EXPLANATORY MEMORANDUM TO

THE TOBACCO RETAILER (FIXED PENALTY) (AMOUNT) (AMENDMENT) REGULATIONS (NORTHERN IRELAND) 2026

S.R. 2026 No. 171

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health to accompany the above-named Statutory Rule which was laid in draft and has now been approved by the Northern Ireland Assembly.

1.2 The Tobacco Retailer (Fixed Penalty) (Amount) (Amendment) Regulations (Northern Ireland) 2026 are made under sections 12(8) and 24(3) of the Tobacco Retailers Act (Northern Ireland) 2014. It was subject to the draft affirmative resolution procedure.

1.3 The Regulations are to come into operation on 29th October 2026, except for Regulation 4, which is to come into operation on 1st January 2027, and Regulation 5, which is to come into operation on 1st March 2027.

2. Purpose

2.1 The purpose of the Regulations is to amend The Tobacco Retailer (Fixed Penalty) (Amount) Regulations (Northern Ireland) 2016 to update the schedule of fixed penalty offences to align with the new and revised offences now regulated under the Tobacco Retailers Act (Northern Ireland) 2014, as a result of amendments made by the Tobacco and Vapes Act 2026 to that Act.

2.2 The Regulations also revoke The Tobacco Retailer (Fixed Penalty) (Amount) (Amendment) Regulations (Northern Ireland) 2021 as the amendments contained in those Regulations are now superseded.

3. Background

Legislative background

3.1 Legislation currently provides a comprehensive framework in relation to tobacco control. This includes measures to prevent youth appeal and access, such as the ban on vending machine sales, point of display bans, age of sale restrictions, plain packaging, flavour bans and bans on packs of 10 or single cigarettes.

The Tobacco and Vapes Act 2026 (“the Act”) received Royal Assent on 29th April 2026. The Tobacco and Vapes Act (“the Act”) contains a number of provisions in Part 3 (sections 72-84 refer) that are inserted into the Part 2 of

the Health and Personal Social Services (Northern Ireland) Order 1978, which restate and amend the existing tobacco control legislation including those offences in respect of which a district council may issue a Fixed Penalty Notice (FPN).

The Act also provides several new offences related to the retail of vape and nicotine products, including age of sale offences, sale from vending machines, free distribution and the display of products and pricing, and the new age of sale for tobacco from January 2027, in respect of which a council may issue an FPN.

Section 87 (extension of retailer register) of the Act (commenced on order by the Department of Health for Northern Ireland) introduces Schedule 10 (extension of retailer register: Northern Ireland). Schedule 10 amends the Tobacco Retailers Act (Northern Ireland) 2014 to extend the mandatory register of tobacco retailers so that it will also apply to retailers of vaping products and nicotine products.

Section 12 of the Tobacco Retailers Act (Northern Ireland) 2014 enables district council officers to issue FPNs for tobacco, vape and nicotine offences. Schedule 14 to the Act amends section 12 of the Tobacco Retailers Act (Northern Ireland) 2014 to incorporate new and revised fixed penalty offences.

Subordinate legislation The Tobacco Retailer (Fixed Penalty) (Amount) Regulations (Northern Ireland) 2016 (S.R. 2016 No. 180) sets out in a Schedule fixed penalty offences and associated fixed penalty monetary amounts. Further subordinate legislation The Tobacco Retailer (Fixed Penalty) (Amount) (Amendment) Regulations (Northern Ireland) 2021 (S.R. 2021 No. 331) amended this Schedule to The Tobacco Retailer (Fixed Penalty) (Amount) Regulations (Northern Ireland) 2016 to include offences relating to nicotine products.

The revised list of retailer offences and proposed fixed penalty amounts were shared with the Department of Justice (DoJ), who were content that the proposed penalties for all new or comparable offences are consistent and proportionate.

Policy Background

3.2 Smoking is one of the most important preventable causes of disparities in health and a significant contributor to the gap in life expectancy. Although vaping is less harmful than smoking, the main ingredient of vapes that poses a health risk to young people is nicotine. When inhaled, nicotine is a highly addictive drug. The addictive nature of nicotine means that a user can become

dependent on vapes when they use them regularly. Vaping amongst local children has been increasing.

The Act aims to protect children and future generations by creating a smoke-free generation through prohibiting the sale of tobacco to anyone born on or after 1st January 2009. It also seeks to reduce youth vaping by restricting the marketing, branding, flavours and packaging of vapes that appeal to children.

The Act also provides for the extension of The Tobacco Register of Northern Ireland so that the existing statutory registration requirements for tobacco retailers will also apply to retailers of vape and nicotine products.

The policy will not directly affect existing smokers and, therefore, is not anticipated to have an immediate impact on adults.

3.3 FPNs are a well-established approach to enforce a range of regulatory offences and are already used to enforce age of sale legislation for tobacco products.

The Regulations are consequential upon the provisions of Part 3, section 87 of and Schedule 10 to, the Act. The provisions amend the Health and Personal Social Services (Northern Ireland) Order 1978 and the Tobacco Retailers Act (Northen Ireland) 2014. The Regulations are necessary to amend The Tobacco Retailer (Fixed Penalty) (Amount) Regulations (Northern Ireland) 2016 to ensure alignment with the new and revised fixed penalty offences now regulated under the Tobacco Retailers Act (Northern Ireland) 2014, as amended.

The current FPN amounts are retained, and any new or comparable offences are assigned monetary values within the present levels set for offences. This approach, which is consistent with FPN amounts set out under the Act, ensures consistency, proportionality and alignment with existing regulations and maintains a coherent enforcement framework going forward.

In practice, most of the enforcement activity is undertaken by district councils in Northern Ireland.

4. Consultation

4.1 The amendments introduced by this Rule are technical and consequential in nature. They do not introduce new policy and therefore did not require public consultation.

4.2 Relevant stakeholders, including district councils have been informed of the forthcoming changes.

District councils are designated as the enforcement authorities in Northern Ireland for tobacco-related offences under the Tobacco Retailers Act (Northern Ireland) 2014. Councils therefore play a central role in monitoring compliance and enforcing tobacco control measures across their respective areas. Consequently, District Councils were consulted in respect of the Regulations.

Officials have engaged with Council Chief Executives, through Solace, who agreed with the proposal to maintain current levels of fixed penalties amounts and support the Department's proposed recommendations for new FPN amounts.

5. Equality Impact

5.1 The policy will address an experience / priority for pregnant women. The impact assessment conducted for the Bill identified smoking as representing a significant risk for poor pregnancy-associated health outcomes. Women who smoked during pregnancy were 2.6 times more likely to give birth prematurely.

Whilst not a gender specific issue, smoking rates and smoking related ill-health is disproportionally high in areas of high deprivation. It is therefore expected that in due course, the policy will result in reduced health inequalities, increased productivity and more expendable income for smokers in those areas. This benefit will be welcome for pregnant women in deprived areas who are a target group in our tobacco strategy.

In accordance with its duty under section 75 of the Northern Ireland Act 1998, the Department conducted a screening exercise on the proposals and concluded that they do not have any significant implications for equality of opportunity. The Rule will not affect any of the section 75 groups disproportionately. In light of this, the Department considers that an equality impact assessment is not necessary.

6. Regulatory Impact

6.1 It is anticipated that there will be an initial cost for retailers in terms of training staff and raising awareness of the new age of sale restriction and the products range to which it applies. However, this will be a one-off cost, as opposed to a recurring annual cost. There is some limited evidence to suggest that retailers do not view the process of age-checking as excessively burdensome.

As the Regulations, in terms of additional costs, are, therefore, expected to have only a minor, indirect, initial and transitory effect on businesses and do not impose any additional costs on voluntary organisations, or the public

sector, the Department considers that regulatory impact assessment is not necessary.

7. Rural Needs

7.1 The Department has assessed the proposals in line with the Rural Needs Act (Northern Ireland) 2016 and has determined they will not have an adverse impact on rural communities.

8. Data Protection

8.1 The Department does not consider that these Regulations affect the obtaining, handling or use of personal information relating to retailers of tobacco, vape, or nicotine products such as these relate to the requirements of the Data Protection Act 2018 and the GDPR and that the Regulations are consistent with the data protection principles set out in therein.

9. Financial Implications

9.1 The amended Regulations will have no financial implications for the Department of Health or district councils.

10. Section 24 of the Northern Ireland Act

10.1 The Department is satisfied that the regulations are compatible with Section 24 of the Northern Ireland Act 1998.

11. EU Implications

11.1 Not applicable.

12. Parity or Replicatory Measures

12.1 This Statutory Rule applies only to Northern Ireland.