

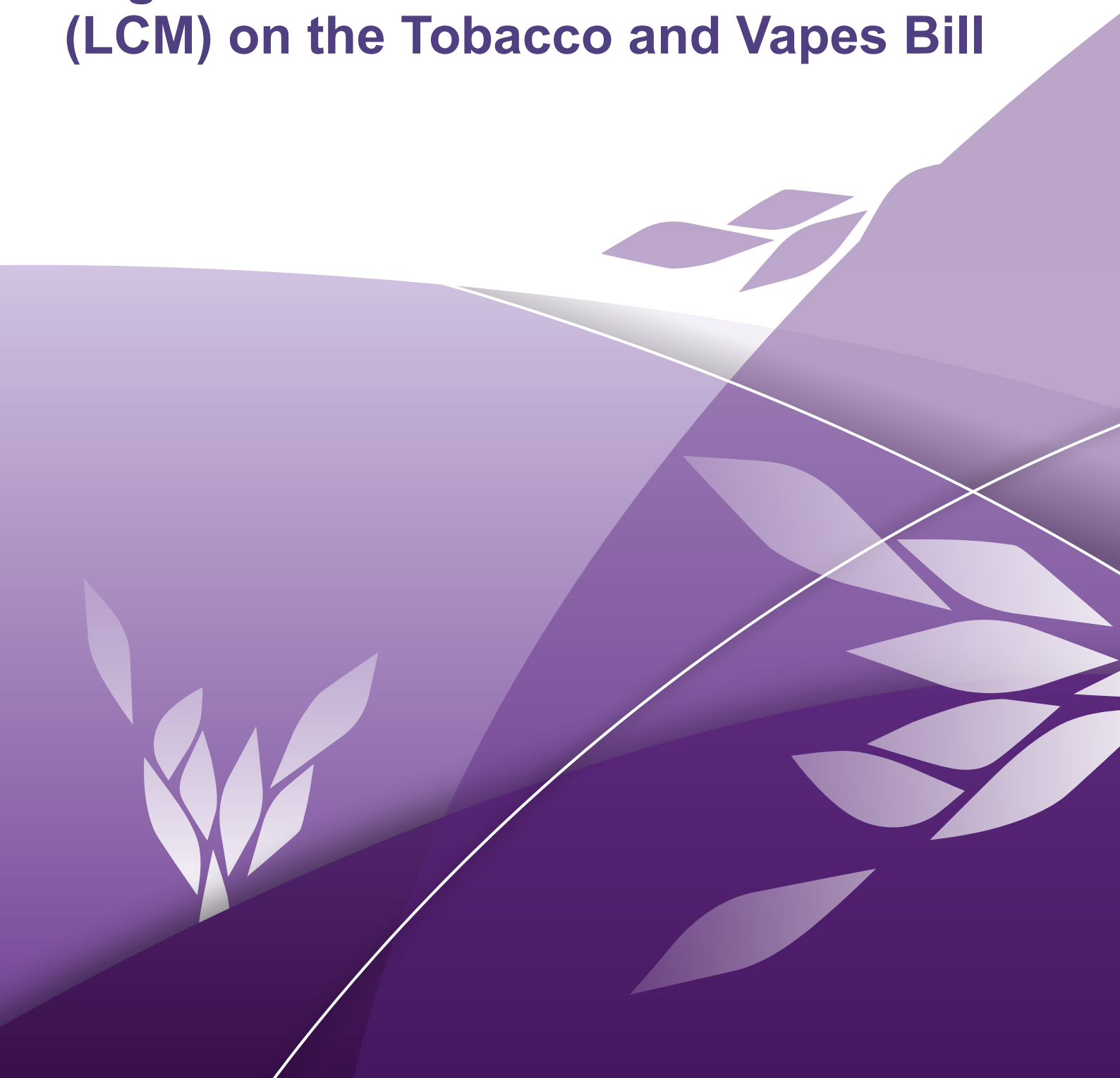


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Pàrlamaid na h-Alba

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## Health, Social Care and Sport Committee

# Legislative Consent Memorandum (LCM) on the Tobacco and Vapes Bill



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# Health, Social Care and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Social Care.



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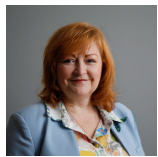
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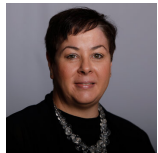
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Scottish National Party



**Brian Whittle**  
Scottish Conservative  
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# Introduction

1. A Tobacco and Vapes Bill was originally introduced in the House of Commons by the Conservative UK Government at the time on 20 March 2024.
2. [Legislative Consent Memorandum S6-44](#) related to this Bill was lodged on 2 April 2024 by Neil Gray, Cabinet Secretary for Health and Social Care, under Rule 9B.3.1(a) of the Parliament's standing orders, and was supported by Jenni Minto, Minister for Public Health and Women's Health. The Health, Social Care and Sport Committee was designated as the lead committee for consideration of the LCM.
3. At its meeting on [21 May 2024](#), the Committee took evidence on LCM-S6-44 from the following stakeholders:
  - Scottish Grocers Federation
  - UK Vaping Industry Association
  - ASH Scotland
  - Public Health Scotland
4. At the dissolution of the 2019-2024 UK Parliament, the Tobacco and Vapes Bill fell on 30 May 2024. On this basis, the Committee subsequently decided to take no further action in relation to its scrutiny of LCM-S6-44.
5. Following the UK General Election on 4 July 2024, the newly elected UK Labour Government subsequently introduced a modified version of the [Tobacco and Vapes Bill in the House of Commons on 5 November 2024](#).
6. On 21 November 2024, a [Legislative Consent Memorandum \(S6-51\)](#) related to the reintroduced Bill was lodged by Neil Gray, Cabinet Secretary for Health and Social Care, under Rule 9B.3.1(a) of the Parliament's standing orders, and was supported by Jenni Minto, Minister for Public Health and Women's Health.
7. In preparation for considering LCM-S6-51, the Committee wrote to those stakeholders from whom it previously took evidence on 21 May 2024, inviting them to share their views on the reintroduced Tobacco and Vapes Bill and the associated LCM. Links to their respective responses are provided below:
  - [ASH Scotland](#)
  - [Public Health Scotland](#)
  - [Scottish Grocers' Federation](#)
  - [UK Vaping Industry Association](#)
8. The Health, Social Care and Sport Committee was designated as the lead committee for consideration of the new LCM-S6-51 and held an evidence session with the Minister for Public Health and Women's Health on [17 December 2024](#).
9. On 18 March 2025, the UK Government tabled amendments NC11, 81 and 64 to

the Tobacco and Vapes Bill.

10. Amendment NC11 inserts a new clause into the Bill which extends only to Scotland, and is not covered by the original LCM-S6-51, therefore triggering the need for [supplementary LCM-S6-51a](#).

## Interaction with devolved competence

11. Under Rule 9B.1 of the Standing Orders of the Scottish Parliament, the Scottish Ministers are to lodge an LCM in respect of a “relevant Bill”. A “relevant Bill” is one which makes provision applying to Scotland for any purpose within the legislative competence of the Scottish Parliament or which alters that legislative competence or the executive competence of the Scottish Ministers.
12. The UK Government has identified (within Annex A of the explanatory notes of the LCM) that the consent of the Scottish Parliament is required in relation to the majority of provisions which extend to Scotland.
13. The exceptions are detailed in the LCM as follows:
  - Part 4
  - Clauses 95, 100 and 109 in Part 5
  - Clauses 119, 126 and 127 in Part 6
  - Clause 158 in Part 7

These are considered to relate to a number of different reserved matters as listed in Schedule 5 of the Scotland Act 1998.

14. The Scottish Government agrees with the UK Government’s position that all other provisions which extend to Scotland require the consent of the Scottish Parliament.
15. The main provisions of the Bill requiring consent can be summarised as follows:

### **Part 2 – Sale and distribution**

This part of the Bill amends Scottish legislation to bring it in line with the provisions set out in part 1 of the Bill which extend to England and Wales. Some of these provisions repeal existing Scottish legislation and re-enact it:

- Creates an offence to sell tobacco products to anyone born on or after 1 January 2009.
- Repeals the offence of purchasing tobacco products by under 18s.
- Repeals the power to confiscate tobacco products from persons under 18.
- Creates an offence to sell cigarettes that are not in their original packaging.
- Extends the tobacco legislation to cover herbal smoking products. This will, for example, bring them into line with the age of sale and proxy purchasing restrictions.
- Introduces a new power which will allow Scottish Ministers to regulate the retail display of herbal smoking, vaping and nicotine products (including display of prices).

- Bans the manufacture and supply of oral tobacco products such as ‘snus’.
- Extends the restrictions on vaping to nicotine products more generally (e.g. to nicotine pouches). This would include the age of sale, proof of age schemes and proxy-purchasing provisions.
- Extends the Tobacco and Nicotine Vapour Products register to include herbal smoking products and nicotine products more generally.
- Provides powers for Scottish Ministers to make provision about the size or appearance of warning statements.

### **Part 5 – Product and information requirements**

- Provides regulation-making powers which would cover the production, importation, and supply of products. This would include broad powers to regulate various packaging elements such as markings, appearance, size, shape and other distinguishing features.
- Provides powers to regulate the flavours and content of products.
- Provides powers to regulate the nature and amount of substances emitted from tobacco products, tobacco related devices, herbal smoking products, cigarette papers, vaping and nicotine products.
- Repeals and replaces the Tobacco Advertising and Promotion Act 2002 (“TAPA”). TAPA prohibits the advertising of tobacco products and sponsorship agreements that promote such products. The Bill will re-enact those restrictions and extend them to herbal smoking products, cigarette papers, vaping products and other nicotine products. There is also a power for the Secretary of State to prohibit or restrict brand-sharing<sup>1</sup>.

### **Part 6 – Advertising and sponsorship**

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

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

- Gives Ministers the power to broaden the types of places that can be designated smoke-free to those which are not ‘wholly or substantially enclosed’ and are open to the public or used as a workplace.
- Gives Ministers the power to extend smoke-free spaces to also be vape-free and heated tobacco-free.

16. LCM-S6-51 contains broadly the same core provisions as the initial LCM (S6-44) which fell, but with some notable additions, namely:

- the power for Ministers to make regulations to extend the smoking ban to spaces which are not ‘wholly or substantially enclosed’,
  - the power for Ministers to make spaces ‘vape-free’ or ‘heated tobacco-free’ as well as smoke-free,
  - the extension of the Tobacco and Nicotine Vapour Products retailer register to businesses that sell herbal smoking products, and
  - a ban on the manufacture, sale and possession of ‘snus’ (oral tobacco) with intent to supply.
17. On 21 November 2024, the Scottish Government lodged the following Legislative Consent Motion S6-51:
- ” That the Parliament agrees that the relevant provisions of the Tobacco and Vapes Bill, introduced in the House of Commons on 5 November 2024, relating to 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, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.
18. As previously outlined, on 18 March 2025, the UK Government tabled further amendments to the Bill which triggered the need for a supplementary LCM (S6-51a).
19. The UK Government tabled amendment NC11 to the Tobacco and Vapes Bill. This inserts a new clause into the Bill which extends to Scotland only, and is not considered to be covered by LCM-S6-51. This new clause requires the legislative consent of the Scottish Parliament as it is a provision for a purpose which is within the legislative competence of the Scottish Parliament, namely public health. The UK Government is in agreement that consent is required.
20. The Scottish Government has lodged the following supplementary Legislative Consent Motion (S6-51a):
- ” That the Parliament agrees that the relevant provisions of the Tobacco and Vapes Bill, introduced in the House of Commons on 5 November 2024 and subsequently amended, relating to age verification in relation to tobacco and vaping products etc, so far as these matters fall within the legislative competence of the Scottish Parliament and alter the executive competence of Scottish Ministers, should be considered by the UK Parliament.

## Committee consideration

### Delegated Powers and Law Reform Committee consideration

21. The Delegated Powers and Law Reform Committee considered LCM-S6-51 at its meetings on [28 January 2025](#) and [25 February 2025](#), publishing its report on [28 February 2025](#).
22. Its report concludes that the Committee is content with the new powers conferred on the Scottish Ministers in sections 4 and 4A of the Tobacco and Primary Medical Services (Scotland) Act 2010 in principle and that they are subject to the negative procedure.
23. The Delegated Powers and Law Reform Committee then considered the supplementary LCM-S6-51a at its meeting on [April 29 2025](#), publishing its report on [6 May 2025](#).
24. Its report concludes that the Committee is content with the power conferred on the Scottish Ministers in principle and that it is subject to the negative procedure unless the power is exercised to modify primary legislation in which case it is subject to the affirmative procedure.

### Health, Social Care and Sport Committee consideration

25. Ahead of taking oral evidence on LCM-S6-51, the Committee sought written evidence from stakeholders and received a response from -
  - [ASH Scotland](#)
  - [Scottish Grocers' Federation](#)
  - [Dr Garth Reid, Public Health Scotland](#)
  - [UK Vaping Industry Association](#)
26. The Bill and LCM-S6-51 were welcomed by ASH Scotland and Public Health Scotland, but several concerns were raised by the Scottish Grocers' Federation and the Vaping Industry Association. These could be summarised as:
  - Concerns about inadequate implementation and enforcement of existing restrictions.
  - Concerns about how the generational ban on smoking will be implemented, including proxy purchasing. These concerns included requiring identification from people of all ages, adult staff being prohibited from selling tobacco products due to the new age restriction, and potential abuse that staff may be

exposed to.

- A perceived risk that further regulation would fuel illicit trade in tobacco and vaping products.
- Restrictions on associated products such as cigarette papers were considered disproportionate on the basis that they are not directly harmful.
- Concerns that restrictions on flavours and other restrictions on sale of vapes would restrict choice and increase the negative perception of vapes, thereby undermining their contribution to smoking cessation efforts.
- Concerns about the lack of enforcement around illicit trade and arguing that duty should be applied to such products to incentivise enforcement by HMRC.
- Arguing that exemptions from advertising for specialist tobacco retailers should be extended to include specialist vaping retailers.

27. The Committee took oral evidence from the above stakeholders at its meeting on 21 May 2024, albeit this related to LCM-S6-44 which referred to the Bill as originally introduced by the previous UK Government and which subsequently fell following the announcement of a UK general election. When the Bill was re-introduced by the newly elected UK Government, the Committee wrote to the same stakeholders seeking their views on LCM-S6-51 and received the following responses.

28. ASH Scotland reiterated its support for the LCM and the motion lodged - stating the Bill is a landmark step towards creating a tobacco-free Scotland and tackling youth vaping, both of which are major public health concerns.

They also called for effective enforcement on social media platforms to restrict promotions of tobacco related products.

They also outlined their support for decriminalisation of under-age consumer purchases of tobacco products, stating that:

” ...the burden of criminalisation should fall on producers and promoters of addictive health harming tobacco related products, rather than on consumers.

ASH Scotland also highlighted various statistics to underline their position and the need for the Bill - for example, that around 75% of people who smoke started before the age of 18, and two-thirds of adult smokers in Scotland state they wish to quit.

However, ASH Scotland did raise some concerns that the definition of "nicotine product" could be more comprehensive - and that this would ensure that the definition was suitably future-proofed to be able to capture products such as synthetic nicotine and nicotine analogues which may emerge on the market in future.

29. Dr Garth Reid, representing Public Health Scotland, also reiterated support for the Bill :

” My view is that these are all positive developments that complement and extend the previous iteration of the Bill.

30. The Committee took oral evidence on LCM-S6-51 from the Minister for Public Health and Women's Health, and Scottish Government officials, on [17 December 2024](#).
31. The Minister indicated that she was supportive of the policy intent of the Bill and that, in the Scottish Government's view, it would help Scotland achieve its public health target of being tobacco-free by 2034. The Minister described the Bill as landmark legislation that, if passed, would benefit public health in Scotland and help to save lives. The Minister therefore recommended that the Scottish Parliament should consent to the legislative consent memorandum.
32. The Minister also answered various questions related to enforcement of the legislation should it be passed. The Minister reconfirmed the Scottish Government's commitment to work closely with local authorities to support enforcement, highlighting that it was investing £3 million directly, and that it would continue to work with the Society of Chief Officers of Trading Standards in Scotland to this end.
33. The Committee then took further oral evidence on the supplementary LCM (S6-51a) from the Minister for Public Health and Women's Health, and Scottish Government officials, on [6 May 2025](#).
34. The Minister outlined that since giving evidence on 17 December 2025, the Tobacco and Vapes Bill has further progressed through the UK Parliament - with its second reading in the House of Lords taking place on 23 April. She added:

” I am delighted to say that there continues to be cross-party support for the Bill and for creating a tobacco-free country for future generations.
35. The Minister also confirmed that the amendments tabled by the UK Government related to clause 60 of the Bill would ensure the Scottish Government would have the ability to prescribe other digital age verification options in future. She told the Committee:

” Currently, someone who is accused of selling products contrary to the age of sale restrictions in Scotland might have a defence if they check certain prescribed identity documents, and the clause seeks to amend the Tobacco and Primary medical Services (Scotland) Act 2010 to ensure that Scottish Ministers will have a power to prescribe a wider range of methods of age verification in regulations.
36. She went on to inform the Committee that any new regulations brought forward using these new powers would be subject to the negative procedure and argued that this would give Parliament the opportunity to scrutinise their content to ensure it aligns with the stated policy intention.
37. Members raised certain issues with the Minister related to broader aspects of the Tobacco and Vapes Bill. These included the definition of certain tobacco products, enforcement, and the potential for the legislation to be 'future proofed' in response to ongoing innovations by the tobacco and vapes industry.
38. In response, the Minister and supporting officials emphasised the robustness of definitions contained within the Bill and assured the Committee that the Scottish Government would continue to work with Trading Standards to ensure adequate enforcement and monitoring of the Bill once implemented.

39. On the question of tracking and monitoring of new products introduced to the market, the Minister elaborated -

” In Scotland, we have a register for anyone who sells tobacco products, which will be expanded to include new products as part of the Bill. We have just invested in that, and it has far better outreach, which means that we can have direct conversations with retailers who are selling products.

40. In relation to the supplementary LCM, Gillian Mackay MSP asked how quickly the Scottish Government envisaged being able to "skill up" the workforce involved in selling tobacco products to be able to deal with emerging new forms of identification prescribed in regulations.

41. The Minister responded that, while the Scottish Government's intention was that paper identification would still be used, it would consult further on any regulations to ensure they got them right, before adding:

” ...it is through the important conversations that we have with trading standards and the regulatory review group representing businesses that we will understand the best way of implementing them if the decision is made to do so.

The Minister further highlighted the existence of an updated register, allowing the Scottish Government to keep retailers informed of any future changes.

42. The Minister concluded by recommending that the Scottish Parliament should consent to the supplementary LCM.

## Conclusion

43. The Committee recommends that the Parliament agree to a legislative consent motion in similar terms to the draft motion included in the LCM and supplementary LCM.

