POLICY NOTE

THE TOBACCO AND VAPES ACT 2026 (CONSEQUENTIAL, TRANSITIONAL AND SAVING PROVISIONS) (SCOTLAND) REGULATIONS 2026

SSI 2026/213

The above instrument was made in exercise of the powers conferred by section 169(1)(a) and 172(1) of the Tobacco and Vapes Act 2026. The instrument is subject to negative procedure.

Summary Box

The Tobacco and Vapes Act 2026 (Consequential, Transitional and Saving Provisions) (Scotland) Regulations 2026 will make technical amendments to secondary legislation to reflect the changes made by the Tobacco and Vapes Act 2026 ("the 2026 Act").

Policy Objectives

The overarching policy objectives of the 2026 Act are to create a smoke free generation in Scotland and to reduce nicotine and vape product use among young people and non-smokers. The 2026 Act aligns with Scotland's Population Health Framework[1] and the Tobacco and Vaping Framework[2].

The Tobacco and Vapes Act 2026 (Consequential, Transitional and Savings Provisions) (Scotland) Regulations 2026 will make technical amendments to secondary legislation to reflect certain changes made by the 2026 Act. This includes amendments to:

- The Sale of Tobacco (Register of Tobacco Retailers) Regulations 2010
- The Sale of Tobacco (Registration of Moveable Structures and Fixed Penalty Notices) (Scotland) Regulations 2011
- The Prisons and Young Offenders Institutions (Scotland) Rules 2011
- The Sale of Nicotine Vapour Products (Prescribed Documents) (Scotland) Regulations 2017
- The Sale of Tobacco (Prescribed Documents) (Scotland) Regulations 2013
- The Sale of Tobacco and Nicotine Vapour Products by Persons Under 18 (Scotland) Regulations 2017

The amendments will reflect the extension of various provisions in the Tobacco and Primary Medical Services (Scotland) Act 2010 ("the 2010 Act") to cover herbal smoking products and nicotine products and will reflect changes in terminology from "nicotine vapour product" to "vaping product".

Section 54 of the 2026 Act repeals the offence of purchasing tobacco products by people under the age of 18 and section 55 repeals the offence of a person under 18 failing to comply with a confiscation request. The instrument reflects those provisions by removing prescribed fixed penalties for those offences from secondary legislation.

Part 4 of the Regulations makes amendments in consequence of provision in the 2026 Act (section 69 and schedule 9) which extends Chapter 2 (register of tobacco and vaping product retailers) of Part 1 of the 2010 Act so that retailers selling herbal smoking products and nicotine products are subject to the same registration requirements as retailers who sell

[1] https://www.gov.scot/publications/scotlands-population-health-framework/

[2] https://www.gov.scot/publications/tobacco-vaping-framework-implementation-plan-2023-2025-progress-update/

tobacco and vaping products. These provisions are brought into force by The Tobacco and Vapes Act 2026 (Commencement No. 1, Transitional and Saving Provisions) (Scotland) Regulations 2026 (S.S.I. 2026/210 (C. 22)).

The instrument provides transitional and saving provisions to ensure that a person who is subject to an existing tobacco and vaping product banning order which was made before 29 October 2026 will, after the relevant consequential amendments come into force, still be required to declare that in an application to be registered. There is a saving provision to ensure that the old form of banning order notice continues to apply for notices relating to existing tobacco and vaping product banning orders.

There is a minor amendment in Part 5 to reflect the change to the age of sale made by section 52 of the 2026 Act which comes into force on 1 January 2027.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

The Scottish Ministers have made the following statement regarding children's rights.
In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Tobacco and Vapes Act 2026 (Consequential, Transitional and Saving Provisions) (Scotland) Regulations 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

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 this instrument, as it contains technical regulations required as a result of substantive provisions in the 2026 Act.

Impact Assessments

A Childs Rights and Wellbeing impact assessment and Data Protection Impact Assessment have been completed for the instrument

Financial Effects

The Minister for Community Care confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Population Health Directorate
June 2026