POLICY NOTE

THE TOBACCO AND VAPES ACT 2026 (COMMENCEMENT NO. 1, TRANSITIONAL AND SAVING PROVISIONS) (SCOTLAND) REGULATIONS 2026

SSI 2026/210

The above instrument was made in exercise of the powers conferred by section 175(7)(b), 175(9) and section 177(2)(a) of the Tobacco and Vapes Act 2026 ("the 2026 Act"). The instrument is subject to no procedure.

Summary Box

This instrument commences provisions in the 2026 Act so that retailers selling herbal smoking products and nicotine products are subject to the same registration requirements as retailers who sell tobacco and vaping products.

Policy Objectives

The Tobacco and Vapes Act 2026 (Commencement No. 1, Transitional and Saving Provisions) (Scotland) Regulations 2026 commence relevant provisions in the 2026 Act which will extend Chapter 2 (register of tobacco and vaping product retailers) of Part 1 of the Tobacco and Primary Medical Services (Scotland) Act 2010, to make changes relating to the Register of tobacco and vaping product retailers ("the Register"). The changes will expand the Register so that it also covers herbal smoking products and nicotine products. Once the amendments brought into force by regulation 2(1) take effect, tobacco businesses, herbal smoking product businesses, vaping product businesses and nicotine product businesses will all be "registrable businesses" and the council will have the power to apply to the sheriff for a "banning order" banning a person from carrying on a registrable business from premises within the council's area.

The provisions in section 69 and schedule 9 come into force on 29 October 2026. The exception is the amendments in paragraph 15(a), (b) and (d) of schedule 9 which are amendments to registration offence provisions in section 20(1), (2), (2A) and (6)(a) of the 2010 Act. These amendments come into force 6 months later meaning that businesses will have 6 months from the date the extended Register is active to register herbal smoking product businesses and nicotine product businesses.

Transitional and saving provisions are made to clarify the effect of the law for undetermined applications for tobacco and vaping product banning orders, for ancillary orders and for tobacco and vaping product banning orders which were made before 29 October 2026.

The amendments in schedule 9 of the 2026 Act are drafted with the intention of taking effect after the amendments in schedule 8 (alignment of definition of "vaping product") and a power was given to Scottish Ministers to determine the date of commencement for section 69 and schedule 9. This was in order to provide flexibility to Scottish Ministers when deciding when to commence the provisions in the 2026 Act which will extend the Register provisions in Chapter 2 of Part 1 of the 2010 Act to cover herbal smoking products and nicotine products.

Following consideration of the options, it is now considered desirable to commence most of these provisions on the same date as the coming into force of section 68 and schedule 8 (29 October 2026). This will align the commencement with the extension of other provisions in Chapter 1 of Part 1 of the 2010 Act which will be extended to cover nicotine products and herbal smoking products on 29 October 2026.

The provisions which are brought into force by regulation 2(1) will come into force "immediately after" the coming into force of section 68 and schedule 8 to reflect the fact that they can only take effect in that sequence.

At present, there is no comprehensive mechanism to identify where nicotine and herbal smoking products are sold. Commencing the extension of the Register to cover herbal smoking and nicotine products is necessary to support enforcement, reduce youth access, prevent future growth in use of these products, and ensure our approach remains effective and responsive to emerging products.

However, providing an appropriate period for business to familiarise themselves with, and comply with, this legislation is an important consideration which has influenced the approach taken in this instrument.

EU Alignment Consideration
This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation
There was a UK-Wide public consultation to support the development of the 2026 Act, which covered policies related to age restrictions for nicotine products and the expansion of tobacco policies to herbal smoking products. No public consultation was undertaken for these commencement regulations, although some stakeholder engagement with affected business and enforcement authorities has informed the approach to commencement.

Impact Assessments
As these are commencement regulations to implement provisions within the 2026 Act, there is no legislative requirement to complete impact assessments for this instrument, however, a Business and Regulatory Impact Assessment (BRIA) considering the impact of the commencement approach is attached.

Financial Effects
Whilst not a legislative requirement, a BRIA has been completed and is attached, as we appreciate that business and local authorities will be impacted by the approach to commencement of the extension of the Register. In line with the impact assessment, our approach provides a period of 6 months from the date the extended Register is active for businesses and local authorities to familiarise themselves with registration requirements before relevant registration offences apply.

Scottish Government
Population Health Directorate

June 2026