EXPLANATORY MEMORANDUM TO

THE REGULATION OF INVESTIGATORY POWERS (DIRECTED SURVEILLANCE AND COVERT HUMAN INTELLIGENCE SOURCES) (AMENDMENT) ORDER 2026

2026 No. 956

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Dame Diana Johnson, Minister of State for Public Health and Patient Safety at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

2.2 Richard Boden, Deputy Director for Tobacco and Vapes Policy, at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 The Tobacco and Vapes Team at the Department of Health and Social Care can be contacted by email at the following address with any queries regarding the instrument: tobaccocontrol@dhsc.gov.uk. Alternatively, the department can be contacted by telephone: 0300 790 4007.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument updates the list of offences for which local authorities may authorise directed surveillance (as defined in the Regulation of Investigatory Powers Act 2000), to reflect the new age of sale and proxy purchasing offences set out in the Tobacco and Vapes Act 2026 ("the 2026 Act"). This will enable Trading Standards Officers ("TSOs") to seek authorisation to undertake directed surveillance in test purchasing operations relating to the new age of sale and proxy purchasing offences for tobacco products, herbal smoking products, cigarette papers, vaping products and nicotine products (as they have done for previous offences relating to tobacco, herbal smoking products, cigarette papers and nicotine inhaling products).

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales only.

5. Policy Context

What is being done and why?

5.1 The 2026 Act introduced new age of sale requirements for relevant products in England and Wales.

5.2 From 1 January 2027, it is an offence to sell a tobacco product, a herbal smoking product or cigarette papers to a person born on or after 1 January 2009, replacing the previous offence of selling tobacco products or cigarette papers to anyone under the age of 18 years. This policy aims to create a 'smoke-free generation', reducing tobacco use in the UK population over time. It responds to the evidence that smoking is the number one preventable cause of death, disability and ill health. It kills up to two-thirds of its long-term users and causes around 75,000 deaths a year in the UK. It also substantially increases the risk of many major health conditions throughout people's lives and costs society billions of pounds through lost productivity and health and care costs.

5.3 From 29 October 2026, it is an offence to sell any vaping product or nicotine product to a person who is under the age of 18, replacing the previous age of sale restrictions which applied only to nicotine inhaling products. This aims to close gaps in the previous legislative framework and ensure that non-nicotine vapes and nicotine products cannot be sold to anyone under 18. Ensuring that vaping restrictions cover all vapes aims to prevent children accessing these products and to avoid loopholes which can be exploited. Nicotine products, particularly nicotine pouches, are becoming increasingly popular; it is estimated that 3.3% of children have tried a nicotine pouch. Introducing age restrictions for these products aims to prevent children becoming dependent on nicotine, which is highly addictive.

5.4 The 2026 Act also introduces new proxy purchasing offences to align with the new age of sale across the relevant products. Proxy purchasing is when anyone over the age of 18 purchases the relevant products on behalf of someone under the legal age of sale.

5.5 TSOs, based in local authorities, had responsibility for enforcement of the previous age of sale and proxy purchasing offences, and retain responsibility for enforcement of the new offences from 29 October 2026 and 1 January 2027.

5.6 To aid enforcement of these offences, Trading Standards conduct 'test purchasing'. For the enforcement of age of sale offences, test purchasing is when an individual under the age of sale is directed by an enforcement officer (i.e. TSOs) to attempt to buy an age restricted product from a retailer. This is only conducted where there is intelligence that underage sales have been taking place. TSOs may detect proxy purchasing offences while conducting age of sale test purchasing.

5.7 Directed surveillance is a type of covert surveillance undertaken for the purposes of a specific pre-planned investigation or operation which is likely to result in the obtaining of private information about a person and does not take place on residential premises, or in any private vehicle. Some local authorities previously used directed surveillance to conduct test purchasing activity, in respect of the relevant offences. An example of this would be where an underage person has a covert camera or recording device to record the interaction.

5.8 The intention of this instrument is to extend the previous enforcement regime to the new age of sale and proxy purchasing offences set out in the 2026 Act, outlined in paragraphs 5.2 and 5.3, to enable TSOs to continue their enforcement approach.

What was the previous policy, how is this different?

5.9 Previously, senior officials within local authorities were able to authorise (subject to approval by a Magistrate) TSOs to undertake activities that constitute directed surveillance. This authorisation would be in response to requests made by TSOs.

5.10 Local authorities could only authorise directed surveillance in enforcement activity for crimes that attracted at least a six month prison sentence, or that related to specified offences. This included the previous age of sale and proxy purchasing offences of selling tobacco products, herbal smoking products, cigarette papers and nicotine inhaling products to anyone under the age of 18 and purchasing these products on behalf of anyone under the age of 18.

5.11 The new policy updates the specified offences to reflect the new age of sale and proxy purchasing offences, introduced by the 2026 Act, when they come into force on 29 October 2026 and 1 January 2027.

6. Legislative and Legal Context

How has the law changed?

6.1 Part 2 of the Regulation of Investigatory Powers Act 2000 provides a statutory framework for regulating the carrying out of covert surveillance by relevant public authorities.

6.2 Article 7A of the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) Order 2010 ("the 2010 Order")[1] imposes a restriction on the purposes for which an authorisation for directed surveillance may be granted by an individual holding an office, rank or position with any county council or district council in England, a London borough council, the Common Council of the City of London in its capacity as a local authority, the Council of the Isles of Scilly, or any county council or county borough council in Wales. These individuals may not authorise directed surveillance except for the purpose of (a) preventing or detecting a criminal offence punishable, whether on summary conviction or on indictment, by a maximum term of at least six months of imprisonment, or (b) for preventing or detecting specified criminal offences listed in article 7A(3)(b).

6.3 The list of criminal offences in article 7A(3)(b) of the 2010 Order included age of sale and proxy purchasing offences that have been repealed by the 2026 Act. This instrument amends the list in article 7A(3)(b) in order to remove the offences that are repealed by the 2026 Act and insert in their place the new age of sale and proxy purchasing offences set out in the 2026 Act (outlined in paragraphs 5.2 and 5.3 of this explanatory memorandum) when they come into force. This will aid enforcement of the new offences in the 2026 Act, by ensuring local authorities have the ability to authorise the use of directed surveillance in test purchasing carried out in connection with these offences.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes.

[1] As inserted by the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2012 and amended by the Regulation of Investigatory Powers (Directed Surveillance and Covert Human Intelligence Sources) (Amendment) Order 2015.

7. Consultation

Summary of consultation outcome and methodology

7.1 From October 2023 to December 2023, the then government held an open consultation[2] on policy proposals for inclusion in the Tobacco and Vapes Bill. There were 27,921 responses, including 896 from organisations and 27,025 from individuals in both personal and professional capacities. This consultation included the changes to the age of sale for tobacco products; 63.2% of respondents agreed with the proposal, 32.2% disagreed and 4.6% said they didn't know. The consultation also gathered responses on whether non-nicotine vapes and nicotine products should be regulated under a similar approach taken for nicotine vapes, which received public support at 59.6% and 52.9% respectively.

7.2 We did not consider it necessary to run a further consultation in relation to directed surveillance as this is a technical instrument to aid well established enforcement activity. However, the Department of Health and Social Care did conduct informal engagement with representatives from Trading Standards who confirmed directed surveillance is required in some test purchasing scenarios to aid enforcement of age of sale offences for age restricted products, including tobacco and nicotine inhaling products. Therefore, this instrument has been made as a consequence of the new age of sale and proxy purchasing offences in the 2026 Act.

Devolved Governments

7.3 While this instrument applies to England and Wales only, the Executive Office in Northern Ireland will develop legislation, as required, to aid enforcement of the 2026 Act in their jurisdiction. In Scotland, equivalent amendments are not required for secondary legislation made under the Regulation of Investigatory Powers (Scotland) Act 2000 because there is not an equivalent list of specified offences for local authority authorisations.

8. Applicable Guidance

8.1 The Home Office has published local authority-specific guidance on use of the Regulation of Investigatory Powers Act 2000 (RIPA), following changes made in the Protection of Freedoms Act 2012 that introduced magistrates' approval of local authority directed surveillance authorisations[3]. The Home Office is also responsible for the statutory RIPA Code of Practice ("the Code") on Covert Surveillance[4] and will reflect the requirements of this statutory instrument in the Code the next time it is updated. The Investigatory Powers Commissioner, who has a statutory obligation to keep under review the use of covert surveillance powers under RIPA, will continue to ensure local authorities understand their obligations.

8.2 The Department of Health and Social Care has published guidance on GOV.UK detailing the new age of sale provisions for tobacco products, herbal smoking products, cigarette papers[5] and for vaping products and nicotine products[6] including proxy purchasing provisions, introduced by the 2026 Act.

[2] https://www.gov.uk/government/consultations/creating-a-smokefree-generation-and-tackling-youth-vaping
[3] https://www.gov.uk/government/publications/changes-to-local-authority-use-of-ripa
[4] https://www.gov.uk/government/publications/covert-surveillance-and-covert-human-intelligence-sources-codes-of-practice/covert-surveillance-and-property-interference-code-of-practice-accessible
[5] https://www.gov.uk/guidance/selling-tobacco-herbal-smoking-products-and-cigarette-papers
[6] https://www.gov.uk/guidance/selling-vaping-and-nicotine-products

8.3 The Department of Health and Social Care has also funded the Chartered Trading Standards Institute to deliver training to TSOs and businesses to inform them of the updated legislation.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 An Impact Assessment has not been prepared for this instrument as it relates to the maintenance of existing regulatory standards.

9.2 An Impact Assessment was prepared for the 2026 Act[7]. The instrument has been made as a consequence of the 2026 Act, and the intention is to extend the previous enforcement regime to the new age of sale and proxy purchasing offences.

Impact on businesses, charities and voluntary bodies

9.3 This instrument will not have a direct impact on businesses, charities or voluntary bodies. However, the 2026 Act will impact the businesses selling relevant products as they will be required to familiarise themselves with the change in age of sale and proxy purchasing offences. Understanding the measures in the 2026 Act, and the associated changes, will provide businesses with clarity on the products which directed surveillance activity may be undertaken against.

9.4 The Impact Assessment for the 2026 Act included the familiarisation costs to retailers for the new age of sale and proxy purchasing offences for tobacco products, herbal smoking products and cigarette papers. This was estimated to be £8.3m. The impact assessment did not include estimates for the familiarisation cost with new age of sale and proxy purchasing offences for vaping and nicotine products. We assume that any familiarisation or training covering the changes to tobacco offences will also extend to changes to vaping and nicotine products.

9.5 This instrument will not have a direct impact on small or micro businesses. However, the Impact Assessment for the 2026 Act estimated familiarisation costs to small and micro retailers in the UK to be £2.4 million. The cost to each individual small and micro retailer was estimated to be around £70.

9.6 This instrument will have some impacts on the public sector. This instrument will enable TSOs to continue their current enforcement regime and include the new age of sale and proxy purchasing offences introduced by the 2026 Act. As with businesses, the 2026 Act will impact TSOs as they will be required to familiarise themselves with the change in age of sale and proxy purchasing offences. Understanding the 2026 Act, and the associated changes will help TSOs identify which products can be enforced through directed surveillance.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is through wider evaluation of the 2026 Act. Section 165 of that Act creates a statutory requirement for the Secretary of State to carry out a review of its operation within 4-7 years of passage. We expect this review to capture any relevant findings on enforcement and impact on businesses.

[7] https://assets.publishing.service.gov.uk/media/6985eeb7cfe7ccf77efbc74e/tobacco-and-vapes-bill-impact-assessment.pdf

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Dame Diana Johnson, Minister of State for Public Health and Patient Safety has made the following statement: "It is not considered necessary to include a review clause in this instrument as it does not regulate business or voluntary and community bodies".

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").