



Northern Ireland
Assembly

Committee for Health, Social Services and
Public Safety

OFFICIAL REPORT (Hansard)

Health (Miscellaneous Provisions) Bill:
Departmental Briefing

23 September 2015

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Maeve McLaughlin (Chairperson)
Mr Alex Easton (Deputy Chairperson)
Mrs Jo-Anne Dobson
Ms Rosaleen McCorley
Mr Daithí McKay
Mr Fearghal McKinney

Witnesses:

Mr Gerard Collins	Department of Health, Social Services and Public Safety
Ms Margaret Glass	Department of Health, Social Services and Public Safety
Ms Jenny McAlarney	Department of Health, Social Services and Public Safety

The Chairperson (Ms Maeve McLaughlin): You are all very welcome. I understand that we have had a slight change in attendance, but you are very welcome nonetheless. We have Gerard Collins from the population health directorate, Margaret Glass from medicines policy and Jenny McAlarney. I invite you to make your presentation, after which we will open the meeting up for comments and observations. Gerard, are you leading?

Mr Gerard Collins (Department of Health, Social Services and Public Safety): I think that Margaret is starting off, and then I will come in.

Ms Margaret Glass (Department of Health, Social Services and Public Safety): Thank you for the invitation here today. We are here to brief you on the Health (Miscellaneous Provisions) Bill. We have already provided a briefing paper to the Committee, and, during the consultation period, the Committee had a briefing on the tobacco and e-cigarette provisions.

I will start by giving a bit of background to the Bill. The Health (Miscellaneous Provisions) Bill started out as a Bill to amend the Health (Miscellaneous Provisions) Act 2008. Those provisions are now in Part 2 of the current draft of the Bill. During work on the Bill, we were joined by colleagues with responsibility for provisions on e-cigarettes and tobacco, and those provisions are now in Part 1 of the Bill. Gerard will give you the background to that, and I will then cover the miscellaneous parts on family practitioner services, specifically dental, pharmaceutical and ophthalmic services. We are happy to take questions at the end or as we go.

The Chairperson (Ms Maeve McLaughlin): I think we will take them at the end.

Mr Collins: Good afternoon. I will provide an overview of Part 1 of the Bill, which deals with provisions relating to nicotine-containing products (NCPs). I will also provide background on the decision to include in the draft Bill provisions on the sale of these items.

The most common form of NCPs is e-cigarettes, and a recent report commissioned by Public Health England estimated that e-cigarettes are 95% less harmful than tobacco cigarettes. In the past four to five years, the market for e-cigarettes has grown exponentially, and it is estimated that there are now around 2.6 million regular users in the UK, the vast majority of whom are former or current smokers.

At present the e-cigarette market is unregulated. The quality and safety of available products therefore cannot be verified. The position on regulation will change shortly. From May 2016, the revised EU tobacco products directive will require all NCPs containing less than 20 milligrams of nicotine to be regulated as consumer products. Any manufacturer wishing to market its product as a smoking-cessation aid or to sell a product containing more than 20 milligrams will have to apply for licensing to the Medicines and Healthcare Products Regulatory Agency.

Currently, there are no age restrictions on the sale of e-cigarettes and no requirement in the revised EU directive for member states to introduce such restrictions. A 2014 report from the World Health Organization considered the emerging evidence on health risks associated with NCPs. It concluded that there is sufficient evidence to caution children and young people against using the products. Nicotine is a highly addictive substance, and adolescent nicotine exposure is known to have long-term adverse consequences for brain development.

To address concerns about youth access to e-cigarettes, an amendment was included in the Children and Families Act 2014 to provide England and Wales with regulation-making powers to restrict sale of NCPs to persons over 18. These regulations have since been made and will come into force on 1 October. In Scotland and the Republic of Ireland, plans are under way for legislation to allow for age restrictions on the sale of NCPs.

In February 2014, the Executive agreed the inclusion of relevant provisions in the draft Health (Miscellaneous Provisions) Bill. The Bill contains provisions to enable the Department to make regulations prohibiting the sale of NCPs to minors. A provision to allow the Department to create an offence of proxy purchasing is also included. It is not intended that legislation will apply to licensed nicotine replacement therapy products currently on the market as aids to smoking cessation. The majority of these products are sold as general sales list medicines, available in pharmacies and supermarkets to persons aged 12 and over.

Schedule 1 to the Bill amends the Tobacco Retailers Act (Northern Ireland) 2014 to allow for offences in relation to the underage sale of NCPs to be included as an offence that could lead to an application for a restricted sale order or restricted premises order. In practice, that will mean that, if a retailer commits an underage sales offence in relation to an NCP, the enforcement officer can include that as one of three offences that could result in a retailer's being banned from selling tobacco and/or nicotine-containing products for a period of up to three years.

Following consultation on the draft Health (Miscellaneous Provisions) Bill, two small amendments were made to Part 1. The first provides the Department with regulation-making powers in relation to banning the sale of e-cigarettes from vending machines, and the second raises the level of fine for sales of tobacco from vending machines to a level 5 fine, which is up to £5,000. That ensures a consistent approach to all fines for all underage tobacco or e-cigarette sales offences.

That concludes my overview of Part 1 of the Bill. I will hand you back to Margaret, who will provide an overview of the remaining provisions.

Ms Glass: Part 2 of the Bill is the original provisions of the Bill, which are amending specific provisions in the Health (Miscellaneous Provisions) Act (Northern Ireland) 2008. Essentially, we are trying to make a few technical amendments to certain anomalies in it. The 2008 Act covered a wide range of issues, but there are certain specific ones that I will briefly explain the background of.

The main one that we are trying to amend is dental provisions. The 2008 Act contains provisions to introduce new dental legislation in Northern Ireland, commonly called the new dental contract. While it is some way from being introduced, we have identified a few areas where the wording is just not quite right, and we want to tidy that up. However, it essentially revolves around the listing of dentists. At the moment, dentists, pharmacists and providers of ophthalmic services are all on specific lists, but those tend to be business-type lists and not necessarily lists of professionals. They are lists of either

corporate bodies or individuals who have an arrangement with the Health and Social Care Board to provide the service. In the new dental contract, there will obviously be contracts, and the listing will change to what is known as performers' lists, which will be a list of professionals — of dentists. We have identified some wording in that; the word "performer" was not used where it should have been, so that is the main amendment on the dental side.

The other changes are again to do with listing, but of a different type. The ophthalmic and pharmaceutical services also had changes in the 2008 Act, but, unlike the dental services, they were not introducing contractual arrangements. What it attempted to do was to amend the listing services so that you did not just have a list of businessmen or corporate bodies that had an arrangement with the board, but you would additionally have lists of professionals — of pharmacists and of opticians. Again, the wording is not quite right; it needs to be amended.

These areas are a bit more complex. When we looked back at the original consultation, we were not necessarily happy that it had been properly explained. What we are doing in this instance is that, rather than just tidying up the wording, we are taking the provisions back to what they were in 2008, before this came in, and we are going to move forward again and look at the listing for ophthalmic services and pharmaceutical services. We are already looking at the listing of ophthalmic services. I do not know whether the Committee is aware of the developing eye care partnership that is examining the provision of eye care in Northern Ireland, but that is one of the work streams that we are currently looking at in that.

Those are the main changes. There is one other very technical change that we are making as a follow-on from the 2008 Act. There are provisions in the original legislation, which is the 1972 Order, that deal with providing services to people who are not ordinarily resident in Northern Ireland. The legislation allows for that work to be charged. Before the 2008 Act, there was a line in the legislation about exempting people from charge — say, for humanitarian reasons. That legislation was changed slightly, but, on the basis of legal advice, we are going to put the exemption words back in. Again, that is a very technical change.

Part of the consultation included consulting on a draft of the Bill, and, unlike our colleagues here, we did not get many responses other than bodies saying that they were happy that we were making technical changes to the legislation. In addition to the changes that have already been made, the changes that we are making in the Bill will update legislation that has been modernised since 2008. We are also putting the legislation into gender-neutral terminology, which is a more acceptable way of drafting legislation now. The main changes that we are making are very technical. In the consultation responses, everybody was quite positive about it. We are happy to take any questions.

The Chairperson (Ms Maeve McLaughlin): Thank you both for that. One of the key opportunities with this legislation was the potential for banning smoking in cars carrying children. That is also in limbo now.

Mr Collins: It is. The intention had been to include an enabling provision in the Bill to produce regulations banning smoking in cars carrying children. That obviously needed Executive approval. There was a period from March in which approval was sought. Executive approval has not been obtained, and, at the end of June, the Minister was concerned that, if we held off any further, we could delay the passage of the Bill and therefore risk that the Bill would not make it through in this mandate. So, on the understanding that, in its passage through the Assembly, there was an opportunity for any Member to raise an amendment on smoking in cars, the Minister decided to remove the potential for an enabling provision on smoking in cars at this stage.

The Chairperson (Ms Maeve McLaughlin): I asked this question in the previous session: is there a cut-off point by which the Minister could bring forward an enabling amendment?

Mr Collins: The Minister could bring forward an enabling amendment, but, again, that would need to be cleared. It would have to go back to the Executive. My understanding is that if, in the passage of the Bill through the Assembly, a Member proposed an amendment to introduce the smoking-in-cars provision, that would not have to go back to the Executive, but the final Bill would have to go to the Executive for clearance.

Ms Jenny McAlarney (Department of Health, Social Services and Public Safety): Yes, the final Bill would have to do so if any significant changes had been made to it.

Mr Collins: So, in terms of progress, an Assembly amendment might be the shorter route.

The Chairperson (Ms Maeve McLaughlin): Gerard, you referred to the nicotine replacement therapy. The legislation will not apply to nicotine replacement therapy, is that right? I am particularly interested in the difference between nicotine products and nicotine replacement therapy.

Mr Collins: Nicotine replacement therapy is like patches. Those are the licensed products that have medicines licensing for use in smoking cessation. A nicotine-containing product, such as an e-cigarette, could in theory be licensed as a cessation product. I think that one product has actually applied for medicines licensing. If it was licensed as a cessation product, depending on how novel it is — there is some issue around novel products — it could be made available to under-18s.

The Chairperson (Ms Maeve McLaughlin): I am trying to drill down a bit on this. If a 15-year-old was smoking and wanted to give up, could he or she technically go to the GP and obtain nicotine replacement therapy?

Mr Collins: Or a cessation service. They could obtain nicotine replacement therapy if the GP or the provider of the cessation service thought that it was appropriate for the 15-year-old in their circumstances.

The Chairperson (Ms Maeve McLaughlin): It would be GP judgement on it.

Margaret, you raised the issue of the dental practitioners. The paper states that these may be provided by a wider range of services, not just dental practitioners. Who would they be?

Ms Glass: It would mainly be corporate bodies. At the moment, the legislation just allows for dentists to provide what are known as general dental services. There is one other route. I am sure that you are familiar with the Oasis dentists in Northern Ireland. They used a different legislative route. They came in as a pilot. The legislation that is coming in will allow corporate bodies such as Oasis to ordinarily provide dental services as a matter of course.

The Chairperson (Ms Maeve McLaughlin): Would there not need to be a definition of what corporate —

Ms Glass: There is in the legislation, yes. That is already in the 2008 legislation. All that legislation is already sitting there. All we are doing is tinkering with it to tidy up bits that need it.

The Chairperson (Ms Maeve McLaughlin): The other issue that you raised was about services to persons who are not ordinarily resident and the issue about the 2008 Act. Is there a problem at the moment with not specifying those exemptions to charge? Is that an issue?

Ms Glass: The 2008 legislation simply reworded the existing legislation. It took out a reference to exemptions from charge and said that anything will be set in regulations. There is an implication that you can set in regulations an exemption from charge. However, on the basis of legal advice, we were advised to put those words back in. It is really a belt-and-braces job.

The Chairperson (Ms Maeve McLaughlin): Is there an issue now?

Ms Glass: No, there is no problem.

The Chairperson (Ms Maeve McLaughlin): OK. Thank you for that.

Mr McKinney: Why do you make the point that an Assembly Member could put the amendment through?

Mr Collins: It is because we do not have Executive clearance for an amendment at this stage. If the Department wishes to put the amendment in, it is my understanding that we have to have Executive clearance for that. As we have not yet had Executive approval, the other option is for an amendment to be raised during the progress of the Bill through the Assembly.

Mr McKinney: But you accept that it is the health authorities that have the biggest responsibility here in ensuring the safety of our children?

Mr Collins: Yes; it is a shared responsibility.

Mr McKinney: I sense that we are straying into a bit of politics here. Did anybody ask you to say that?

Mr Collins: No. I can just give you the facts. A paper was prepared for the Executive in March, but it has not been approved. That leaves us in the position that we are in at the moment where we do not have approval to —

Mr McKinney: Has your Department approached any individual MLAs to ask them to pursue that method?

Mr Collins: Not that I am aware of.

Mr McKinney: Why are you raising it today, not having acted in that way before?

Mr Collins: I understand that the Minister has made the point in previous correspondence that an amendment can be raised in the Assembly.

Mr McKinney: Has he sought to identify individual MLAs, or even the Committee, to pursue that?

Mr Collins: I am not aware of that.

Mrs Dobson: Thank you for your briefing. I appreciate your amendment to prevent the sale of e-cigarettes from vending machines. In your briefing you explain that these are the only substantive changes made to the draft Bill. What other changes have been made after consultation? Can you explain why you have made those changes?

Mr Collins: The two changes made after consultation were the inclusion of the ban on e-cigarettes from vending machines and the increase of the level of fine for sales from tobacco vending machines to a level 5 fine. It was a level 4 fine in the Tobacco Retailers Act (Northern Ireland) 2014. That was just to bring consistency in the level of fines across the Act.

Mrs Dobson: It was purely for consistency, then, based on the consultation?

Mr Collins: Yes.

Mrs Dobson: OK. I have another question relating to clause 11, which relates to services provided to persons not ordinarily resident in Northern Ireland. Can you again explain the rationale for this wording being reinstated? What ambiguity, do you feel, has crept in to warrant that?

Ms Glass: It was not that there was any ambiguity. It was recognised that the exemption was understood to be implied in the wording that was put back in. That went through in 2008, but our legal advisers suggested that it would be better. There was some correspondence between the drafters of the Bill and the Departmental Solicitor's Office, and it was agreed to put it back in.

Mrs Dobson: So that is the rationale behind it.

Ms Glass: Yes.

Mrs Dobson: OK.

The Chairperson (Ms Maeve McLaughlin): Sorry, Alex, I think it was on that previous point that you indicated.

Mr Easton: I was just looking for clarification. The bit about the banning and the smoking had gone to the Executive, and there was not an agreement.

Mr Collins: There has not been agreement to date from the Executive, and then the paper was withdrawn.

Mr Easton: Was it discussed?

Mr Collins: I am not aware if it was discussed.

Mr Easton: I am just curious why, if it got to the Executive, it was not agreed. I thought all parties were in favour of it, so I would be interested to see which parties were not agreeing to it going forward. Can we get that information?

Ms McAlarney: We do not have that information.

Mr Easton: Can we ask the Executive?

The Chairperson (Ms Maeve McLaughlin): You would not have that information.

Mr Collins: We do not have that information.

The Chairperson (Ms Maeve McLaughlin): Surely, the Minister needs to move the Bill before an amendment could be sought. Is that not accurate?

Ms McAlarney: Do you mean introduce the Bill?

The Chairperson (Ms Maeve McLaughlin): Yes.

Ms McAlarney: I think we were intending then that the Bill would be introduced without the provisions on smoking in cars to allow them to be introduced, because we could not get Executive agreement on the inclusion of those provisions.

The Chairperson (Ms Maeve McLaughlin): Yes but my point is that the Bill would need to be introduced.

Mr Collins: Before the amendment.

The Chairperson (Ms Maeve McLaughlin): Yes.

Mr Collins: Yes, but I think that, with Executive agreement, an amendment could have been included in the Bill prior to its introduction in the Assembly.

The Chairperson (Ms Maeve McLaughlin): I am not sure if that would have been an amendment at that point.

Ms McAlarney: No, it would not have been an amendment at that stage.

The Chairperson (Ms Maeve McLaughlin): I think that we are talking in circles. It seems to me that the Bill needs to be introduced. That is the key point. The Bill needs to be introduced, and there is probably a particular timescale now to doing that within this mandate. Introduce it, and then look at the amendments issue.

Mr Collins: In order to progress, if the Committee wants to see an amendment introduced on smoking in cars, probably the quickest way to do that now be —

The Chairperson (Ms Maeve McLaughlin): With respect, Gerard, it seems to have been put back on the Committee to do that. This is now an issue for individual MLAs who want to bring this forward, when there is a degree of consensus around this issue that the key to progressing it would have been for the Minister to introduce the Bill.

Mr Collins: The Bill was intended to be introduced after the summer recess, so the earliest we identified that it could be introduced was October. Whether that can happen now or not, I do not know.

The Chairperson (Ms Maeve McLaughlin): Right, so that is more clarity: it is October.

Mr Collins: The intention was to introduce the Bill in October.

The Chairperson (Ms Maeve McLaughlin): But the Bill is at risk.

Mr Collins: If we delay beyond October, the Bill will be at risk in this mandate, yes.

The Chairperson (Ms Maeve McLaughlin): OK.

Mr McKinney: Just to be clear, the Minister made no attempt to approach MLAs to pursue this issue and no attempt to pursue the issue via MLAs, despite the fact that he is outside his Committee. That issue, I am sorry, Mr Collins, I have to put back. There is a responsibility on the Minister to introduce the Bill. There is consensus in the country. There is consensus among politicians that this smoking ban should happen, and it is his responsibility.

Mr Collins: At official level, we would not be aware if the Minister had approached any particular MLAs regarding the passage of the Bill through the Assembly.

The Chairperson (Ms Maeve McLaughlin): OK, thank you for that clarity.

Mr McKay: Is the former Minister keeping open, or are you keeping open, an option that you may process this Bill by accelerated passage if it goes beyond October in order to get this legislation through?

Mr Collins: That is a possibility. If the Bill was introduced in October, we would do everything we could to try to ensure that it was made law before the end of the mandate.

Mr McKay: Which is not ideal for this Committee's role in scrutinising.

Mr Collins: No, certainly not.

Mr McKay: In terms of the part of the Bill covering e-cigarettes, there is obviously the EU tobacco products directive that will come into force to ban advertising of e-cigarettes. It states that they will no longer be advertised on television or radio. Are there other circumstances under which they will continue to be advertised?

Mr Collins: The tobacco products directive, I think, bans cross-border advertising of e-cigarettes, so there is the issue of domestic advertising. I know that Scotland consulted on that issue when they were introducing this provision. I do not think Scotland have gone forward with the ban, or if they are considering the ban on domestic advertising.

Ms McAlarney: I think they are considering a ban on domestic advertising. It is something that the rest of the UK will probably look at, but I think they will wait until the cross-border advertising ban is in place.

Mr McKay: In terms of Westminster or Scotland?

Ms McAlarney: Yes. Well, I think Scotland are going ahead. They introduced a Bill in June, and I am pretty sure that they included within it some provisions around domestic advertising.

Mr McKay: Are we waiting until the cross-border ban is in place before —

Ms McAlarney: Well, we have not considered it; we have not consulted on it.

Mr McKay: Would that be an option with regard to an amendment to the Bill?

Ms McAlarney: I would need to speak to our lawyers. Scotland have different legislation from us, so we would need to speak to the Departmental Solicitor's Office (DSO) to see whether we have any remit over domestic advertising before I could confirm.

Mr McKay: Does the Department have a view on e-cigarette advertising?

Ms McAlarney: We do not have a policy position on it yet.

Mr McKay: How have you gone about trying to formulate a position on it? Have you looked at it?

Ms McAlarney: We have not yet, no.

Mr Collins: We have not looked into it in detail. At this stage, we have been concentrating on introducing other legislation around tobacco. There are a lot of issues around e-cigarettes that we still need to look at from a policy perspective.

Mr McKay: There is a reference here to e-liquids. Will you tell us more about whether they are damaging? It is not something I am overly familiar with.

Mr Collins: There have been one or two cases in which teenagers have ingested the liquids and have had to be taken to A&E. Ingestion of large quantities of nicotine is actually dangerous; it is a poison. I know that the environmental health officers of at least one or two councils have removed the nicotine liquid containers in local shops where the containers do not have a childproof cap.

Mr McKay: That is not included within the Bill or any proposals regarding the regulation of e-liquids?

Ms McAlarney: The EU tobacco products directive covers the regulation of e-liquids as well. One thing that it is insisting on is more safety measures, one of which will be that all products have to be in childproof containers. Nicotine is dangerous, but only if it is ingested in pretty large quantities. It is the same as household things like bleach and things like that. It is just about ensuring that the packaging is not accessible by children.

Mr McKay: OK. So you are confident that the directive will cover any concerns that the Department would have.

Ms McAlarney: Yes, it does.

Mr McKay: I want to return to the advertising issue. I have my concerns about e-cigarettes. I know the jury is out. I know that some take the position that they seem to reduce smoking, but we do not have a good evidence base of what their impact is.

Mr Collins: The best evidence that we have to date is the Public Health England evidence review. It went into some detail. I know that one or two experts have queried some of the findings, but the evidence in that review is that, by and large, e-cigarettes are not particularly harmful in their own right. They do not appear to be the gateway to smoking tobacco that was originally feared, although it is still early days. The proportion of people who have tried e-cigarettes, or who regularly take e-cigarettes, and who have never smoked is 0.3%, so it is quite low. We need more years to pass before we get trends, but Public Health England's overall findings are that there are some risks with e-cigarettes, that they are not overly harmful and that they are certainly much, much less harmful than tobacco cigarettes.

Mr McKay: The point I seize upon there is that we will have to wait a number of years before we establish whether there are trends or not. I personally do not believe that the research base is adequate. Is it not the case that you should regulate to err on the side of caution until you are sure about the effects of e-cigarettes?

Mr Collins: Yes, and that is the reason why we are introducing the age-of-sale legislation. We have not regulated for a ban on e-cigarettes in public places at this stage, again largely on the basis of findings that there is no danger from second-hand exposure to vapour, and also given that a lot of employers and organisations have introduced voluntary bans on e-cigarettes in their premises. While

it is not backed up by legislation, for example, the use of e-cigarettes is banned on Civil Service property and the district councils have banned their use. A letter has gone out to schools following some work by the Department of Health and the Department of Education advising head teachers that e-cigarette use should be banned in schools as well.

Mr McKay: Could you still advertise these products in magazines and newspapers?

Mr Collins: Yes, it is still possible.

Mr McKay: Even after the directive comes into force. It is only for cross-border advertising on television and radio. It appears that there is a gap that legislators may choose to fill. Would you agree that is an option for an amendment to this Bill?

Mr Collins: Once we establish what the Northern Ireland powers are in relation to domestic advertising. As I say, we would need to go back to the solicitor to identify what authority we have as a Department over advertising.

Mr McKay: Did you not check that while doing this research?

Ms McAlarney: We put an initial query to DSO, but we have not taken it too far. Their initial thoughts were that we did not have the remit, but that we would have to look into it further.

The Chairperson (Ms Maeve McLaughlin): I thank all three of you. We are in a bit of limbo as far as this legislation is concerned. It is potentially at risk, and particularly the opportunity to ban smoking in cars. Thank you for your time and honesty.