common Council of the City of London (in its capacity as a local authority), the Sub-Treasurer of the Inner Temple or the Under Treasurer of the Middle Temple;
 - (g) the Council of the Isles of Scilly;
- “personal licence” has the meaning given by section 16(8);
- “premises licence” has the meaning given by section 16(8);
- “relevant products” has the meaning given by section 16(8).

SCHEDULE 2

Section 18

FINANCIAL PENALTIES FOR BREACH OF RETAIL LICENCE CONDITIONS: ENGLAND

Introduction

- 1 This Schedule makes further provision in connection with the imposition of financial penalties under section 18.

Notices of intent

- 2 (1) A local weights and measures authority must, before imposing a financial penalty on a person, give the person written notice (a “notice of intent”) of the proposed financial penalty.
- (2) A notice of intent must specify –
- (a) the amount of the proposed financial penalty,
 - (b) the reasons for proposing to impose the penalty,
 - (c) information about the right to make representations under paragraph 3, and
 - (d) the date by which any representations must be made.
- (3) The date specified under sub-paragraph (2)(d) must be a date more than 28 days after the day on which the notice of intent is given to the person.

- (4) The local weights and measures authority may at any time withdraw the notice of intent, or amend it to reduce the amount of the proposed financial penalty, by giving written notice to the person.

Right to make representations

- 3 (1) A person who is given a notice of intent under paragraph 2 may make written representations to the local weights and measures authority that issued the notice about the proposal to impose a financial penalty.
- (2) Any representations must be made within the period (“the period for representations”) ending with the date specified under paragraph 2(2)(d).

Final notices

- 4 (1) After the end of the period for representations the local weights and measures authority must decide whether to impose a financial penalty on the person.
- (2) If the local weights and measures authority decides to impose a financial penalty on the person, the authority must give the person written notice (a “final notice”) imposing the penalty.
- (3) A final notice must specify –
 - (a) the amount of the financial penalty,
 - (b) the reasons for imposing the penalty,
 - (c) the date by which the penalty must be paid,
 - (d) information about the right of appeal under paragraph 5, and
 - (e) the consequences of failure to comply with the final notice.
- (4) The date specified under sub-paragraph (3)(c) must be a date more than 28 days after the day on which the final notice is given to the person.
- (5) The local weights and measures authority may at any time withdraw a final notice, or amend it to reduce the amount of the financial penalty, by giving written notice to the person.
- (6) A final notice may not be given more than 28 days after the last day of the period for representations.

Appeals

- 5 (1) A person on whom a financial penalty is imposed under section 18 may appeal to the magistrates’ court against –
 - (a) the decision to impose the penalty, or
 - (b) the amount of the penalty.
- (2) An appeal under this paragraph must be brought before the end of the period of 28 days beginning with the day after the day on which the final notice is given to the person in accordance with paragraph 4.
- (3) On an appeal under this paragraph the magistrates’ court may confirm, reduce or cancel the penalty.

- (4) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined, withdrawn or abandoned.

Recovery

- 6 (1) This paragraph applies if a person fails to pay the whole or part of a financial penalty before the end of the period within which the person is required to pay the penalty.
- (2) The local weights and measures authority that imposed the financial penalty may recover the unpaid amount of the penalty as if it were payable under an order of the county court.

Use of proceeds

- 7 (1) Any sums received in pursuance of final notices given under paragraph 4 must be paid into the Consolidated Fund.
- (2) But before paying such sums into the Consolidated Fund the local weights and measures authority may deduct—
 - (a) the costs of investigating the matters to which the final notices relate, and
 - (b) the costs of issuing the notices.

SCHEDULE 3

Section 19(6)

RETAIL LICENSING SCHEME: WALES

Introduction

- 1 This Schedule is about the provision that may be made by regulations under section 19(4).

Grant of licence

- 2 (1) The regulations may—
 - (a) prohibit a licensing authority from granting a licence unless satisfied as to a matter specified in the regulations;
 - (b) require a licensing authority to have regard, in deciding whether to grant a licence, to a matter specified in the regulations.
- (2) The provision that may be made under sub-paragraph (1)(a) includes—
 - (a) provision prohibiting a licensing authority from granting a premises licence in respect of premises within an area of a description specified in the regulations;
 - (b) provision limiting the number of licensed premises within an area of a description specified in the regulations.

- (3) The regulations may make provision requiring a licensing authority not to grant a premises licence unless the premises have been inspected in accordance with the regulations.

Licence fee

- 3 (1) The regulations may authorise a licensing authority to charge a fee in respect of an application for the grant of a licence (which may be set at a level that takes into account the cost of exercising functions under or in connection with sections 19 to 21 or the regulations).
- (2) Any such fee must not exceed an amount specified in, or determined in accordance with, the regulations.
- (3) The regulations may require a licensing authority to pay a proportion of any amount received by virtue of sub-paragraph (1) to any other person with functions under sections 19 to 21 or the regulations.

Licence conditions

- 4 (1) The regulations may make provision for the grant of a licence subject to conditions.
- (2) Provision of the kind mentioned in sub-paragraph (1) may –
 - (a) enable a licensing authority to attach conditions to a licence;
 - (b) require a licensing authority to attach to a licence a condition specified in the regulations.
- (3) The provision that may be made under sub-paragraph (1) includes provision prohibiting or restricting the sale of relevant products within an area of a description specified in the regulations.

Duration etc of licence

- 5 (1) The regulations may make provision about the duration, renewal, variation, suspension or revocation of licences.
- (2) The provision that may be made under sub-paragraph (1) includes provision conferring power on a court by which a person is convicted of an offence under section 20 to vary, suspend or revoke a licence.

Publication of licence information

- 6 The regulations may make provision for the publication by a licensing authority of information relating to licences granted by the licensing authority.

Reviews and appeals

- 7 (1) The regulations must specify the circumstances in which a person may request a review of a decision taken under the regulations.

- (2) The regulations must confer a right of appeal to the magistrates' court against a decision taken on a review.
- (3) The regulations may contain provision about time limits for requesting reviews or initiating appeals.

Guidance

- 8 The regulations may require a licensing authority, in carrying out functions under the regulations, to have regard to guidance published by the Welsh Ministers.

Sub-delegation

- 9 The regulations may confer discretions.

Interpretation

- 10 In this Schedule –
 - “grant” includes vary or renew;
 - “licence” means a personal licence or a premises licence;
 - “licensing authority”, in relation to the doing of things or the use of premises in a county or county borough in Wales, means the council of the county or county borough;
 - “personal licence” has the meaning given by section 19(8);
 - “premises licence” has the meaning given by section 19(8);
 - “relevant products” has the meaning given by section 19(8).

SCHEDULE 4

Section 21

FINANCIAL PENALTIES FOR BREACH OF RETAIL LICENCE CONDITIONS: WALES

Introduction

- 1 This Schedule makes further provision in connection with the imposition of financial penalties under section 21.

Notices of intent

- 2 (1) A local weights and measures authority must, before imposing a financial penalty on a person, give the person written notice (a “notice of intent”) of the proposed financial penalty.
- (2) A notice of intent must specify –
 - (a) the amount of the proposed financial penalty,
 - (b) the reasons for proposing to impose the penalty,
 - (c) information about the right to make representations under paragraph 3, and

- (d) the date by which any representations must be made.
- (3) The date specified under sub-paragraph (2)(d) must be a date more than 28 days after the day on which the notice of intent is given to the person.
- (4) The local weights and measures authority may at any time withdraw the notice of intent, or amend it to reduce the amount of the proposed financial penalty, by giving written notice to the person.

Right to make representations

- 3 (1) A person who is given a notice of intent under paragraph 2 may make written representations to the local weights and measures authority that issued the notice about the proposal to impose a financial penalty.
- (2) Any representations must be made within the period (“the period for representations”) ending with the date specified under paragraph 2(2)(d).

Final notices

- 4 (1) After the end of the period for representations the local weights and measures authority must decide whether to impose a financial penalty on the person.
- (2) If the local weights and measures authority decides to impose a financial penalty on the person, the authority must give the person written notice (a “final notice”) imposing the penalty.
- (3) A final notice must specify –
 - (a) the amount of the financial penalty,
 - (b) the reasons for imposing the penalty,
 - (c) the date by which the penalty must be paid,
 - (d) information about the right of appeal under paragraph 5, and
 - (e) the consequences of failure to comply with the final notice.
- (4) The date specified under sub-paragraph (3)(c) must be a date more than 28 days after the day on which the final notice is given to the person.
- (5) The local weights and measures authority may at any time withdraw a final notice, or amend it to reduce the amount of the financial penalty, by giving written notice to the person.
- (6) A final notice may not be given more than 28 days after the last day of the period for representations.

Appeals

- 5 (1) A person on whom a financial penalty is imposed under section 21 may appeal to the magistrates’ court against –
 - (a) the decision to impose the penalty, or
 - (b) the amount of the penalty.

- (2) An appeal under this paragraph must be brought before the end of the period of 28 days beginning with the day after the day on which the final notice is given to the person in accordance with paragraph 4.
- (3) On an appeal under this paragraph the magistrates' court may confirm, reduce or cancel the penalty.
- (4) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined, withdrawn or abandoned.

Recovery

- 6 (1) This paragraph applies if a person fails to pay the whole or part of a financial penalty before the end of the period within which the person is required to pay the penalty.
- (2) The local weights and measures authority that imposed the financial penalty may recover the unpaid amount of the penalty as if it were payable under an order of the county court.

Use of proceeds

- 7 (1) Any sums received in pursuance of final notices given under paragraph 4 must be paid into the Welsh Consolidated Fund.
- (2) But before paying such sums into the Welsh Consolidated Fund the local weights and measures authority may deduct—
 - (a) the costs of investigating the matters to which the final notices relate, and
 - (b) the costs of issuing the notices.

SCHEDULE 5

Section 40

HANDING OVER TOBACCO ETC TO UNDERAGE PEOPLE IN WALES

- 1 The Public Health (Wales) Act 2017 (anaw 2) is amended as follows.
- 2 In the heading of Part 3—
 - (a) in the Welsh language text, after “tybaco” insert “, cynhyrchion fepio”;
 - (b) in the English language text, after “tobacco” insert “, vaping products”.
- 3 In the heading of Chapter 4 of Part 3—
 - (a) in the Welsh language text omit “i bersonau o dan 18 oed”;
 - (b) in the English language text omit “to persons under 18”.

4 In the Welsh language text, before section 52 insert—

“51A Y drosedd o roi tybaco etc. i bobl a anwyd ar neu ar ôl 1 Ionawr 2009

- (1) Mae person (“A”) yn cyflawni trosedd—
- (a) os yw A, mewn cysylltiad â threfniadau o dan adran 53, yn rhoi yng Nghymru gynhyrchion tybaco, cynhyrchion smygu llysieuol neu bapurau sigarêts i berson a anwyd ar neu ar ôl 1 Ionawr 2009 (“B”),
 - (b) os nad yw’r rhoi yn digwydd naill ai—
 - (i) yng nghwrs crefft, proffesiwn, busnes neu gyflogaeth B, neu
 - (ii) yng ngŵydd person arall a anwyd cyn 1 Ionawr 2009,
 - (c) os yw A, ar adeg y rhoi, yn gwybod bod cynhyrchion tybaco, cynhyrchion smygu llysieuol neu bapurau sigarêts (pa un bynnag sy’n gymwys) yn cael eu rhoi, a
 - (d) pan roddir y cynhyrchion tybaco, y cynhyrchion smygu llysieuol neu’r papurau sigarêts, os nad ydynt mewn pecyn—
 - (i) sydd wedi ei selio, a
 - (ii) sydd â chyfeiriad arno, at ddiben ei ddanfôn i’r cyfeiriad hwnnw yn unol â threfniadau o fewn adran 53.
- (2) Ystyr “pecyn” yn isadran (1)(d) yw pecyn yn ychwanegol at y pecyn gwreiddiol y mae’r cynhyrchion tybaco, y cynhyrchion smygu llysieuol neu’r papurau sigarêts wedi eu cyflenwi ynddo at ddiben eu gwerthu drwy fanwerthu gan eu gwneuthurwr neu eu mewnforiwr.
- (3) Mae person sy’n euog o drosedd o dan yr adran hon yn agored ar euogfarn ddiannod i ddirwy nad yw’n uwch na lefel 4 ar y raddfa safonol.
- (4) Pan fo person (“y cyhuddedig”) wedi ei gyhuddo o drosedd o dan yr adran hon oherwydd ymddygiad y cyhuddedig ei hun (ac eithrio yn rhinwedd adran 44 o Ddeddf Llysoedd Ynadon 1980 (p.43) (helpwyr ac anogwyr)) mae’n amddiffyniad i’r cyhuddedig ddangos—
- (a) bod y cyhuddedig yn credu, pan ddigwyddodd y rhoi, fod y person y rhoddwyd y cynhyrchion tybaco, y cynhyrchion smygu llysieuol neu’r papurau sigarêts iddo, neu berson arall a oedd yn bresennol ar adeg y rhoi, wedi cael ei eni cyn 1 Ionawr 2009, a
 - (b) naill ai—
 - (i) bod y cyhuddedig wedi cymryd camau rhesymol i gadarnhau oedran y person hwnnw, neu

- (ii) na allai neb fod wedi amau'n rhesymol o olwg y person hwnnw fod y person wedi cael ei eni ar neu ar ôl 1 Ionawr 2009.
- (5) At ddibenion is-adran (4)(b), mae'r cyhuddedig i gael ei drin fel pe bai wedi cymryd camau rhesymol i gadarnhau oedran person—
 - (a) os gofynnodd y cyhuddedig i'r person hwnnw am dystiolaeth o oedran y person hwnnw, a
 - (b) pe bai'r dystiolaeth wedi argyhoeddi person rhesymol.
- (6) Pan fo person wedi ei gyhuddo o drosedd o dan yr adran hon oherwydd gweithred neu ddiffyg person arall, neu yn rhinwedd cymhwyso adran 44 o Ddeddf Llysoedd Ynadon 1980 (p.43) (helpwyr ac anogwyr), mae'n amddiffyniad dangos i'r person gymryd rhagofalon rhesymol ac arfer diwydrwydd dyladwy i osgoi cyflawni'r drosedd."

5 In the English language text, before section 52 insert—

“51A Offence of handing over tobacco etc to people born on or after 1 January 2009

- (1) A person (“A”) commits an offence if—
 - (a) in connection with arrangements under section 53, A hands over in Wales tobacco products, herbal smoking products or cigarette papers to a person born on or after 1 January 2009 (“B”),
 - (b) the handing over does not take place either—
 - (i) in the course of B’s trade, profession, business or employment, or
 - (ii) in the presence of another person who was born before 1 January 2009,
 - (c) at the time of the handing over, A knows that tobacco products, herbal smoking products or cigarette papers (whichever is the case) are being handed over, and
 - (d) when handed over, the tobacco products, herbal smoking products or cigarette papers are not contained in a package that—
 - (i) is sealed, and
 - (ii) has an address on it, for the purpose of its delivery to that address in accordance with arrangements within section 53.
- (2) “Package” in subsection (1)(d) means a package in addition to the original package in which the tobacco products, herbal smoking products or cigarette papers were supplied for the purpose of retail sale by their manufacturer or importer.
- (3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

- (4) Where a person (“the accused”) is charged with an offence under this section by reason of the accused’s own conduct (and otherwise than by virtue of section 44 of the Magistrates’ Courts Act 1980 (c.43) (aiders and abettors)) it is a defence for the accused to show –
- (a) that the accused believed, when the handing over took place, that the person to whom the tobacco products, herbal smoking products or cigarette papers were handed over, or another person present at the time of the handing over, was born before 1 January 2009, and
 - (b) either –
 - (i) that the accused had taken reasonable steps to establish the age of that person, or
 - (ii) that nobody could reasonably have suspected from that person’s appearance that the person was born on or after 1 January 2009.
- (5) For the purposes of subsection (4)(b), the accused is to be treated as having taken reasonable steps to establish the age of a person if –
- (a) the accused asked that person for evidence of that person’s age, and
 - (b) the evidence would have convinced a reasonable person.
- (6) Where a person is charged with an offence under this section by reason of the act or default of another person, or by virtue of the application of section 44 of the Magistrates’ Courts Act 1980 (c.43) (aiders and abettors), it is a defence to show that the person took reasonable precautions and exercised due diligence to avoid committing the offence.”
- 6 (1) The Welsh language text of section 52 is amended as follows.
- (2) In the heading, for “tybaco etc.” substitute “cynhyrchion fepio a chynhyrchion nicotin”.
 - (3) In subsection (1) –
 - (a) in paragraph (a), for “dybaco, papurau sigaréts neu gynhyrchion nicotin” substitute “gynhyrchion fepio neu”;
 - (b) in paragraph (c), for “tybaco neu bapurau sigaréts neu gynhyrchion nicotin” substitute “cynhyrchion fepio neu”;
 - (c) in paragraph (d), for “tybaco, y papurau sigaréts neu’r cynhyrchion nicotin” substitute “cynhyrchion fepio neu’r”.
 - (4) In subsection (2), for “tybaco, y papurau sigaréts neu’r cynhyrchion nicotin” substitute “cynhyrchion fepio neu”.
 - (5) In subsection (4)(a), for “tybaco, y papurau sigaréts neu’r cynhyrchion nicotin” substitute “cynhyrchion fepio neu”.
 - (6) Omit subsection (7).
- 7 (1) The English language text of section 52 is amended as follows.

- (2) In the heading, for “tobacco etc.” substitute “vaping and nicotine products”.
 - (3) In subsection (1) –
 - (a) in paragraph (a), for “tobacco, cigarette papers or” substitute “vaping products or”;
 - (b) in paragraph (c), for “tobacco or cigarette papers or” substitute “vaping products or”;
 - (c) in paragraph (d), for “tobacco, cigarette papers or” substitute “vaping products or”.
 - (4) In subsection (2), for “tobacco, cigarette papers or” substitute “vaping products or”.
 - (5) In subsection (4)(a), for “tobacco, cigarette papers or” substitute “vaping products or”.
 - (6) Omit subsection (7).
- 8 (1) The Welsh language text of section 53 is amended as follows.
- (2) In subsection (1) –
 - (a) in the words before paragraph (a), for “tybaco, papurau sigarêts neu gynhyrchion nicotin” substitute “cynnyrch perthnasol”;
 - (b) in paragraph (a), for “tybaco, y papurau sigarêts neu’r cynhyrchion nicotin gael eu danfon” substitute “cynnyrch perthnasol gael ei ddanfon”;
 - (c) in paragraph (b), for “tybaco, y papurau sigarêts neu’r cynhyrchion nicotin o dan sylw” substitute “cynnyrch perthnasol”.
 - (3) In subsection (2) –
 - (a) in the words before paragraph (a), for “tybaco, papurau sigarêts neu gynhyrchion nicotin” substitute “cynnyrch perthnasol”;
 - (b) in paragraph (a), for “tybaco, y papurau sigarêts neu’r cynhyrchion nicotin gael eu casglu” substitute “cynnyrch perthnasol gael ei gasglu”;
 - (c) in paragraph (b), for “tybaco, y papurau sigarêts neu’r cynhyrchion nicotin o dan sylw” substitute “cynnyrch perthnasol”.
 - (4) After subsection (3) insert –
 - “(4) Yn yr adran hon ystyr “cynnyrch perthnasol” yw –
 - (a) cynnyrch tybaco,
 - (b) cynnyrch smygu llysieuol,
 - (c) papurau sigarêts,
 - (d) cynnyrch fepio, neu
 - (e) cynnyrch nicotin.”
- 9 (1) The English language text of section 53 is amended as follows.
- (2) In subsection (1) –
 - (a) in the words before paragraph (a), for “tobacco, cigarette papers or nicotine products” substitute “a relevant product”;

- (b) in paragraph (a), for “tobacco, cigarette papers or nicotine products” substitute “relevant product”;
 - (c) in paragraph (b), for “tobacco, cigarette papers or nicotine products concerned” substitute “relevant product”.
- (3) In subsection (2) –
- (a) in the words before paragraph (a), for “tobacco, cigarette papers or nicotine products” substitute “a relevant product”;
 - (b) in paragraph (a), for “tobacco, cigarette papers or nicotine products” substitute “relevant product”;
 - (c) in paragraph (b), for “tobacco, cigarette papers or nicotine products concerned” substitute “relevant product”.
- (4) After subsection (3) insert –
- “(4) In this section “relevant product” means –
- (a) a tobacco product,
 - (b) a herbal smoking product,
 - (c) cigarette papers,
 - (d) a vaping product, or
 - (e) a nicotine product.”
- 10 In the Welsh language text, after section 54 insert –
- “54A Pŵer i ymestyn y Bennod hon i gynhyrchion eraill**
- Caiff Gweinidogion Cymru drwy reoliadau ddiwygio’r Bennod hon at ddiben ymestyn unrhyw ddarpariaeth sy’n gymwys mewn perthynas â chynhyrchion tybaco i –
- (a) dyfais o ddisgrifiad penodedig sy’n galluogi cynnyrch tybaco i gael ei ddefnyddio (er enghraifft, dyfais cynhesu tybaco neu bibell);
 - (b) eitem y bwriedir iddi ffurfio rhan o ddyfais o’r fath.”
- 11 In the English language text, after section 54 insert –
- “54A Power to extend this Chapter to other products**
- (1) The Welsh Ministers may by regulations amend this Chapter for the purpose of extending any provision that applies in relation to a tobacco product to –
 - (a) a device of a specified description which enables a tobacco product to be consumed (for example, a heated tobacco device or pipe);
 - (b) an item which is intended to form part of such a device.
 - (2) Before making regulations under this section the Welsh Ministers must consult any persons the Welsh Ministers consider it appropriate to consult.”

12 For the Welsh language text of section 55 substitute –

“55 Dehongli’r Bennod hon

Yn y Bennod hon –

ystyr “cyflogaeth” (“*employment*”) yw unrhyw gyflogaeth, pa un ai â thâl neu’n ddi-dâl, ac mae’n cynnwys –

- (a) gwaith o dan gontract am wasanaethau neu fel deiliad swydd, a
- (b) profiad gwaith a ddarperir yn unol â chwrs neu raglen hyfforddi neu yng nghwrs hyfforddiant ar gyfer cyflogaeth;

mae i “cynnyrch fepio” yr ystyr a roddir i “vaping product” gan adran 48 o Ddeddf Tybaco a Fêps 2024;

mae i “cynnyrch nicotin” yr ystyr a roddir i “nicotine product” gan adran 48 o Ddeddf Tybaco a Fêps 2024;

mae i “cynnyrch smygu llysieuol” yr ystyr a roddir i “herbal smoking product” gan adran 48 o Ddeddf Tybaco a Fêps 2024;

mae i “cynnyrch tybaco” yr ystyr a roddir i “tobacco product” gan adran 48 o Ddeddf Tybaco a Fêps 2024;

mae “papurau sigarêts” (“*cigarette papers*”) yn cynnwys unrhyw beth y bwriedir iddo gael ei ddefnyddio ar gyfer cau am gynhyrchion tybaco neu gynhyrchion smygu llysieuol at y diben o alluogi iddynt gael eu smygu.”

13 For the English language text of section 55 substitute –

“55 Interpretation of this Chapter

In this Chapter –

“cigarette papers” (“*papurau sigarêts*”) includes anything intended to be used for encasing tobacco products or herbal smoking products for the purpose of enabling them to be smoked;

“employment” (“*cyflogaeth*”) means any employment, whether paid or unpaid, and includes –

- (a) work under a contract for services or as an office holder, and
- (b) work experience provided pursuant to a training course or programme or in the course of training for employment;

“herbal smoking product” (“*cynnyrch smygu llysieuol*”) has the meaning given by section 48 of the Tobacco and Vapes Act 2024;

“nicotine product” (“*cynnyrch nicotin*”) has the meaning given by section 48 of the Tobacco and Vapes Act 2024;

“tobacco product” (*“cynnyrch tybaco”*) has the meaning given by section 48 of the Tobacco and Vapes Act 2024;

“vaping product” (*“cynnyrch fepio”*) has the meaning given by section 48 of the Tobacco and Vapes Act 2024.”

- 14 In the Welsh language text of section 123, in subsection (2), for “neu 50(2)” substitute “, 50(2) neu 54A”.
- 15 In the English language text of section 123, in subsection (2)(a), for “or 50(2)” substitute “, 50(2) or 54A”.

SCHEDULE 6

Section 41

PART 1 CONSEQUENTIAL AMENDMENTS COMMENCING AFTER 6 MONTHS

Children and Young Persons Act 1933

- 1 The Children and Young Persons Act 1933 is amended as follows.
- 2 Omit sections 12A to 12D and the italic heading before those sections.
- 3 Omit section 102.

Children and Young Persons (Protection from Tobacco) Act 1991

- 4 The Children and Young Persons (Protection from Tobacco) Act 1991 is amended as follows.
- 5 Omit sections 3 and 3A.
- 6 (1) Section 4 is amended as follows.
- (2) Omit subsection (2).
- (3) In subsections (3) and (4) omit “or (2).”
- (4) In the heading omit “and on vending machines”.
- 7 Omit section 5.

Tobacco Advertising and Promotion Act 2002

- 8 The Tobacco Advertising and Promotion Act 2002 is amended as follows.
- 9 Omit section 9
- 10 In section 17, in subsection (1) omit “9(5).”

Health Act 2006

- 11 The Health Act 2006 is amended as follows.
- 12 Omit Chapter 2 of Part 1.
- 13 (1) Section 79 is amended as follows.

- (2) In subsection (4) omit paragraph (b).
- (3) In subsection (4A) omit paragraph (b) (but not the “or” at the end).

Criminal Justice and Immigration Act 2008

- 14 In the Criminal Justice and Immigration Act 2008 omit section 143 and the italic heading before that section.

Regulatory Enforcement and Sanctions Act 2008

- 15 (1) Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008.
- (2) At the appropriate place insert—
 - “Tobacco and Vapes Act 2024, Parts 1, 5 and 6”.
- (3) Omit the reference to section 92 of the Children and Families Act 2014.

Health Act 2009

- 16 The Health Act 2009 is amended as follows.
- 17 Omit section 22.
- 18 In Schedule 4 omit paragraph 1 and the italic heading before that paragraph.

Children and Families Act 2014

- 19 The Children and Families Act 2014 is amended as follows.
- 20 (1) Section 91 is amended as follows.
 - (2) In the heading omit “, nicotine products”.
 - (3) In subsection (1), for “, cigarette papers or a relevant nicotine product” substitute “or cigarette papers”.
 - (4) Omit subsection (5).
 - (5) Omit subsection (8).
- 21 Omit sections 92 and 93.
- 22 In section 135, in subsection (6) omit paragraph (d).

Tobacco and Related Products Regulations 2016 (S.I. 2016/507)

- 23 In the Tobacco and Related Products Regulations 2016 omit regulation 17.

Public Health (Wales) Act 2017 (anaw 2)

- 24 The Public Health (Wales) Act 2017 is amended as follows.
- 25 (1) Section 32 is amended as follows.
 - (2) In subsection (2)—

- (a) in the Welsh language text, for “adran 12A o Ddeddf Plant a Phobl Ifanc 1933 (p.12)” substitute “adran 23 o Ddeddf Tybaco a Fêps 2024”;
 - (b) in the English language text, for “section 12A of the Children and Young Persons Act 1933 (c. 12)” substitute “section 23 of the Tobacco and Vapes Act 2024”.
- (3) In subsection (3)–
- (a) in the Welsh language text, for “adran 12B o Ddeddf Plant a Phobl Ifanc 1933 (p.12)” substitute “adran 28 o Ddeddf Tybaco a Fêps 2024”;
 - (b) the English language text, for “section 12B of the Children and Young Persons Act 1933 (c. 12)” substitute “section 28 of the Tobacco and Vapes Act 2024”.
- 26 Omit Chapter 3 of Part 3.
- 27 Omit section 54.
- 28 In Schedule 2 omit paragraph 17.

Digital Markets, Competition and Consumers Act 2024

- 29 In Schedule 15 to the Digital Markets, Competition and Consumers Act 2024, in Part 1, in the first part of the Table (Acts of Parliament), at the appropriate place (according to alphabetical order of Acts mentioned) insert–
- “Tobacco and Vapes Act 2024
- (1) All public designated enforcers, other than–
 - (a) the Department for the Economy in Northern Ireland;
 - (b) the Department of Health in Northern Ireland;
 - (c) the Department for Infrastructure in Northern Ireland;
 - (d) an enforcement authority within the meaning of section 120(15) of the Communications Act 2003 (regulation of premium rate services);
 - (e) the Maritime and Coastguard Agency;
 - (f) the Office for the Traffic Commissioner;
 - (g) the Secretary of State.
 - (2) All private designated enforcers.”

SCHEDULE 7

Section 41

PART 1 CONSEQUENTIAL AMENDMENTS COMMENCING ON 1 JANUARY 2027

Children and Young Persons Act 1933

- 1 In the Children and Young Persons Act 1933 omit section 7.

Protection of Children (Tobacco) Act 1986

- 2 The Protection of Children (Tobacco) Act 1986 is repealed.

Children and Young Persons (Protection from Tobacco) Act 1991

- 3 The Children and Young Persons (Protection from Tobacco) Act 1991 is repealed.

Local Government etc (Scotland) Act 1994

- 4 In Schedule 13 to the Local Government etc (Scotland) Act 1994 omit paragraph 169 and the italic heading before that paragraph.

Police Reform Act 2002

- 5 In Schedule 5 to the Police Reform Act 2002 omit paragraph 6 and the italic heading before that paragraph.

Courts Act 2003

- 6 In Schedule 8 to the Courts Act 2003 omit paragraph 72.

Regulatory Enforcement and Sanctions Act 2008

- 7 The Regulatory Enforcement and Sanctions Act 2008 is amended as follows.
- 8 In Schedule 3 omit the reference to the Children and Young Persons (Protection from Tobacco) Act 1991.
- 9 (1) Schedule 6 is amended as follows.
- (2) Omit the reference to section 7(1) of the Children and Young Persons Act 1933.
- (3) Omit the reference to the Children and Young Persons (Protection from Tobacco) Act 1991.

Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3)

- 10 In Schedule 2 to the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) omit paragraph 2 and the italic heading before that paragraph.

Police Reform and Social Responsibility Act 2011

- 11 In Schedule 16 to the Police Reform and Social Responsibility Act 2011 omit paragraph 67.

Children and Families Act 2014

- 12 In the Children and Families Act 2014 omit section 91.

Digital Markets, Competition and Consumers Act 2024

- 13 In Schedule 15 to the Digital Markets, Competition and Consumers Act 2024, in Part 1, in the Table omit the entries relating to—
- (a) section 7(1) and (2) of the Children and Young Persons Act 1933;
 - (b) section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991.

SCHEDULE 8

Section 64

ALIGNMENT OF DEFINITION OF “VAPING PRODUCT” IN SCOTTISH LEGISLATION

Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3)

- 1 The Tobacco and Primary Medical Services (Scotland) Act 2010 is amended as follows.
- 2 For the heading of Part 1 substitute “Tobacco, vaping and nicotine products”.
- 3 In the heading of Chapter 2 of Part 1, for “nicotine vapour” substitute “vaping”.
- 4 In section 10 (register of tobacco and nicotine vapour product retailers)—
 - (a) in subsection (1), for “nicotine vapour” substitute “vaping”;
 - (b) in the heading, for “nicotine vapour” substitute “vaping”.
- 5 In section 11 (application for registration and addition of premises etc.), in subsections (2)(b) and (c), (2A)(b) and (c), (3)(b), (4)(b) and (5), for “nicotine vapour”, in each place it occurs, substitute “vaping”.
- 6 In section 12 (certificates of registration), in subsection (2)(b) and (c), for “nicotine vapour” substitute “vaping”.
- 7 In section 13 (duty to notify registrar of changes), in subsection (1)(c), for “nicotine vapour” substitute “vaping”.
- 8 In section 14 (changes to and removal from register), in subsections (2), (3)(b) and (5)(b), for “nicotine vapour” substitute “vaping”.
- 9 In the italic heading before section 15, for “nicotine vapour” substitute “vaping”.

- 10 In section 15 (tobacco and nicotine vapour product banning orders) –
 - (a) in subsections (1), (2), (3), (4)(c) and (6), for “nicotine vapour” substitute “vaping”;
 - (b) in the heading, for “nicotine vapour” substitute “vaping”.
- 11 In section 16 (tobacco and nicotine vapour product banning orders: ancillary orders) –
 - (a) in subsections (1)(a) and (b), (2)(a)(i) and (ii) and (b)(i), (ii) and (iii), (3)(b), (4) and (5), for “nicotine vapour” substitute “vaping”;
 - (b) in the heading, for “nicotine vapour” substitute “vaping”.
- 12 In section 17 (tobacco and nicotine vapour product banning orders etc.: appeals) –
 - (a) in subsections (1) and (3), for “nicotine vapour” substitute “vaping”;
 - (b) in the heading, for “nicotine vapour” substitute “vaping”.
- 13 In section 18 (tobacco and nicotine vapour product banning orders etc.: notification to Scottish Ministers) –
 - (a) in subsection (1), for “nicotine vapour” substitute “vaping”;
 - (b) in the heading, for “nicotine vapour” substitute “vaping”.
- 14 In section 19 (tobacco and nicotine vapour product banning orders: display of notices) –
 - (a) in subsections (1)(a), (3)(a) and (c) and (4), for “nicotine vapour” substitute “vaping”;
 - (b) in the heading, for “nicotine vapour” substitute “vaping”.
- 15 In section 20 (offences relating to the register), in subsections (1), (2), (2A) and (4), for “nicotine vapour”, in each place it occurs, substitute “vaping”.
- 16 In the italic heading above section 21, for “nicotine vapour” substitute “vaping”.
- 17 In section 21 (public inspection of the register), in subsection (1)(b) and (c), for “nicotine vapour” substitute “vaping”.
- 18 In section 35 (interpretation), in subsection (1) –
 - (a) omit the definition of “nicotine vapour product business”;
 - (b) in the definition of “tobacco or nicotine vapour product business”, for “nicotine vapour” substitute “vaping” in both places;
 - (c) at the appropriate places insert –
 - ““medical device” has the meaning given by the Medical Devices Regulations 2002 (S.I. 2002/618),”;
 - ““medicinal product” has the meaning given by the Human Medicines Regulations 2012 (S.I. 2012/1916),”;
 - ““vape” means –
 - (a) a device which –
 - (i) vaporises substances, other than tobacco, for the purpose of inhalation through a

- mouthpiece (whether or not it also vaporises tobacco), and
- (ii) is not a medical device or a medicinal product, or
- (b) an item which is intended to form part of a device within paragraph (a) (including anything intended to be attached to it with a view to imparting flavour),”;
- ““vaping product” means –
- (a) a vape, or
- (b) a vaping substance,”;
- ““vaping product business” means a business involving the sale of vaping products by retail,”;
- ““vaping substance” means a substance, other than tobacco, that is intended to be vaporised by a vape,”;
- ““vaporises” includes aerosolises (and “vaporised” is to be construed accordingly).”

- 19 Omit section 35A (meaning of “nicotine vapour product”).

Transitional provision

- 20 In any legislation passed at a time before this Schedule comes into force, and in any instrument or other document made before that time under or for the purposes of the Tobacco and Primary Medical Services (Scotland) Act 2010, any reference to a nicotine vapour product (within the meaning of section 35A of that Act before its repeal by this Schedule) is to be read, in relation to times after this Schedule comes into force, as a reference to a vaping product (within the meaning of section 35 of that Act).

SCHEDULE 9

Section 65

EXTENSION OF RETAILER REGISTER ETC: SCOTLAND

- 1 The Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3) is amended as follows.
- 2 In the heading of Part 1, after “Tobacco,” insert “herbal smoking.”
- 3 In the heading of Chapter 2 of Part 1, for “and vaping” substitute “, herbal smoking, vaping and nicotine”.
- 4 In section 10 (register of tobacco and nicotine vapour product retailers) –
- (a) for subsection (1) substitute –
- “(1) The Scottish Ministers must keep a register (referred to in this Part as “the Register”) of persons carrying on one or

- more of the following (each of which is a “registrable business”) –
- (a) a tobacco business,
 - (b) a herbal smoking product business,
 - (c) a vaping product business,
 - (d) a nicotine product business.”;
- (b) after subsection (2) insert –
- “(3) References in this Chapter to a kind of registrable business are to a kind mentioned in subsection (1)(a), (b), (c) or (d).”
- (c) in the heading, for “and vaping” substitute “, herbal smoking, vaping and nicotine”.
- 5 (1) Section 11 (application for registration and addition of premises etc.) is amended as follows.
- (2) In subsection (2)(b) and (c), for “tobacco or vaping product” substitute “registrable”.
- (3) For subsection (2A) substitute –
- “(2A) An application under subsection (1) must state, in relation to each of the premises included in it, each kind of registrable business that the applicant proposes to carry on at the premises.”
- (4) In subsection (3)(b) –
- (a) for “tobacco and vaping product banning order” substitute “banning order”;
 - (b) for “tobacco or vaping product business” substitute “registrable business”.
- (5) For subsection (4)(b) substitute –
- “(b) the addresses of the premises at which the applicant proposes to carry on a registrable business, noting, in relation to each of the premises, each kind of registrable business that the applicant proposes to carry on at the premises, and”.
- (6) For subsection (5) substitute –
- “(5) On granting an application under subsection (1)(b), the Scottish Ministers must amend the applicant’s entry in the Register so as to include the address of the further premises at which the applicant proposes to carry on a registrable business, noting, in relation to each of the premises, each kind of registrable business that the applicant proposes to carry on at the premises.”
- 6 In section 12 (certificates of registration), for subsection (2) substitute –
- “(2) A certificate issued under subsection (1) must state each kind of registrable business noted in the applicant’s entry in the Register in relation to the premises.”

- 7 In section 13 (duty to notify certain changes), in subsection (1), for paragraph (c) substitute—
- “(c) the fact that the person is no longer carrying on a herbal smoking product business at an address noted in the person’s entry in the Register,
 - (d) the fact that the person is no longer carrying on a vaping product business at an address noted in the person’s entry in the Register,
 - (e) the fact that the person is no longer carrying on a nicotine product business at an address noted in the person’s entry in the Register.”
- 8 In section 14 (changes to and removal from register)—
- (a) in subsection (2) omit “tobacco and vaping product”;
 - (b) in subsection (3)(b), for “tobacco or vaping product” substitute “registrable”;
 - (c) in subsection (5)(b), for “tobacco or vaping product” substitute “registrable”.
- 9 In the italic heading before section 15 omit “Tobacco and vaping product”.
- 10 In section 15 (tobacco and vaping product banning orders)—
- (a) in subsections (1), (2) and (3), for “tobacco or vaping product” substitute “registrable”;
 - (b) in subsection (4)(c)—
 - (i) after “, tobacco products” insert “, herbal smoking products”;
 - (ii) for “or vaping products” substitute “, vaping products or nicotine products”;
 - (c) in subsection (6) omit “tobacco and vaping product”;
 - (d) in the heading omit “Tobacco and vaping product”.
- 11 In section 16 (tobacco and vaping product banning orders: ancillary orders)—
- (a) in subsections (1)(a) and (b) omit “tobacco and vaping product”;
 - (b) in subsection (2)(a)(i) and (ii) and (b)(i), (ii) and (iii), for “tobacco or vaping product” substitute “registrable”;
 - (c) in subsections (3)(b), (4) and (5) omit “tobacco and vaping product”;
 - (d) in the heading omit “Tobacco and vaping product”.
- 12 In section 17 (tobacco and vaping product banning orders etc.: appeals)—
- (a) in subsections (1) and (3) omit “tobacco and vaping product”;
 - (b) in the heading omit “Tobacco and vaping product”.
- 13 In section 18 (tobacco and vaping product banning orders etc.: notification to Scottish Ministers)—
- (a) in subsection (1) omit “tobacco and vaping product”;
 - (b) in the heading omit “Tobacco and vaping product”.

- 14 In section 19 (tobacco and vaping product banning orders: display of notices) –
- (a) in subsections (1)(a) and (3)(a) and (c) omit “tobacco and vaping product”;
 - (b) in subsection (4) –
 - (i) after “tobacco products” insert “, herbal smoking products”;
 - (ii) for “or vaping products” substitute “, vaping products or nicotine products”;
 - (c) in the heading omit “Tobacco and vaping product”.
- 15 In section 20 (offences relating to the register) –
- (a) in subsection (1), for “tobacco or vaping product” substitute “registrable”;
 - (b) for subsections (2) and (2A) substitute –
 - “(2) A registered person who carries on a registrable business at premises other than those noted in the person’s entry in the Register as premises at which the person carries on that kind of registrable business commits an offence.”;
 - (c) in subsection (4) omit “tobacco and vaping product”;
 - (d) in subsection (6)(a), in the words before sub-paragraph (i) omit “, (2A)”.
- 16 In the italic heading above section 21, for “and vaping” substitute “, herbal smoking, vaping and nicotine”.
- 17 In section 21 (public inspection of register), for subsection (1) substitute –
- “(1) On the basis of information contained in the Register, the Scottish Ministers must make available for public inspection a list of premises, specifying for each of those premises each kind of registrable business carried on or proposed to be carried on there.”
- 18 In section 22 (council access to Register), in subsection (2), for “may by” substitute “may be”.
- 19 In section 35 (interpretation), in subsection (1) –
- (a) omit the definitions of “tobacco or vaping product business” and “tobacco retailing banning order”;
 - (b) at the appropriate places insert –
 - ““banning order” has the meaning given in section 15(6),”;
 - ““herbal smoking product business” means a business involving the sale of herbal smoking products by retail,”;
 - ““nicotine product business” means a business involving the sale of nicotine products by retail,”;
 - ““registrable business” has the meaning given in section 10(1) (and references to a kind of registrable business have the meaning given in section 10(3)),”.

SCHEDULE 10

Section 85(2)

EXTENSION OF RETAILER REGISTER: NORTHERN IRELAND

- 1 The Tobacco Retailers Act (Northern Ireland) 2014 (c. 4 (N.I.)) is amended as follows.
- 2 In the italic heading before section 1, after “tobacco” insert “, vaping product and nicotine product”.
- 3 In section 1 (register of tobacco retailers) –
 - (a) for subsection (1) substitute –

“(1) The registration authority must, in accordance with the provisions of this Act, maintain a register (“the Register”) of persons carrying on one or more of the following (each of which is a “registrable business”) –

 - (a) a tobacco business;
 - (b) a vaping product business;
 - (c) a nicotine product business.”;
 - (b) in subsection (2)(a), for “tobacco” substitute “registrable”;
 - (c) after subsection (6) insert –

“(7) References in this Act to a kind of registrable business are to a kind mentioned in subsection (1)(a), (b) or (c).”;
 - (d) in the heading, after “tobacco” insert “, vaping product and nicotine product”.
- 4 In section 2 (application for registration) –
 - (a) in subsection (1) –
 - (i) omit the “or” at the end of paragraph (a);
 - (ii) at the end of paragraph (b) insert “; or
 - (c) to add further kinds of registrable business in relation to premises the address of which is noted in the person’s entry in the Register.”;
 - (b) in subsection (2) –
 - (i) in paragraphs (b) and (c), for “tobacco” substitute “registrable”;
 - (ii) after paragraph (c) insert –
 - “(ca) where it is an application under subsection (1)(a) or (b), state, in relation to each of the premises to which the application relates, each kind of registrable business that the applicant proposes to carry on at the premises;
 - (cb) where it is an application under subsection (1)(c), state, in relation to each of the premises to which the application relates, each further

- kind of registrable business that the applicant proposes to carry on at the premises;”;
- (c) in subsection (5) –
 - (i) in paragraph (b), for “tobacco” substitute “registrable”;
 - (ii) after paragraph (b) insert –
 - “(ba) in relation to each of those premises, each kind of registrable business that the applicant proposes to carry on at the premises;”;
 - (d) in subsection (6) –
 - (i) in paragraph (a), for “tobacco” substitute “registrable”;
 - (ii) after paragraph (a) insert –
 - “(aa) in relation to each of those premises, each kind of registrable business that the applicant proposes to carry on at the premises;”;
 - (e) after subsection (6) insert –
 - “(6A) On granting an application under subsection (1)(c) the registration authority must enter the following information in the Register –
 - (a) in relation to each of the premises to which the application relates, each further kind of registrable business the applicant proposes to carry on at the premises;
 - (b) any other information which the Department may direct the authority to include.”
- 5 In section 3 (duty to notify certain changes), in subsection (1), after paragraph (b) insert “;
- (c) the fact that the person is no longer carrying on a vaping product business at an address noted in the person’s entry in the Register;
 - (d) the fact that the person is no longer carrying on a nicotine product business at an address noted in the person’s entry in the Register.”
- 6 In section 4 (changes to and removal from the Register), in subsections (3)(b) and (4)(b), for “tobacco” substitute “registrable”.
- 7 In section 10 (offences) –
- (a) in subsection (1), for “tobacco” substitute “registrable”;
 - (b) for subsection (2) substitute –
 - “(2) A registered person who carries on a registrable business at premises other than those noted in the person’s entry in the Register as premises at which the person proposes to carry on that kind of registrable business commits an offence.”

- 8 In section 22 (interpretation), in subsection (1), at the appropriate places insert—

““nicotine product business” means a business involving the sale of nicotine products by retail;”;

““registrable business” has the meaning given in section 1(1) (and references to a kind of registrable business have the meaning given in section 1(7));”;

““vaping product business” means a business involving the sale of vaping products by retail;”.

SCHEDULE 11

Section 85(3)

RETAIL LICENSING SCHEME IN NORTHERN IRELAND

In the Tobacco Retailers Act (Northern Ireland) 2014 (c. 4 (N.I.)), after section 26 insert—

“SCHEDULE 1

Section 4A(6).

RETAIL LICENSING SCHEME

Introduction

- 1 This Schedule is about the provision that may be made by regulations under section 4A(4).

Licensing authority

- 2 The regulations must specify a council (a “licensing authority”) which is to grant licences.

Grant of licence

- 3 (1) The regulations may—
- (a) prohibit a licensing authority from granting a licence unless satisfied as to a matter specified in the regulations;
 - (b) require a licensing authority to have regard, in deciding whether to grant a licence, to a matter specified in the regulations.
- (2) The provision that may be made under sub-paragraph (1)(a) includes—
- (a) provision prohibiting a licensing authority from granting a premises licence in respect of premises within an area of a description specified in the regulations;
 - (b) provision limiting the number of licensed premises within an area of a description specified in the regulations.

- (3) The regulations may make provision requiring a licensing authority not to grant a premises licence unless the premises have been inspected in accordance with the regulations.

Licence fee

- 4 (1) The regulations may authorise a licensing authority to charge a fee in respect of an application for the grant of a licence (which may be set at a level that takes into account the cost of exercising functions under or in connection with sections 4A to 4C or the regulations).
- (2) Any such fee must not exceed an amount specified in, or determined in accordance with, the regulations.
- (3) The regulations may make provision for the payment by a licensing authority of a proportion of any amount received by virtue of sub-paragraph (1) to any other person with functions under or in connection with sections 4A to 4C or the regulations.

Licence conditions

- 5 (1) The regulations may make provision for the grant of a licence subject to conditions.
- (2) Provision of the kind mentioned in sub-paragraph (1) may –
 - (a) enable a licensing authority to attach conditions to a licence;
 - (b) require a licensing authority to attach to a licence a condition specified in the regulations.
- (3) The provision that may be made under sub-paragraph (1) includes provision prohibiting or restricting the sale of relevant products within an area of a description specified in the regulations.

Duration etc of licence

- 6 (1) The regulations may make provision about the duration, renewal, variation, suspension or revocation of licences.
- (2) The provision that may be made under sub-paragraph (1) includes provision conferring power on a court by which a person is convicted of an offence under section 4B to vary, suspend or revoke a licence.

Publication of licence information

- 7 The regulations may make provision for the publication by a licensing authority of information relating to licences granted by the licensing authority.

Reviews and appeals

- 8 (1) The regulations must specify the circumstances in which a person may request a review of a decision taken under the regulations.

- (2) The regulations must confer a right of appeal to a magistrates’ court against a decision taken on a review.
- (3) The regulations may contain provision about time limits for requesting reviews or initiating appeals.

Guidance

- 9 The regulations may require a licensing authority, in carrying out functions under the regulations, to have regard to guidance published by the Department.

Sub-delegation

- 10 The regulations may confer discretions.

Interpretation

- 11 In this Schedule –
 - “grant” includes vary or renew;
 - “licence” means a personal licence or a premises licence;
 - “licensing authority” has the meaning given by paragraph 2;
 - “personal licence” has the meaning given by section 4A(7);
 - “premises licence” has the meaning given by section 4A(7);
 - “relevant products” has the meaning given by section 4A(7).”

SCHEDULE 12

Section 85(4)

FINANCIAL PENALTIES FOR BREACH OF RETAIL LICENCE CONDITIONS IN NORTHERN IRELAND

After Schedule 1 to the Tobacco Retailers Act (Northern Ireland) 2014 (c. 4 (N.I.)) (inserted by Schedule 11 to this Act) insert –

“SCHEDULE 2

Section 4C(4)

FINANCIAL PENALTIES FOR BREACH OF RETAIL LICENCE CONDITIONS

Introduction

- 1 This Schedule makes further provision in connection with the imposition of financial penalties under section 4C.

Notices of intent

- 2 (1) A council must, before imposing a financial penalty on a person, give the person written notice (a “notice of intent”) of the proposed financial penalty.
- (2) A notice of intent must specify –

- (a) the amount of the proposed financial penalty,
 - (b) the reasons for proposing to impose the penalty,
 - (c) information about the right to make representations under paragraph 3, and
 - (d) the date by which any representations must be made.
- (3) The date specified under sub-paragraph (2)(d) must be a date more than 28 days after the day on which the notice of intent is given to the person.
- (4) The council may at any time withdraw the notice of intent, or amend it to reduce the amount of the proposed financial penalty, by giving written notice to the person.

Right to make representations

- 3 (1) A person who is given a notice of intent under paragraph 2 may make written representations to the council that issued the notice about the proposal to impose a financial penalty.
- (2) Any representations must be made within the period (“the period for representations”) ending with the date specified under paragraph 2(2)(d).

Final notices

- 4 (1) After the end of the period for representations the council must decide whether to impose a financial penalty on the person.
- (2) If the council decides to impose a financial penalty on the person, the council must give the person written notice (a “final notice”) imposing the penalty.
- (3) A final notice must specify –
- (a) the amount of the financial penalty,
 - (b) the reasons for imposing the penalty,
 - (c) the date by which the penalty must be paid,
 - (d) information about the right of appeal under paragraph 5, and
 - (e) the consequence of failure to comply with the final notice.
- (4) The date specified under sub-paragraph (3)(c) must be a date more than 28 days after the day on which the final notice is given to the person.
- (5) The council may at any time withdraw a final notice, or amend it to reduce the amount of the financial penalty, by giving written notice to the person.
- (6) A final notice may not be given more than 28 days after the last day of the period for representations.

Appeals

- 5 (1) A person on whom a financial penalty is imposed under section 4C may appeal to the magistrates’ court against –
- (a) the decision to impose the penalty, or

- (b) the amount of the penalty.
- (2) An appeal under this paragraph must be brought before the end of the period of 28 days beginning with the day after the day on which the final notice is given to the person in accordance with paragraph 4.
- (3) On an appeal under this paragraph the magistrates' court may confirm, reduce or cancel the penalty.
- (4) If a person appeals under this paragraph, the final notice is suspended until the appeal is finally determined, withdrawn or abandoned.

Recovery

- 6 (1) This paragraph applies if a person fails to pay the whole or part of a financial penalty before the end of the period within which the person is required to pay the penalty.
- (2) The council that imposed the financial penalty may recover the unpaid amount of the penalty as if it were payable under an order of a county court.

Use of proceeds

- 7 (1) A council may use any sums it receives in pursuance of final notices given under paragraph 4 (its "financial penalty receipts") only for the purposes of its functions under this Act.
- (2) A council must supply the Department with such information relating to its use of its financial penalty receipts as the Department may require.
- (3) Regulations may make provision for what a council is to do with its financial penalty receipts—
 - (a) pending their being used for the purposes mentioned in sub-paragraph (1);
 - (b) if they are not used for those purposes within a period of time specified in the regulations and beginning with their receipt.
- (4) The provision that may be made under sub-paragraph (3)(b) includes (in particular) provision for the payment of sums to a person (including the Department) other than the council.
- (5) Regulations may make provision for accounting arrangements in respect of a council's financial penalty receipts.
- (6) Before making regulations under this paragraph, the Department must consult—
 - (a) councils, and
 - (b) such other persons as the Department considers appropriate."

SCHEDULE 13

Section 1(4)

LICENSING OF RETAIL SALES OF TOBACCO PRODUCTS ETC: CONSEQUENTIAL AMENDMENTS

Tobacco Retailers Act (Northern Ireland) 2014 (c. 4 (N.I.))

- 1 The Tobacco Retailers Act (Northern Ireland) 2014 is amended as follows.
- 2 Omit sections 1 to 4 (and the italic heading before section 1).
- 3 In section 5, in subsection (14) –
 - (a) after paragraph (d) insert –
 - “(da) an offence committed under section 4B on or in respect of any premises (which are accordingly “the premises in relation to which the offence is committed”).”;
 - (b) omit paragraph (f).
- 4 In section 6, in subsection (8) (as inserted by Schedule 14 to this Act) –
 - (a) after paragraph (d) insert –
 - “(da) an offence committed under section 4B on or in respect of any premises (which are accordingly “the premises in relation to which the offence is committed”).”;
 - (b) omit paragraph (e).
- 5 Omit the italic heading before section 10.
- 6 (1) Section 10 is amended as follows.
 - (2) Omit subsections (1), (2) and (3).
 - (3) In subsection (9), omit paragraphs (a) and (b).
 - (4) In the heading, after “Offences” insert “in connection with restricted premises orders and restricted sales orders”.
- 7 In the italic heading before section 11, for “Enforcement” substitute “General enforcement”.
- 8 In section 11, in subsection (1)(a)(i), after “section” insert “4B or”.
- 9 In section 12, in subsection (1)(a) –
 - (a) after “section” insert “4B or”;
 - (b) omit “(1), (2), (3),”.
- 10 (1) Section 16 is amended as follows.
 - (2) In subsection (1) –
 - (a) omit “, the registration authority” in each place it occurs;
 - (b) before paragraph (a) insert –
 - “(za) financial penalties imposed under section 4C by that council;”.

- (3) In subsection (2), omit “or the registration authority” in each place it occurs.
- 11 Omit section 21.
- 12 In section 22, in subsection (1) omit the following definitions –
- (a) “nicotine product business”;
 - (b) “the Register”;
 - (c) “registered”, “unregistered”, and “the registration authority”;
 - (d) “registrable business”;
 - (e) “tobacco business”;
 - (f) “vaping product business”.
- 13 In section 23, omit subsections (3) and (4).
- 14 In section 24, in subsection (2), for “2(7)” substitute “4A”.

This Act

- 15 (1) This Act is amended as follows.
- (2) Omit section 84 and Schedule 10.
 - (3) In Schedule 14, omit paragraphs 14 and 16.
 - (4) In Schedule 15, omit paragraph 9.

SCHEDULE 14

Section 87

PART 3: CONSEQUENTIAL AND OTHER AMENDMENTS COMMENCING AFTER 6 MONTHS

Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26))

- 1 The Health and Personal Social Services (Northern Ireland) Order 1978 is amended as follows.
- 2 In the heading of Part 2 of that Order omit “to persons apparently under 18”.
- 3 Before Article 3 insert a new italic heading “Tobacco products etc”.
- 4 In Article 3(1), after “tobacco” insert “product, herbal smoking product”.
- 5 Omit Article 4.
- 6 In Article 5(1) and (2), after “tobacco” insert “products, herbal smoking products”.
- 7 In Article 6–
- (a) for “this Part” substitute “Article 3 or 5”;
 - (b) in paragraphs (a) and (b), after “tobacco” insert “products, herbal smoking products”;

- (c) in the words after paragraph (b), after “tobacco” insert “products or herbal smoking products”.

Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (S.I. 1991/2872 (N.I. 25))

- 8 The Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 is amended as follows.
- 9 Omit Article 4.
- 10 Omit Article 4A.
- 11 (1) Article 5 is amended as follows.
 - (2) In paragraph (1) –
 - (a) for “tobacco is” substitute “tobacco products are”;
 - (b) after “the tobacco” insert “products”;
 - (c) after “sale of tobacco” insert “products”.
 - (3) Omit paragraph (2).
 - (4) In paragraphs (3) and (4) omit “or (2)”.
 - (5) In paragraph (6), for the definition of “tobacco” substitute –
 - ““tobacco product” has the meaning given by Article 7 of the Health and Personal Social Services (Northern Ireland) Order 1978.”
 - (6) In the heading omit “and on vending machines”.
- 12 Omit Article 6.
- 13 In Article 7 omit paragraphs (2) and (3).

Tobacco Retailers Act (Northern Ireland) 2014 (c. 4 (N.I.))

- 14 The Tobacco Retailers Act (Northern Ireland) 2014 is amended as follows.
- 15 In section 2, in subsection (3)(b), for “tobacco” substitute “a tobacco product or herbal smoking product”.
- 16 In section 4, in subsection (2)(b), for “tobacco” substitute “a tobacco product or herbal smoking product”.
- 17 In the italic heading before section 5, for “or nicotine” substitute “, vape or nicotine”.
- 18 (1) Section 5 is amended as follows.
 - (2) In subsection (1)(a) and (b), for “or nicotine” substitute “, vape or nicotine”.
 - (3) In subsection (4), for “of any tobacco, cigarette papers or nicotine products to any person” substitute “to any person of any one or more of the following –
 - (a) tobacco products;
 - (b) herbal smoking products;

- (c) cigarette papers;
 - (d) vaping products;
 - (e) nicotine products.”
- (4) In subsection (5) omit “of tobacco, cigarette papers or nicotine products”.
- (5) In subsection (8)(b)(i) and (ii), for “or nicotine” substitute “, vape or nicotine”.
- (6) In subsection (13)(a), for “or nicotine” substitute “, vape or nicotine”.
- (7) In subsection (14) –
- (a) for “and section 6 “tobacco or nicotine offence”” substitute ““tobacco, vape or nicotine offence””;
 - (b) in paragraph (a), after “Article 3” insert “or 4H”;
 - (c) after paragraph (a) insert –
 - “(aa) an offence committed under Article 4B or 4J of the Health and Personal Social Services (Northern Ireland) Order 1978 in respect of a machine kept on any premises (which are accordingly “the premises in relation to which the offence is committed”);”;
 - (d) omit paragraph (b);
 - (e) in paragraph (c), for “tobacco” substitute “a tobacco product or herbal smoking product”;
 - (f) at the end of paragraph (d) insert “or”;
 - (g) omit paragraphs (e), (g) and (h).
- 19 (1) Section 6 is amended as follows.
- (2) In subsection (1)(a) and (b), for “or nicotine” substitute “, vape or nicotine”.
- (3) In subsection (4) –
- (a) in paragraphs (a) and (b), for “tobacco, cigarette papers or nicotine products” substitute “tobacco products, herbal smoking products, cigarette papers, vaping products or nicotine products”;
 - (b) in paragraphs (c) and (d), for “tobacco or nicotine products” substitute “tobacco products, herbal smoking products, cigarette papers, vaping products or nicotine products”.
- (4) In subsection (6)(a) and (b), for “or nicotine” substitute “, vape or nicotine”.
- (5) In subsection (7), for “or nicotine” substitute “, vape or nicotine”.
- (6) For subsection (8) substitute –
- “(8) In this section “tobacco, vape or nicotine offence” means –
 - (a) an offence committed under Article 3 or 4H of the Health and Personal Social Services (Northern Ireland) Order 1978 on any premises (which are accordingly “the premises in relation to which the offence is committed”);
 - (b) an offence committed under Article 4B or 4J of the Health and Personal Social Services (Northern Ireland) Order 1978

- in respect of a machine kept on any premises (which are accordingly “the premises in relation to which the offence is committed”);
- (c) an offence relating to a tobacco product or herbal smoking product committed under section 170 or 170B of the Customs and Excise Management Act 1979 on any premises in Northern Ireland (which are accordingly “the premises in relation to which the offence is committed”);
 - (d) an offence committed under section 8F, 8G or 8H of the Tobacco Products Duty Act 1979 on any premises in Northern Ireland (which are accordingly “the premises in relation to which the offence is committed”); or
 - (e) an offence committed under section 10 in respect of any premises (which are accordingly “the premises in relation to which the offence is committed”).”
- 20 In section 8, in subsection (4), for “tobacco, cigarette papers or nicotine products” substitute “tobacco products, herbal smoking products, cigarette papers, vaping products or nicotine products”.
- 21 (1) Section 9 (restricted premises orders: no tobacco in retail area) is amended as follows.
- (2) In the heading, for “or nicotine products” substitute “, vaping products or nicotine products”.
 - (3) In subsection (2), for “tobacco, cigarette papers or nicotine products” substitute “tobacco products, herbal smoking products, cigarette papers, vaping products or nicotine products”.
 - (4) In subsection (3), for “tobacco, cigarette papers and nicotine products” substitute “tobacco products, herbal smoking products, cigarette papers, vaping products and nicotine products”.
- 22 In section 10, in subsection (4)(a), for “tobacco, cigarette papers or nicotine products” substitute “tobacco products, herbal smoking products, cigarette papers, vaping products or nicotine products”.
- 23 In section 11, in subsection (1)(a) –
- (a) in sub-paragraph (ii), for “Article 3, 4 or 4A” substitute “any provision made by or under Part 2”;
 - (b) in sub-paragraph (iii) omit “4, 4A or”.
 - (c) omit sub-paragraphs (iv) and (v).
- 24 In section 12, in subsection (1) –
- (a) in paragraph (b), for “Article 3, 4 or 4A” substitute “any provision made by or under Part 2”;
 - (b) in paragraph (c) omit “4, 4A or”;
 - (c) omit paragraphs (d) and (e).
- 25 (1) Section 16 is amended as follows.
- (2) In subsection (1)(a) and (b), for “or nicotine” substitute “, vape or nicotine”.

(3) For subsection (3) substitute –

“(3) In this section “tobacco, vape or nicotine offence” means an offence falling within section 5(14) or 6(8).”

26 In section 22, in subsection (1) –

(a) omit the definition of “cigarettes”;

(b) for the definition of “nicotine product” substitute –

““nicotine product” has the meaning given by Article 7 of the Health and Personal Social Services (Northern Ireland) Order 1978;”;

(c) for the definition of “tobacco” substitute –

““tobacco product” has the meaning given by Article 7 of the Health and Personal Social Services (Northern Ireland) Order 1978;”;

(d) in the definition of “tobacco business”, for “tobacco” substitute “tobacco products, herbal smoking products”;

(e) at the appropriate places insert –

““cigarette papers” has the meaning given by Article 7 of the Health and Personal Social Services (Northern Ireland) Order 1978;”;

““herbal smoking product” has the meaning given by Article 7 of the Health and Personal Social Services (Northern Ireland) Order 1978;”;

““vaping product” has the meaning given by Article 7 of the Health and Personal Social Services (Northern Ireland) Order 1978;”.

Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26 (N.I.))

27 The Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 is amended as follows.

28 In the heading of Part 1, for “Sale or use” substitute “Use”.

29 Omit sections 1 to 4.

30 Omit sections 6 and 7.

Health Act 2009

31 In the Health Act 2009 omit section 23.

Digital Markets, Competition and Consumers Act 2024

32 (1) The Digital Markets, Competition and Consumers Act 2024 is amended as follows.

- (2) In section 151 (consumer protection law: enforcers), in subsection (1), after paragraph (h) insert—
- “(ha) every district council in Northern Ireland;”.
- (3) In Schedule 15 (consumer protection enactments), in Part 1, in the Table—
- (a) in the entry relating to Article 5 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (S.I. 1991/2872 (N.I. 25)), in column 2, in paragraph (1), before sub-paragraph (a) insert—
- “(aa) the Department for the Economy in Northern Ireland;”;
- (b) in the entry relating to Articles 3 and 4 of the Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26))—
- (i) in column 1, for “Articles 3 and 4” substitute “Part 2”;
- (ii) in column 2, in paragraph (1), before sub-paragraph (a) insert—
- “(aa) the Department for the Economy in Northern Ireland;”.

SCHEDULE 15

Section 87

PART 3: CONSEQUENTIAL AMENDMENTS COMMENCING ON 1 JANUARY 2027

Health and Personal Social Services (Northern Ireland) Order 1978 (S.I. 1978/1907 (N.I. 26))

- 1 In the Health and Personal Social Services (Northern Ireland) Order 1978 omit Articles 5 and 6.

Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (S.I. 1991/2872 (N.I. 25))

- 2 The Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 is revoked.

Police (Northern Ireland) Act 2003

- 3 (1) Schedule 2A to the Police (Northern Ireland) Act 2003 is amended as follows.
- (2) Omit paragraph 7 and the italic heading before it.
- (3) In paragraph 8—
- (a) omit sub-paragraph (2);
- (b) in sub-paragraphs (3), (4) and (5) omit “or (2)”.

Smoking (Northern Ireland) Order 2006 (S.I. 2006/2957 (N.I. 20))

- 4 The Smoking (Northern Ireland) Order 2006 is amended as follows.
- 5 In Article 1, in paragraph (3)(h), for “14 to” substitute “15 and”.
- 6 Omit Article 14 (power to change age of sale for tobacco, etc).
- 7 In Article 15, in paragraph (3)(a) omit “or 14”.

Tobacco Retailers Act (Northern Ireland) 2014 (c. 4 (N.I.))

- 8 The Tobacco Retailers Act (Northern Ireland) 2014 is amended as follows.
- 9 In section 1, in subsection (4) omit paragraph (c).
- 10 In section 11, in subsection (1)(a) omit sub-paragraph (iii).
- 11 In section 12, in subsection (1) omit paragraph (c).
- 12 Omit section 18.

Digital Markets, Competition and Consumers Act 2024

- 13 In Schedule 15 to the Digital Markets, Competition and Consumers Act 2024, in Part 1, in the Table omit the entry relating to Article 5 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (S.I. 1991/2872 (N.I. 25)).

SCHEDULE 16

Section 127

ADVERTISING ETC: AUDIOVISUAL AND RADIO BROADCASTING

- 1 The Communications Act 2003 is amended as follows.
- 2 (1) Section 319 (OFCOM’s standards code for television and radio) is amended as follows.
- (2) In subsection (9), for “subsections (10) to (12)” substitute “subsection (12)”.
- (3) Omit subsections (10) and (11).
- 3 In section 368F (on-demand programme services: prohibited advertising), in subsection (1), for paragraph (aa) substitute –
- “(aa) herbal smoking products;
(ab) cigarette papers;
(ac) vaping products;
(ad) nicotine products;”.
- 4 (1) Section 368G (on-demand programme services: prohibited sponsorship) is amended as follows.
- (2) In subsection (1)(a) and (b), after “other tobacco products” insert “, herbal smoking products or cigarette papers”.

- (3) In subsection (1A)(a) and (b), for “electronic cigarettes or electronic cigarette refill containers” substitute “vaping products or nicotine products”.
- 5 In section 368H (on-demand programme services: prohibited product placement), in subsection (4), for paragraphs (ba) and (bb) substitute –
- “(ba) it is of herbal smoking products,
 - (bb) it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of herbal smoking products,
 - (bc) it is of cigarette papers,
 - (bd) it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarette papers,
 - (be) it is of vaping products or nicotine products,
 - (bf) it is by or on behalf of an undertaking whose principal activity is the manufacture or sale of vaping products or nicotine products, or”.
- 6 In section 368R (interpretation of Part 4A), in subsection (1) –
- (a) omit the definitions of “electronic cigarette” and “electronic cigarette refill container”;
 - (b) at the appropriate places insert –
 - ““cigarette papers” has the meaning given by section 112 of the Tobacco and Vapes Act 2024;”;
 - ““herbal smoking product” has the meaning given by section 112 of the Tobacco and Vapes Act 2024;”;
 - ““nicotine product” has the meaning given by section 112 of the Tobacco and Vapes Act 2024;”;
 - (c) for the definition of “tobacco product” substitute –
 - ““tobacco product” has the meaning given by section 112 of the Tobacco and Vapes Act 2024;
 - “vaping product” has the meaning given by section 112 of the Tobacco and Vapes Act 2024.”
- 7 (1) Section 368Z (video-sharing platform service: prohibited audiovisual commercial communications) is amended as follows.
- (2) In subsection (2), for paragraph (b) substitute –
- “(b) herbal smoking products;
 - (ba) cigarette papers;
 - (bb) vaping products;
 - (bc) nicotine products;”.
- (3) In subsection (6) –
- (a) omit the definitions of “electronic cigarette” and “electronic cigarette refill container”;

- (b) at the appropriate places insert—
- ““cigarette papers” has the meaning given by section 112 of the Tobacco and Vapes Act 2024;”;
 - ““herbal smoking product” has the meaning given by section 112 of the Tobacco and Vapes Act 2024;”;
 - ““nicotine product” has the meaning given by section 112 of the Tobacco and Vapes Act 2024;”;
- (c) for the definition of “tobacco product” substitute—
- ““tobacco product” has the meaning given by section 112 of the Tobacco and Vapes Act 2024;
 - “vaping product” has the meaning given by section 112 of the Tobacco and Vapes Act 2024.”
- 8 (1) Schedule 11A (restrictions on product placement) is amended as follows.
- (2) In paragraph 4, for paragraphs (ba) and (bb) substitute—
- (ba) of herbal smoking products;
 - (bb) by or on behalf of an undertaking whose principal activity is the manufacture or sale of herbal smoking products;
 - (bc) of cigarette papers;
 - (bd) by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarette papers;
 - (be) of vaping products or nicotine products;
 - (bf) by or on behalf of an undertaking whose principal activity is the manufacture or sale of vaping products or nicotine products; or”.
- (3) In paragraph 9—
- (a) omit the definitions of “electronic cigarette” and “electronic cigarette refill container”;
 - (b) for the definition of “tobacco product” substitute—
 - ““tobacco product” has the meaning given by section 112 of the Tobacco and Vapes Act 2024;”;
 - (c) at the appropriate places insert—
 - ““cigarette papers” has the meaning given by section 112 of the Tobacco and Vapes Act 2024;”;
 - ““herbal smoking product” has the meaning given by section 112 of the Tobacco and Vapes Act 2024;”;
 - ““nicotine product” has the meaning given by section 112 of the Tobacco and Vapes Act 2024;”;
 - ““vaping product” has the meaning given by section 112 of the Tobacco and Vapes Act 2024.”

SCHEDULE 17

Section 141

AMENDMENTS CONSEQUENTIAL ON SECTIONS 136 TO 140

- 1 The Health Act 2006 is amended as follows.
- 2 (1) Section 2 is amended as follows.
 - (2) For subsection (2) substitute –
 - “(2) Premises in England are smoke-free if they are workplaces; they are smoke-free all the time.”
 - (3) In subsection (3), for “used as a place of work mentioned in subsection (2)” substitute “a workplace”.
 - (4) For subsections (7) and (8) substitute –
 - “(7) In this Part “workplace” means –
 - (a) a place of work used by more than one person (even if the persons who work there do so at different times, or only intermittently), or
 - (b) a place of work where members of the public might attend for the purpose of seeking or receiving goods or services from the person or persons working there (even if members of the public are not always present).”
- 3 (1) Section 9 (fixed penalties) is amended as follows.
 - (2) In subsection (1), for “or 7(2)” substitute “7(2), 8C(1), 8E(5), 8H(1) or 8J(6)”.
 - (3) In subsection (1A), after “section 8(4)” insert “8D(3), 8I(3)”.
- 4 In section 10 (enforcement), in subsections (1), (3) and (5), for “Chapter”, in each place it occurs, substitute “Part”.
- 5 In section 11 (obstruction etc of officers), in subsections (1) and (2), for “Chapter” substitute “Part”.
- 6 (1) Section 12 (interpretation) is amended as follows.
 - (2) In subsection (1), for “Chapter” substitute “Part”.
 - (3) At the appropriate places insert –
 - ““heated tobacco device” means a device that heats tobacco to generate a vapour or an aerosol for the purpose of inhalation through a mouthpiece (whether or not it can also heat other matter to produce a vapour or aerosol);”;
 - ““heated tobacco-free place”: see section 8G;”;
 - ““heated tobacco-free vehicle”: see section 8G;”;
 - ““open to the public”: premises and places are open to the public if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not;”;
 - ““performance” includes –

- (a) the performance of a play or a performance given in connection with the making of a film or television programme, and
 - (b) a rehearsal;”;
- ““relevant vape” has the meaning given by section 8C(6);”;
- ““vape” has the meaning given by section 48 of the Tobacco and Vapes Act 2024;”;
- ““vape-free place”: see section 8B;”;
- ““vape-free vehicle”: see section 8B;”;
- ““vaporises” has the meaning given by section 48 of the Tobacco and Vapes Act 2024;
- ““work” includes voluntary work;”;
- ““workplace” has the meaning given by section 2(7).”.
- (4) In subsection (3), for “Chapter” substitute “Part”.
- 7 In Schedule 2 (powers of entry etc), in paragraphs, 2(a), 3, 4 and 6(1)(a) omit “Chapter 1 of”.

SCHEDULE 18

Section 146

AMENDMENTS CONSEQUENTIAL ON SECTIONS 142 TO 145

- 1 The Smoking, Health and Social Care (Scotland) Act 2005 (asp 13) is amended as follows.
- 2 (1) Section 5 is amended as follows.
- (2) In the heading, for “sections 1 to 3 and 4A to 4C” substitute “Chapters 1 to 3”.
- (3) In subsection (1), for “section 1, 2, 3, 4A, 4B or 4C(5)” substitute “any provision of Chapter 1, 2 or 3 creating an offence”.
- 3 In section 6, in subsection (2), omit “under section 1, 3, 4A, 4B or 4C(5)”.
- 4 (1) Section 7 is amended as follows.
- (2) For subsection (1) substitute—
- “(1) An authorised officer of the appropriate council may—
- (a) enter and search any no-smoking premises in order to ascertain whether an offence under section 1, 2 or 3 has been or is being committed there;
 - (b) enter and search any vape-free premises in order to ascertain whether an offence under Chapter 2 has been or is being committed there;
 - (c) enter and search any heated tobacco-free premises in order to ascertain whether an offence under Chapter 3 has been or is being committed there.”

- (3) Omit subsection (1A).
- (4) In subsection (3)(a)(i), for “section 1, 2, 3, 4A, 4B or 4C(5)” substitute “Chapter 1, 2 or 3”.
- (5) In subsection (5), for the definition of “the appropriate council” substitute –
 ““the appropriate council” means the council in the area in which those premises are.”
- 5 After section 8 insert –
- “8A Interpretation of Part**
- In this Part –
- “heated tobacco device” means a device that heats tobacco to generate a vapour or an aerosol for the purpose of inhalation through a mouthpiece (whether or not it can also heat other matter to produce a vapour or aerosol);
- “heated tobacco-free premises” has the meaning given by section 4L(1);
- “no-smoking premises” has the meaning given by section 4(2);
- “performance” includes –
- (a) the performance of a play or a performance given in connection with the making of a film or television programme, and
- (b) a rehearsal;
- “relevant vape” has the meaning given by section 4E(6);
- “smoke” has the meaning given by section 4(1);
- “vape” has the meaning given by section 35 of the Tobacco and Primary Medical Services (Scotland) Act 2010;
- “vape-free premises” has the meaning given by section 4H(1);
- “vaporises” has the meaning given by section 35 of the Tobacco and Primary Medical Services (Scotland) Act 2010.”
- 6 In section 40, in subsection (3)(a) omit “or 4D(2)(a) or (4)(a)”
- 7 (1) Schedule 1 is amended as follows.
- (2) In the heading, for “sections 1, 2, 3, 4A, 4B and 4C(5)” substitute “Part 1”.
- (3) In paragraph 1 –
- (a) in sub-paragraph (1A), after paragraph (c) insert –
- “(d) an offence under Chapter 2 in vape-free premises within the area of the council,
- (e) an offence under Chapter 3 in vape-free premises within the area of the council.”;
- (b) in sub-paragraphs (2) and (3), for “section 1, 2, 3, 4A, 4B or 4C(5)” substitute “Chapters 1, 2 or 3”.

- 8 In paragraph 2, for “section 1, 2, 3, 4A, 4B or 4C(5)” substitute “Chapter 1, 2 or 3”.
- 9 In paragraph 4, in sub-paragraph (1), for “section 1, 2, 3, 4A, 4B or 4C(5)” substitute “Chapter 1, 2 or 3”.

SCHEDULE 19

Section 152

AMENDMENTS CONSEQUENTIAL ON SECTIONS 147 TO 151

- 1 The Public Health (Wales) Act 2017 is amended as follows.
- 2 In the Welsh language text, after section 17 insert –

“Dehongli

17A Dehongli’r Bennod hon

- (1) Yn y Bennod hon –

ystyr “cartref gofal i oedolion” (“*adult care home*”) yw mangre lle y darperir gwasanaeth cartref gofal o fewn yr ystyr a roddir gan baragraff 1 o Atodlen 1 i Ddeddf Rheoleiddio ac Arolygu Gofal Cymdeithasol (Cymru) 2016 (dccc 2) i bersonau sy’n 18 oed neu’n hŷn;

mae “cerbyd” (“*vehicle*”) yn cynnwys trê, tram, cwch neu long, hofrenfad ac awyren;

mae “cyfarpar maes chwarae” (“*playground equipment*”) yn cynnwys (er enghraifft) siglen, llithren, pwll tywod, neu ramp, ond nid yw’n cynnwys cyfarpar â modur (megis cyfarpar sy’n rhedeg ar fodur trydanol);

mae i “Cymru” yr ystyr a roddir i “Wales” gan adran 158(1) o Ddeddf Llywodraeth Cymru 2006 (p.32);

mae i “disgybl cofrestredig” yr ystyr a roddir i “registered pupil” gan adran 434(5) o Ddeddf Addysg 1996 (p.56);

ystyr “gofal plant” (“*childcare*”) yw (yn ddarostyngedig i is-adran (2)) unrhyw ffurf ar ofal ar gyfer plentyn, ac eithrio gofal a ddarperir ar gyfer plentyn gan riant, perthynas neu riant maeth i’r plentyn, ac mae’n cynnwys –

(a) addysg ar gyfer plentyn, a

(b) unrhyw weithgaredd arall o dan oruchwyliaeth ar gyfer plentyn;

ystyr “hosbis i oedolion” (“*adult hospice*”) yw mangre a ddefnyddir yn gyfan gwbl neu’n bennaf ar gyfer darparu gofal lliniarol i bersonau sy’n 18 oed neu’n hŷn, sy’n dioddef o glefyd sy’n gwaethygu ac sydd yn ei gyfnodau olaf, gan neu ar ran sefydliad â’i brif swyddogaeth yw darparu gofal o’r fath;

mae “mangre” (“*premises*”) yn cynnwys—

- (a) unrhyw fan;
- (b) strwythur symudol ac eithrio cerbyd;
- (c) stondin;
- (d) pabell;
- (e) gosodiad alltraeth o fewn yr ystyr a roddir i “offshore installation” yn Neddf Gweithiau Mwynau (Gosodiadau Alltraeth) 1971 (p.61) (gweler adran 12 o’r Ddeddf honno);

ystyr “perthynas” (“*relative*”), mewn perthynas â phlentyn, yw llys-riant, mam-gu/nain, tad-cu/taid, modryb, ewythr, brawd neu chwaer (gan gynnwys unrhyw berson sydd yn y berthynas honno yn rhinwedd priodas neu bartneriaeth sifil neu berthynas deuluol barhaus);

ystyr “plentyn” (“*child*”) yw person o dan 18 oed;

mae “rhiant” (“*parent*”) yn cynnwys unrhyw berson a chanddo gyfrifoldeb rhiant (o fewn yr ystyr a roddir i “parental responsibility” yn adran 3 o Ddeddf Plant 1989 (p.41)) dros blentyn;

mae i “ysbyty” yr ystyr a roddir i “hospital” gan adran 206 o Ddeddf y Gwasanaeth Iechyd Gwladol (Cymru) 2006 (p.42);

mae i “ysgol” yr ystyr a roddir i “school” gan adran 4 o Ddeddf Addysg 1996 (p.56);

mae “ysmygu” (“*smoking*” a “*smokes*”) i gael ei ddarllen yn unol ag adran 4.

- (2) Nid yw cyfeiriadau yn y Bennod hon at “gofal plant” yn cynnwys—
 - (a) addysg (neu unrhyw weithgaredd arall o dan oruchwyliaeth) a ddarperir gan ysgol yn ystod oriau ysgol ar gyfer disgybl cofrestredig, na
 - (b) unrhyw ffurf ar ofal iechyd ar gyfer plentyn.
- (3) At ddibenion is-adran (1) mae person yn rhiant maeth mewn perthynas â phlentyn os yw’r person-
 - (a) yn rhiant maeth awdurdod lleol (o fewn yr ystyr a roddir gan adran 197 o Ddeddf Gwasanaethau Cymdeithasol a Llesiant (Cymru) 2014 (dccc 4)), neu
 - (b) yn maethu’r plentyn yn breifat.
- (4) Mae cyfeiriadau yn y Bennod hon at “annedd” yn cynnwys tir a fwynheir gyda mangre pan fo’r fangre ei hun yn annedd, oni bai bod y tir yn dir amaethyddol (o fewn yr ystyr a roddir gan adran 246 o Ddeddf Rhentu Cartrefi (Cymru) 2016 (dccc 1)) sy’n fwy na 0.809 hectar.
- (5) Mae cyfeiriadau yn y Bennod hon, sut bynnag y’u mynegir, at fangreoedd neu gerbydau sy’n ddi-fwg (neu nad ydynt yn ddi-fwg) (neu sy’n cael eu trin fel pe baent yn ddi-fwg) yn gyfeiriadau at y

mangreoedd hynny neu'r cerbydau hynny i'r graddau y maent yn ddi-fwg (neu nad ydynt yn ddi-fwg) (neu'n cael eu trin fel pe baent yn ddi-fwg) o dan y Bennod hon neu yn rhinwedd y Bennod hon.

- (6) Gall mangreoedd fod yn ddi-fwg yn rhinwedd mwy nag un adran yn y Bennod hon.
- (7) Caiff rheoliadau bennu at ddiben y Bennod hon ystyr “caeedig”, “sylweddol gaeedig” ac “nad yw'n gaeedig nac yn sylweddol gaeedig.”

3 In the English language text, after section 17 insert –

“Interpretation

17A Interpretation of this Chapter

(1) In this Chapter –

“adult care home” (“*cartref gofal i oedolion*”) means premises at which a care home service within the meaning given by paragraph 1 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) is provided to persons aged 18 or over;

“adult hospice” (“*hosbis i oedolion*”) means premises wholly or mainly used for the provision of palliative care to persons aged 18 or over, who are suffering from a progressive disease in its final stages, by or behalf of an establishment the primary function of which is the provision of such care;

“child” (“*plentyn*”) means a person aged under 18;

“childcare” (“*gofal plant*”) means (subject to subsection (2)) any form of care for a child, other than care provided for a child by a parent, relative or foster parent of the child, and includes –

- (a) education for a child, and
- (b) any other supervised activity for a child;

“hospital” (“*ysbyty*”) has the meaning given by section 206 of the National Health Service (Wales) Act 2006 (c.42);

“parent” (“*rhiant*”) includes any person who has parental responsibility (within the meaning of section 3 of the Children Act 1989 (c.41)) for a child;

“playground equipment” (“*cyfarpar maes chwarae*”) includes (for example) a swing, slide, sand-pit, or ramp, but does not include powered equipment (such as equipment powered by electric motor);

“premises” (“*mangre*”) includes –

- (a) any place;
- (b) a moveable structure other than a vehicle;
- (c) a stall;

- (d) a tent;
 - (e) an offshore installation within the meaning given in the Mineral Workings (Offshore Installations) Act 1971 (c.61) (see section 12 of that Act);
- “registered pupil” (“ *disgybl cofrestredig* ”) has the meaning given by section 434(5) of the Education Act 1996 (c.56);
- “relative” (“ *perthynas* ”), in relation to a child, means a step-parent, grandparent, aunt, uncle, brother or sister (including any person who is in that relationship by virtue of a marriage or civil partnership or an enduring family relationship);
- “school” (“ *ysgol* ”) has the meaning given by section 4 of the Education Act 1996 (c.56);
- “smoking” and “smokes” (“ *ysmygu* ”) are to be read in accordance with section 4;
- “vehicle” (“ *cerbyd* ”) includes a train, tram, vessel, hovercraft and aircraft;
- “Wales” (“ *Cymru* ”) has the meaning given by section 158(1) of the Government of Wales Act 2006 (c.32).
- (2) References in this Chapter to “childcare” do not include –
 - (a) education (or any other supervised activity) provided by a school during school hours for a registered pupil, or
 - (b) any form of health care for a child.
 - (3) For the purposes of subsection (1) a person is a foster parent in relation to a child if the person –
 - (a) is a local authority foster parent (within the meaning given by section 197 of the Social Services and Well-being (Wales) Act 2014 (anaw 4)), or
 - (b) fosters the child privately.
 - (4) References in this Chapter to a “dwelling” include land enjoyed with premises where the premises themselves constitute a dwelling, unless the land is agricultural land (within the meaning given by section 246 of the Renting Homes (Wales) Act 2016 (anaw 1)) exceeding 0.809 hectares.
 - (5) References in this Chapter, however expressed, to premises or vehicles which are (or are not) smoke-free (or treated as smoke-free), are to those premises or vehicles so far as they are (or are not) smoke-free (or treated as smoke-free) under or by virtue of this Chapter.
 - (6) Premises may be smoke-free by virtue of more than one section in this Chapter.

- (7) Regulations may specify for the purpose of this Chapter what “enclosed”, “substantially enclosed” and “not enclosed or substantially enclosed” mean.”
- 4 Sections 18 to 29 (and the italic heading before section 18) become a new Chapter 1C of Part 3 –
- (a) with the heading “Gorfodi a chyffredinol” in the Welsh language text, and
- (b) with the heading “Enforcement and general”, in the English language text.
- 5 In the Welsh language text of section 18, in subsection (3), for “darpariaethau'r Bennod hon a rheoliadau a wneir odani” substitute “darpariaethau Penodau 1, 1A ac 1B a'r Bennod hon a rheoliadau a wneir o dan unrhyw un o'r Penodau hynny”.
- 6 In the English language text of section 18, in subsection (3), for “this Chapter and regulations made under it” substitute “Chapters 1, 1A and 1B and this Chapter and regulations made under any of those Chapters”.
- 7 In the Welsh language text of section 19, in subsection (1)(a), for “adran 5, 6 neu 17” substitute “Bennod 1, 1A neu 1B”.
- 8 In the English language text of section 19, in subsection (1)(a), for “section 5, 6 or 17” substitute “Chapter 1, 1A or 1B”.
- 9 In the Welsh language text of section 20, in subsection (1)(a), for “neu 6” substitute “, 6, 17C, 17D, 17H neu 17I”.
- 10 In the English language text of section 20, in subsection (1)(a), for “or 6” substitute “, 6, 17C, 17D, 17H or 17I”.
- 11 In the Welsh language text of section 21, in subsection (1)(a), for “adran 5, 6 neu 17” substitute “Bennod 1, 1A neu 1B”.
- 12 In the English language text of section 21, in subsection (1)(a), for “section 5, 6 or 17” substitute “Chapter 1, 1A or 1B”.
- 13 In the Welsh language text of section 23, in subsections (1) and (2), for “adran 5, 6 neu 17” substitute “Bennod 1, 1A neu 1B”.
- 14 In the English language text of section 23, in subsections (1) and (2), for “section 5, 6 or 17” substitute “Chapter 1, 1A or 1B”.
- 15 In the Welsh language text of section 25, in subsection (2), for “adran 5, 6 neu 17” substitute “Bennod 1, 1A neu 1B”.
- 16 In the English language text of section 25, in subsection (2), for “section 5, 6 or 17” substitute “Chapter 1, 1A or 1B”.
- 17 In the Welsh language text of section 26, in subsection (2)(a), for “adran 5, 6 neu 17” substitute “Bennod 1, 1A neu 1B”.
- 18 In the English language text of section 26, in subsection (2)(a), for “section 5, 6 or 17” substitute “Chapter 1, 1A or 1B”.
- 19 (1) The Welsh language text of section 27 is amended as follows.

- (2) In subsection (1), after paragraph (b) insert—
- “(c) trosedd o dan adran 17C(1);
 - (d) trosedd o dan adran 17E(5);
 - (e) trosedd o dan adran 17H(1);
 - (f) trosedd o dan adran 17J(6).”
- (3) In subsection (2), after “6(6)” insert “, 17D(3) neu 17I(3)”.
- 20 (1) The English language text of section 27 is amended as follows.
- (2) In subsection (1), after paragraph (b) insert—
- “(c) an offence under section 17C(1);
 - (d) an offence under section 17E(5);
 - (e) an offence under section 17H(1);
 - (f) an offence under section 17J(6).”
- (3) In subsection (2), after “6(6)” insert “, 17D(3) or 17I(3)”.
- 21 In the Welsh language text, for section 28 substitute—

“28 Dehongli’r Bennod hon

- (1) Yn y Bennod hon—
- mae “awdurdod gorfodi” (“*enforcement authority*”) i gael ei ddehongli yn unol ag adran 18;
 - mae “cerbyd” (“*vehicle*”) yn cynnwys trê, tram, cwch neu long, hofrenfad ac awyren;
 - mae i “Cymru” yr ystyr a roddir i “Wales” gan adran 158(1) o Ddeddf Llywodraeth Cymru 2006 (p.32);
 - mae “mangre” (“*premises*”) yn cynnwys—
 - (a) unrhyw fan;
 - (b) strwythur symudol ac eithrio cerbyd;
 - (c) stondin;
 - (d) pabell;
 - (e) gosodiad alltraeth o fewn yr ystyr a roddir i “offshore installation” yn Neddf Gweithiau Mwynau (Gosodiadau Alltraeth) 1971 (p.61) (gweler adran 12 o’r Ddeddf honno);
 - mae i “swyddog awdurdodedig” (“*authorised officer*”) yr ystyr a roddir gan adran 18(5).
- (2) Mae cyfeiriadau yn y Bennod hon at “annedd” yn cynnwys tir a fwynheir gyda mangre pan fo’r fangre ei hun yn annedd, oni bai bod y tir yn dir amaethyddol (o fewn yr ystyr a roddir gan adran 246 o Ddeddf Rhentu Cartrefi (Cymru) 2016 (dccc 1)) sy’n fwy na 0.809 hectar.”

- 22 In the English language text, for section 28 substitute –
- “28 Interpretation of this Chapter**
- (1) In this Chapter –
- “authorised officer” (“ *swyddog awdurdodedig* ”) has the meaning given by section 18(5);
- “enforcement authority” (“ *awdurdod gorfodi* ”) is to be interpreted in accordance with section 18;
- “premises” (“ *mangre* ”) includes –
- (a) any place;
 - (b) a moveable structure other than a vehicle;
 - (c) a stall;
 - (d) a tent;
 - (e) an offshore installation within the meaning given in the Mineral Workings (Offshore Installations) Act 1971 (c.61) (see section 12 of that Act);
- “vehicle” (“ *cerbyd* ”) includes a train, tram, vessel, hovercraft and aircraft;
- “Wales” (“ *Cymru* ”) has the meaning given by section 158(1) of the Government of Wales Act 2006 (c.32).
- (2) References in this Chapter to a “dwelling” include land enjoyed with premises where the premises themselves constitute a dwelling, unless the land is agricultural land (within the meaning given by section 246 of the Renting Homes (Wales) Act 2016 (anaw 1)) exceeding 0.809 hectares.”
- 23 In the Welsh language text of section 123, in subsection (2)(a), for “, 28(7)” substitute “17A(7)”.
- 24 In the English language text of section 123, in subsection (2)(a), for “, 28(7)” substitute “17A(7)”.

SCHEDULE 20

Section 157

AMENDMENTS CONSEQUENTIAL ON SECTIONS 153 TO 156

Smoking (Northern Ireland) Order 2006 (S.I. 2006/2957 (N.I. 20))

- 1 The Smoking (Northern Ireland) Order 2006 is amended as follows.
- 2 In Article 2, in paragraph (3), at the appropriate places insert –

““heated tobacco device” means a device that heats tobacco to generate a vapour or an aerosol for the purpose of inhalation through a mouthpiece (whether or not it can also heat other matter to produce a vapour or aerosol);”;

““open to the public”: premises and places are open to the public if the public or a section of the public has access to them, whether by invitation or not, and whether on payment or not;”;

““performance” includes –

- (a) the performance of a play or a performance given in connection with the making of a film or television programme, and
- (b) a rehearsal;”;

““relevant vape” means a vape that is not a heated tobacco device;”;

““vape” has the meaning given by Article 7 of the Health and Personal Social Services (Northern Ireland) Order 1978;”;

““vaporises” has the meaning given by Article 7 of the Health and Personal Social Services (Northern Ireland) Order 1978;”

““workplace” has the meaning given by Article 3(7);”.

- 3 (1) Article 3 is amended as follows.
 - (2) For paragraph (2) substitute –

“(2) Premises are smoke-free if they are workplaces; they are smoke-free all the time.”
 - (3) In paragraph (3), for “used as a place of work mentioned in paragraph (2)” substitute “a workplace”.
 - (4) For paragraph (7) substitute –

“(7) In this Order “workplace” means –

 - (a) a place of work used by more than one person (even if the persons who work there do so at different times, or only intermittently), or
 - (b) a place of work where members of the public might attend for the purpose of seeking or receiving goods or services from the person or persons working there (even if members of the public are not always present).”
- 4 In Article 10, in paragraphs (1) and (1A), for “or 8(2)” substitute “, 8(2), 9B(5), 9C(1), 9F(6) or 9G(1)”.

Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c. 26 (N.I.))

- 5 In section 5 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 omit subsection (8).

SCHEDULE 21

Section 160

CONSEQUENTIAL AMENDMENTS: GENERAL

Tobacco Advertising and Promotion Act 2002

- 1 The Tobacco Advertising and Promotion Act 2002 is repealed.

Communications Act 2003

- 2 In Schedule 17 to the Communications Act 2003 omit paragraph 173 and the italic heading before it.

Regulatory Enforcement and Sanctions Act 2008

- 3 In Schedule 3 to the Regulatory Enforcement and Sanctions Act 2008 omit the reference to the Tobacco Advertising and Promotion Act 2002.

Health Act 2009

- 4 The Health Act 2009 is amended as follows.
- 5 Omit sections 20 and 21.
- 6 (1) Section 40 is amended as follows.
 - (2) In subsection (2) omit paragraph (b).
 - (3) Omit subsection (3).
 - (4) In subsection (4) for “to (3)” substitute “or (2)”.
 - (5) In subsection (5) omit paragraphs (a) and (b).
 - (6) In subsection (6) omit paragraphs (b) and (c).
 - (7) In subsection (7) omit paragraphs (b) and (c).
- 7 Omit Schedule 4.

Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3)

- 8 The Tobacco and Primary Medical Services (Scotland) Act 2010 is amended as follows.
- 9 In section 1, in subsection (7), for “section 6(2) of the Tobacco Advertising and Promotion Act 2002 (c.36)” substitute “section 121(3) of the Tobacco and Vapes Act 2024”.
- 10 Omit section 2.
- 11 In section 3 omit subsection (5).

Consumer Rights Act 2015

- 12 In Schedule 5 to the Consumer Rights Act 2015, in the entry relating to the Tobacco and Vapes Act 2024 (inserted by section 32 of this Act), after “section 32” insert “or 129”.

Tobacco and Related Products Regulations 2016 (S.I. 2016/507)

- 13 The Tobacco and Related Products Regulations 2016 are amended as follows.
- 14 In regulation 12, in paragraph (1), for “not otherwise made unlawful by the provisions of the Tobacco Advertising and Promotion Act 2002” substitute “not otherwise unlawful”.
- 15 Omit Part 7.
- 16 In regulation 48 omit paragraph (e).
- 17 (1) Regulation 50 is amended as follows.
- (2) Omit paragraphs (2) to (4).
- (3) In paragraph (5) omit “or (2)”.
- (4) In paragraph (7) omit “or (2)”.
- 18 In regulation 53 omit paragraph (5).
- 19 Omit Schedule 1.

Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (asp 14)

- 20 The Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 is amended as follows.
- 21 Omit section 17.
- 22 Omit section 19.

Digital Markets, Competition and Consumers Act 2024

- 23 In Schedule 15 to the Digital Markets, Competition and Consumers Act 2024, in Part 1, in the Table omit the entry relating to the Tobacco Advertising and Promotion Act 2002.

Media Act 2024

- 24 The Media Act 2024 is amended as follows.
- 25 In Schedule 2, omit paragraph 21 and the italic heading before it.
- 26 In Schedule 4 omit paragraph 28 and the italic heading before it.

Tobacco and Vapes Bill

[AS INTRODUCED]

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TO

Make provision about the supply of tobacco, vapes and other products, including provision prohibiting the sale of tobacco to people born on or after 1 January 2009 and provision about the licensing of retail sales and the registration of retailers; to enable product and information requirements to be imposed in connection with tobacco, vapes and other products; to control the advertising and promotion of tobacco, vapes and other products; and to make provision about smoke-free places, vape-free places and heated tobacco-free places.

*Presented by Secretary Wes Streeting
supported by the Prime Minister,
the Chancellor of the Exchequer,
Secretary Yvette Cooper,
Secretary Shabana Mahmood,
Secretary Jonathan Reynolds,
Secretary Hilary Benn, Secretary Ian Murray,
Secretary Bridget Phillipson, Secretary Jo Stevens,
Secretary Steve Reed and Andrew Gwynne.*

Ordered, by The House of Commons, to be
Printed, 5th November 2024.

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