
The Welsh Government's Legislative Consent Memorandum on the Tobacco and Vapes Bill

Welsh Government response to the Legislation, Justice and Constitution Committee's report

7 April 2025

In February 2025, the Legislation, Justice and Constitution Committee submitted its report on the Welsh Government's legislative Consent Memorandum on the Tobacco and Vapes Bill. The report includes 2 conclusions and 17 recommendations. This is the Welsh Government's response to those recommendations.

Responses to recommendations

Recommendation 1 - The Minister should provide further clarity to the Senedd on the reasons why the Welsh Government has adopted the joint approach with the other governments of the UK in the Bill, and confirm whether the United Kingdom Internal Market Act 2020 is a contributing factor.

Welsh Government response: Accept

Our overriding consideration to being part of the Tobacco and Vapes Bill was that of public health benefit and the potential for the measures to provide significant change to tobacco and nicotine use in Wales. The Bill also provided the opportunity to respond swiftly to pressing UK wide public health issues and protect children and young people from nicotine addiction. The UK Internal Market Act 2020 was considered to be relevant during the Bill's development but was not a contributing factor in the decision to take a united approach to tackling these issues via the Bill.

Financial Implications: None.

Recommendation 2 - The Minister should confirm whether it was the UK Government or the Welsh Government that prepared the Welsh language text of the provisions in the Bill that will be inserted into the Public Health (Wales) Act 2017. If it was the UK Government, the Minister should confirm that the text has been approved by the Welsh Government.

Welsh Government response: Accept

When a UK Government Bill seeks to insert text into, or otherwise modify, a Measure of the National Assembly or an Act of Senedd Cymru, it is usual for the relevant provisions of the Bill to be shared in both languages with the Welsh Government in advance. The Welsh Government does not “approve” text, but instead reviews the text.

The text proposed to be inserted into the Public Health (Wales) Act 2017 by the Tobacco and Vapes Bill was dealt with in this way, with both language texts provided by the UK Government to the Welsh Government in advance. On this occasion, as is usual, the review undertaken by the Welsh Government included consideration by the Office of the Legislative Counsel who focussed on the legislative equivalence of the provisions.

Financial Implications: None.

Recommendation 3 - The Minister should explain how and why she considers that the UK Parliament is able to scrutinise sufficiently and effectively the Welsh language text of the provisions in the Bill that will be inserted into the Public Health (Wales) Act 2017.

Welsh Government response: Accept

I do not consider it appropriate to comment on the ability of the UK Parliament to scrutinise legislation sufficiently or effectively, in either the English or Welsh language. The Tobacco and Vapes Bill amends both language texts of the Public Health (Wales) Act 2017, which is the correct approach for amending bilingual legislation.

Financial Implications: None.

Recommendation 4 - The Minister should update the Committee and the Senedd as soon as possible on the progress being made in discussions with the UK Government on clause 34 of the Bill.

Welsh Government response: Accept

Clause 34 sets out a requirement for enforcement authorities in Wales to consider a ‘programme of enforcement’ and the potential design of the programme on a yearly basis. This is a means of ensuring that local authorities in Wales consider whether they are enforcing certain offences effectively. I sought assurances from the UK Government that these requirements aligned with the requirements of the Public Health (Wales) Act 2017. Following those exchanges, it is my view that

the Bill is aligned with the requirements established by the Public Health (Wales) Act 2017, and I am therefore content with the Bill's drafting of clause 34.

Financial Implications: None.

Recommendation 5 - The Minister should clarify and confirm our understanding, as set out in paragraphs 21 to 23 of our report, of the precise number of powers in the Bill delegated to the Secretary of State to act in devolved areas and how many of those require the consent of the Welsh Ministers before being used, as well as confirming the number of powers in the Bill delegated to the Welsh Ministers.

Welsh Government response: Accept

I note paragraphs 21-23 of the committee's report considers there are 19 powers in the Bill delegated to the Secretary of State to act in devolved areas, 15 of which would require the consent of the Welsh Ministers before being used and 20 powers in the Bill delegated to the Welsh Ministers.

I agree with the Committee's assessment apart from the following.

I do not consider that the following are regulation making powers delegated to the Secretary of State / Welsh Ministers:

- Clause 104 – These powers attach to all regulation making powers held by the Secretary of State in Part 5 rather than introduce regulation making powers (see below for non-regulation making powers).
- Clause 105 – This power to confer discretions attaches to all regulation making powers in Part 5 rather than introduce a regulation-making power. The powers are held by the Secretary of State rather than the Welsh Ministers.
- Clause 148 – This is not a new regulation making power. This amends a provision around an existing regulation making power held by the Welsh Ministers at section 15(1) Public Health (Wales) Act 2017. The provision introduced at clause 148 amends section 15(3) which clarifies what the power can do and attaches to the power at section 15(1).

The Bill introduces the following additional regulation making powers in devolved areas:

- Clause 169(2)(b) – the Secretary of State has a regulation making power to specify the commencement of parts of Part 6.
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- Clause 169(4) – the Secretary of State has a regulation making power to specify the commencement of the provisions at clause 60 / schedule 21. These provisions make general consequential amendments.
- Clause 152 / Schedule 19 – Clause 152 introduces schedule 19 which contains amendments to the Public Health (Wales) Act 2017 consequential on clauses 147 to 151 (“free from” provisions in Wales). Paragraph 3 of Schedule 19 inserts a new section 17A(7) which states regulations may specify the meaning of “enclosed”, “substantially enclosed” etc.

The following non-regulation making powers are conferred on the Welsh Ministers:

- Clause 35 - Power for Welsh Ministers to take over certain enforcement functions of the local weights and measures authorities in Wales (Part 1).
- Clause 36 - Power for Welsh Ministers to take over the conduct of certain proceedings of the local weights and measures authorities in Wales (Part 1).
- Clause 130 - Power for Welsh Ministers to take over certain enforcement functions of the local weights and measures authorities in Wales (Part 6).
- Clause 131 - Power for Welsh Ministers to take over the conduct of certain proceedings of the local weights and measures authorities in Wales (Part 6).

The following regulation making power enables the Secretary of state to confer non-regulation making powers on the Welsh Ministers:

- Clause 104 - Regulations made by the Secretary of State may include: provision for the Welsh Ministers to take over certain enforcement functions of the local weights and measures authorities in Wales; and provision for the Welsh Ministers to take over the conduct of certain proceedings of the local weights and measures authorities in Wales.

Taking into account the matters set out above, I consider:

- There are 20 regulation making powers in favour of the Secretary of State, 14 of which require the consent of the Welsh Ministers on matters within the legislative competence of the Senedd;
 - There are 17 regulation making powers delegated to the Welsh Ministers;
 - There are 4 non-regulation making powers delegated to the Welsh Ministers;
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- There is power for the Secretary of State to confer two non-regulation making powers on the Welsh Ministers.

Financial Implications: None.

Recommendation 6 - The Minister should confirm whether and how the Welsh Government identified where a Welsh only approach was needed and, as a result, requested the specific regulation-making powers being taken in the Bill for the Welsh Ministers.

Welsh Government response: Accept

As I state in paragraphs 189-190 of the LCM, the Welsh Government's policy objectives were to collaborate with the other UK nations to create a regulation and enforcement system for tobacco, vapes, herbal tobacco and nicotine products that is consistent and coherent. This was considered important given the nature of these products and the recognised benefits for business, consumers and enforcement. Whilst that was the case, the Welsh Government ensured the delegated nature of these matters, and the Welsh Government's Principles on UK Legislation were considered during the development of the Bill's powers to make subordinate legislation.

The Bill therefore provides Welsh Ministers with powers to bring forward legislation before the Senedd where it is right to do so. Examples in the Bill of where a Wales specific approach may be followed is with regard to retail displays of tobacco, vapes and nicotine products and the introduction of a licensing system for selling those products. In the case of the display provisions, this re-enacts and updates an existing power for tobacco set out at section 7A Tobacco Advertising and Promotion Act 2002 where the Welsh Ministers held powers relating to displays. The licensing provisions are intended to replace the provisions in the Public Health (Wales) Act 2017 relating to the registration scheme for tobacco retailers. It was considered appropriate for the Welsh Ministers to hold the powers. The powers to designate vape and heated-tobacco free places in Wales will also be achieved by updates to the Public Health (Wales) Act 2017 which reflects our approach on creating smoke-free areas in Wales. It was considered appropriate for the Welsh Ministers to hold the powers, to update the existing regime set out in the Public Health (Wales) Act 2017.

Where a power rests with the Secretary of State the requirement for consent of the Welsh Ministers on matters within the Senedd's legislative competence will ensure the regulations take account of the Welsh perspective.

Financial Implications: None.

Recommendation 7 - The Minister should state whether there have been any disagreements over where responsibility for regulation-making powers in the Bill should lie and whether any powers for the Welsh Ministers have been refused by the UK Government.

Welsh Government response: Accept

In the LCM, I highlighted several clauses on which I said I would engage with the UK Government to seek the necessary constitutional assurances. Four of these, clauses 45, 95, 100 and 123 concern regulation-making powers. As these discussions have recently concluded, I am happy to provide an update on the outcome:

- Clause 45 (paragraphs 77 and 178 of the LCM): this provides powers for the Secretary of State to extend the Part 1 provisions to include tobacco related devices. The clause is subject to the consent of the Welsh Ministers on matters within the Senedd's legislative competence. I am content that the Bill has struck the correct balance between the need for a coherent, functional regulatory regime in relation to tobacco and nicotine products and powers for the Welsh Ministers to make regulations in relation to matters affecting Wales. The position on clause 45 aligns with the position taken in Part 5 of the Bill where it was considered that the powers should be held by the Secretary of State to ensure a consistent regulatory regime across the UK. Clause 133 in Part 6 is a similar power to clause 45. It enables the Part 6 provisions (and the Communication Act 2003) to be extended to include tobacco related devices. It was considered that this power should be held by the Secretary of State subject to the consent of the Welsh Ministers on matters within the legislative competence of the Senedd for the same reasons. There are also numerous powers in Part 1 held by the Welsh Ministers where it was considered appropriate for the Welsh Ministers to hold the powers. For example, the power to regulate retail displays (clause 14)
 - Clauses 95 and 100 (paragraphs 97, 98 and 178 of the LCM): Clause 95 allows the Secretary of State to set up a registration scheme for all restricted products. Clause 100 allows the Secretary of State to make regulations for the purpose of minimising risks to human health and safety. The clauses are subject to the consent of the Welsh Ministers on matters that are within the Senedd's legislative competence. For similar reasons to those set out for clause 45, it was considered appropriate for the Secretary of State to hold these powers and others in Part 5 to ensure there is a consistent regulatory framework across the UK. Regulations made under clauses 95 and 100 are also subject to the consent of the Welsh Ministers on matters within the legislative competence of the Senedd. Please see my response to recommendation 8 for information on the engagement that took place.
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- Clause 123 (paragraphs 131, 133 and 178 of the LCM) – this enables the Secretary of State to make regulations to prohibit or restrict brandsharing in relation to the restricted products. As set out at paragraph 181 of the LCM, there was a difference of position in relation to clause 123. In our view, this clause makes provision in relation to Wales about the devolved matter of health. However, the UK Government’s position is that this is reserved. Although we were in agreement that the power should be held by the Secretary of State to ensure a consistent regulatory regime, we considered the regulations should have been subject to a consent provision in terms similar to that set out in Part 5 (clause 111). The governments were unable to reach a consensus on whether clause 123 was reserved. In view of the unlikelihood of divergence on the implementation of this clause, I am content that the provision is in the best interests of Wales at this time.

Financial Implications: None.

Recommendation 8 - The Minister should provide clarity and further detail on why it is only the powers in clauses 45, 95, 100 and 123 which she considers do not currently align with the Welsh Government Cabinet’s Principles on UK Legislation.

Welsh Government response: Accept

The Committee has noted that there are other clauses in 90 to 101 which would require the consent of the Welsh Ministers which are considered devolved. This is correct but all the Secretary of State’s powers set out in Part 5 are subject to a consent provision at clause 111. The regulations will require the Welsh Minister’s consent on matters within the Senedd’s legislative competence. I considered there was no need to engage with the UK Government on the remaining powers of Part 5 as it was only the powers at clauses 95 and 100 that the UK Government considered were reserved (see paragraph 181 of the LCM).

Clauses 95 and 100 are Part 5 provisions that the UK Government indicated were reserved and our disagreement with this was noted in the LCM at paragraph 181. We therefore engaged further with the UK Government on this. Although they considered the clauses were reserved, the consent provision remains in place and therefore if the regulations make provision on matters within the Senedd’s legislative competence then the Welsh Ministers’ consent is required.

Clause 45 was added when the Bill was re-introduced in November 2024. As most of the powers in Part 1 of the Bill are held by the Welsh Ministers, and as this relates to a devolved matter, it was considered that the power should be held by the Welsh Ministers. On further engaging with the UK Government, it was

accepted that there was a need for a consistent regulatory regime to extend Part 1 to include tobacco related devices. The position on this clause also aligns with the position taken on the Part 5 powers, and the power at clause 133, which are also held by the Secretary of State. The consent of the Welsh Ministers is required on matters within the Senedd's legislative competence.

In relation to clause 123, please see response to recommendation 7.

There are other powers exercisable by the Secretary of State which relate to devolved areas and are not subject to a consent provision in favour of the Welsh Ministers. These powers, and the Welsh Government's position, are explained further below.

Clause 125(3) – Clause 125(1) sets out that it is an offence to enter into an agreement to promote tobacco, vapes and other restricted products. The offence has five elements, one of which is a date from which specified conduct will amount to one element of the offence. The Secretary of State has power to specify the date. We are content that this is a commencement power for regulations made by the Secretary of State. Thus, it is appropriate for the Secretary of State to bring the offence into force. There will be collaboration at official level with the UK Government before this offence is brought into force.

Clause 161 – The Secretary of State has power to make provision that is consequential on the Act. This includes amending, repealing or revoking any existing legislation. The purpose of the provision is to ensure that the provisions can be effectively implemented and is limited in scope. Therefore, I consider the position taken on this provision is acceptable.

Clause 169(2)(b) and clause 169(4) - The Secretary of State has power to bring into effect parts of the provisions of Part 6. The purpose of clause 169(2)(b) is to ensure that all the provisions of Part 6 can be effectively implemented. In clause 169(4), the Secretary of State has power to bring into effect clause 160 and schedule 21, which introduce general consequential amendments set out in schedule 21. In view of the technical nature of these provisions, it is appropriate for this to be held by the Secretary of State.

In relation to clause 170(4), please see response to recommendation 16 below.

With regard to all the other regulation making powers held by the Secretary of State, that provide for the Welsh Ministers to consent on matters within the Senedd's legislative competence, our position is explained below.

Clause 45 – See my response to recommendation 7.

Clauses 90 to 101 – See my response to recommendation 1 and 6.

Clause 133 – see my response to recommendation 7 (within the response on clause 45).

The Welsh Ministers will have the opportunity to approve regulations on matters within the Senedd's legislative competence. It is likely that the regulations will contain detailed and technical provisions following a consultation. We commit to keeping the Senedd informed of any regulations that the Welsh Ministers consent to.

With regard to the powers held by the Welsh Ministers, the nature of the powers can be categorised as follows:

- Regulation making powers that enable the Welsh Ministers to make detailed provisions for Wales, to enable the provisions to operate effectively. This includes setting detailed requirements for the display of an age of sale notice in retail settings, and detailed provisions for the display of restricted products and their prices at retail places in Wales (clauses 6 and 14).
 - Regulation making powers to increase the amount of fixed penalties and financial penalties for breach of licensing provisions (clauses 21 and 39).
 - Various other minor regulation making powers (for example to enable the Welsh Ministers to add to the list of offences that can form the basis of a restricted premises order, to specify the health warnings and information to be provided to specialist tobacconists – see clauses 27 and 121).
 - Various regulation making powers following the updates to smoke-free provisions of the Public Health (Wales) Act 2017, including amendments and updates to the existing smoke-free powers in Wales (for example, the power to specify the signage requirements for smoke-free premises, powers to designate vape and heated tobacco-free places in Wales – see clauses 149 to 151).
 - A regulation making power following the update to the Public Health (Wales) Act 2017 in respect of the offence of handing over tobacco etc to under age people in Wales – see clause 40 / schedule 5 and a power to extend the offence to heated tobacco devices.
 - Various regulation making powers to enable the provisions to be effectively brought into effect. For example clauses 163(1) and 170(1) provide powers to make consequential provision on various provisions affecting Wales; and provide for powers to make transitional or saving provision in respect of various powers which bring into effect provisions affecting Wales. Further,
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clauses 168(5) and 169(3)(c) set out the Welsh Ministers' powers to bring into effect certain provisions affecting Wales.

Our position in relation to these powers is that it is appropriate for them to be held by the Welsh Ministers as they enable detailed and appropriate provision to be made for Wales and to take account of the Welsh perspective. This will ensure the provisions of the Bill can be effectively implemented in Wales.

It is correct these powers will not provide the Senedd with same degree of scrutiny that would apply to primary legislation in this Senedd. However, there are still protections for the Senedd as they will be, with the exception of the commencement powers, given the opportunity to scrutinise the regulations and raise any concerns in accordance with the relevant procedure tied to the regulation making power.

The regulations will contain detailed and technical provisions, with mandatory powers to consult in many places (for example clauses 14 and 19 – retail displays and licensing). It is considered appropriate for the Welsh Ministers to make the regulations.

Financial Implications: None.

Recommendation 9 - The Minister should confirm whether she will recommend to the Senedd that it does not provide consent for any clauses in the Bill, including 45, 95, 100 and 123, should they remain out of alignment with the Welsh Government Cabinet's Principles on UK Legislation.

Welsh Government response: Accept

As I explained in my response to recommendation 7, discussions with the UK Government have now concluded and I am content with the Bill's provisions. I will therefore be recommending to the Senedd that consent is provided to all the clauses I identified in the LCM.

Financial Implications: None.

Recommendation 10 - The Minister should confirm what changes to clause 45 she is seeking, and whether agreement on these changes has been reached with the UK Government.

Welsh Government response: Accept

I refer to my response to recommendations 7 and 9.

Financial Implications: None.

Recommendation 11 - The Minister should confirm what changes to clause 95 she is seeking, and whether agreement on these changes has been reached with the UK Government.

Welsh Government response: Accept

I refer to my response to recommendations 7 and 9.

Financial Implications: None.

Recommendation 12 - The Minister should confirm what changes to clause 100 she is seeking, and whether agreement on these changes has been reached with the UK Government.

Welsh Government response: Accept

I refer to my response to recommendations 7 and 9.

Financial Implications: None.

Recommendation 13 - The Minister should confirm what changes to clause 123 she is seeking, and whether agreement on these changes has been reached with the UK Government.

Welsh Government response: Accept

I refer to my response to recommendations 7 and 9.

Financial Implications: None.

Recommendation 14 - The Minister should update the Committee and the Senedd as soon as possible on the progress being made in discussions with the UK Government on clause 150 of the Bill.

Welsh Government response: Accept

Welsh Government officials discussed clauses 150 and 151 (paragraphs 154 - 162 of the LCM) with the UK Government. These clauses deal with vape-free places and heated tobacco-free places and vehicles. I sought assurances that they would

align with the requirements of the Public Health (Wales) Act 2017. There continues to be a disagreement between UK Government and Welsh Government on competence in relation to certain restrictions relating to hovercraft and aircraft in Wales. However, I am content that the Bill's drafting of clauses 150 and 151 are in the best interests of Wales at this time. The new vape and heated tobacco-free provisions in the Public Health (Wales) Act 2017 are inconsistent with the existing smoke-free powers relating to aircraft and hovercraft. However, the practical implications of this are considered to be minor. If there is an issue with these places (hovercraft and aircraft), and there are no suitable national measures in place, the Welsh Ministers can consider making their own measures in the Senedd. We continue to recommend Senedd consent is provided.

Financial Implications: None.

Recommendation 15 - The Minister should update the Committee and the Senedd as soon as possible on the progress being made in discussions with the UK Government on clause 151 of the Bill.

Welsh Government response: Accept

I refer to my response to recommendation 14.

Financial Implications: None.

Recommendation 16 - The Minister should confirm what discussions she has had with the UK Government about the power delegated to the Secretary of State in clause 170(4) and clarify in what situations the consent of the Welsh Ministers would be required if this power were to be used.

Welsh Government response: Accept

Clause 170(4) contains a standard power for the Secretary of State to make transitional or saving provision in connection with the bringing into force of provisions of the Bill. The commencement provisions are set out at clauses 168 and 169.

I note the Committee's view that the power at 170(4) in favour of the Secretary of State to make transitional or saving provision in connection with the coming into force of any provision of the Act is a wide power that can be used in devolved areas. It is correct there is no consent provision.

The purpose of clause 170(4) is so that can be used if required to ensure the provisions can be effectively brought into effect. It is limited in scope. In view of this, I consider it is appropriate for this to be held by the Secretary of State.

Financial Implications: None.

Recommendation 17 - The Minister should confirm that the amendments drawn to the attention of Senedd Committees in correspondence on 4 February 2025 will be included in a supplementary legislative consent memorandum laid before the Senedd

Welsh Government response: Accept

The UK Government tabled two amendments to Clauses 168 and 170 in relation to Wales at Commons Committee Stage. These amendments are minor and technical in nature and thus a supplementary LCM is not necessary as the test at SO 29.2 is not met. Further some of the Government amendments that have been tabled at Report Stage do require a supplementary LCM, which has been laid.

Financial Implications: None.