



Northern Ireland
Assembly

Committee for Health, Social Services and
Public Safety

OFFICIAL REPORT (Hansard)

Health (Miscellaneous Provisions) Bill:
DHSSPS Officials

7 January 2016

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 Pam Cameron
Mr Kieran McCarthy
Ms Rosaleen McCorley
Mr Gary Middleton

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): We have departmental officials here today to respond to issues raised in the evidence session on the Bill. I inform members that initial formal deliberations on the Bill will be at next week's meeting. If clarification is needed on any issue, it should be requested from departmental officials during this meeting. I welcome Gerard Collins from the health improvement policy branch of the Department, Jenny McAlarney from the health improvement policy branch, and Margaret Glass from medicines policy. I will guide officials through each clause and invite them to provide the departmental responses on any of the issues raised. I also expect you to refer to any additional issues raised during the previous oral evidence session. I inform members that I will pause for questions after each clause. I invite officials to brief the Committee on issues relating to clause 1, and then we will open up to comments or questions.

Mr Gerard Collins (Department of Health, Social Services and Public Safety): Thank you, Chair, and good afternoon. Along with Jenny, I will cover the clauses in Part 1, which relate to tobacco and nicotine, and schedule 1, which relates to tobacco. Margaret will cover Part 2, which relates to miscellaneous provisions, to amend the Health (Miscellaneous Provisions) Act 2008. We will respond to any questions on Part 3 clauses relating to the interpretation of the Bill as they arise.

You mentioned that we need to refer to any issues raised in the previous oral session. We can do that now, if you wish, or just as they come up. There were two main issues.

The Chairperson (Ms Maeve McLaughlin): We can do it now.

Mr Collins: OK. The two main issues were smoking in private vehicles and the domestic advertising of e-cigarettes. We wrote to the Committee on 20 October about the domestic advertising of e-cigarettes, basically covering some of the issues in the tobacco products directive relating to domestic advertising. Essentially, those issues were the areas covered in the tobacco products directive.

Under that directive, the forms of advertising that would be available to e-cigarette manufacturers are billboards, leaflets, free distributions, point-of-sale advertising and event sponsorship in a domestic setting. Broadcasts over TV, radio and internet, and certain magazines, will not be available. The issue of domestic advertising therefore just relates to that first series, billboards and leaflets etc.

As you know, under the tobacco products directive there is a ban on cross-border broadcast advertising, so we are of the opinion that it might be better to wait until that ban comes into effect and we see its impact before making a decision on whether there is also a requirement to ban the other forms of domestic advertising. That is the non-broadcast forms of advertising. This issue would require consultation and engagement with the relevant stakeholders.

The other issue is banning smoking in cars. As you know, the Minister confirmed at Second Stage that he intends to table an amendment to provide regulation-making powers to ban smoking in cars carrying children. The Committee will have received a draft of the proposed amendment, and it is hoped to secure Executive agreement to it in the coming weeks, either at the Executive meeting of 21 January or 4 February. The amendment, subject to Executive agreement, will be introduced at Consideration Stage on 22 February. The proposed amendment provides the Department with regulation-making powers similar to those that exist in relation to work vehicles at present, namely banning smoking in a smoke-free vehicle and failing to prevent smoking in a smoke-free vehicle.

The Chairperson (Ms Maeve McLaughlin): Do you want to go back into clause 1?

Mr Collins: We will take you through the comments that were made on the clauses from the various stakeholders and give the Department's response to them. Clause 1 relates to the prohibition on the sale of nicotine products to persons under 18. The British Medical Association expressed concerns about the lack of evidence regarding the effectiveness of e-cigarettes as a smoking cessation aid and raised concerns about the safety of the products. That was made against clause 1, although it does not necessarily relate to clause 1. Our response to that point is that, from May 2016, the EU tobacco products directive will require all nicotine-containing products that contain less than 20 milligrams per millilitre of nicotine to be regulated as consumer products. In practice, that means that e-cigarette manufacturers will be obliged to comply with a number of requirements if they wish to sell their products in the EU. These include a limitation on nicotine content of e-cigarettes to 20 milligrams; obligatory reporting on ingredients in and omissions from the use of e-cigarettes, including toxicological data; the provision of information to consumers, including a health warning; and restrictions on cross-border advertising and promotion.

The BMA also proposed an amendment to the Bill to amend the Tobacco Retailers Act to include a register of those selling e-cigarettes. The Department is in the process of establishing a tobacco retailers' register, and we expect it to be operational from spring this year. At the minute, if we were to extend the register to include e-cigarette retailers, that would involve additional costs and may delay the go live date for the existing tobacco register. We are of the opinion that the health and enforcement focus needs to be on tobacco, so, at present, the Department has no plans to extend the tobacco retailers' register to include e-cigarette retailers. However, that will be revisited in the future if there are difficulties in enforcing the age-of-sale provision in relation to e-cigarettes.

Given that the available evidence points to e-cigarettes being considerably less harmful than tobacco products, we do not want to over-regulate the industry at this stage unless there is evidence that indicates that that is necessary. Already, through survey information, we know that young people have been trying e-cigarettes but at a rate lower than the number who have tried tobacco and that the number of ongoing users of e-cigarettes is quite small, particularly among non-tobacco smokers. The Tobacco Retailers Act is being amended through the Bill to allow the offence of selling an e-cigarette to a minor to count as one of three offences that could lead to a retailer being banned from selling tobacco and/or e-cigarettes. At the minute, we think that it is fairly well covered, and we will see how the legislation on compliance with underage sales of e-cigarettes pans out before we propose to go ahead and include e-cigarette retailers on the register.

The Chairperson (Ms Maeve McLaughlin): You said that extending the Tobacco Retailers Act to include e-cigarettes would involve additional costs. Has that been costed?

Mr Collins: To extend the 2014 Act to require e-cigarette retailers to register would incur additional administration costs associated with managing the register and keeping it up to date. We do not envisage any additional costs in extending the 2014 Act to include the offences of selling an e-

cigarette because the enforcement of the underage sales of e-cigarettes would be carried out by the existing environmental health officers who enforce the age-of-sale tobacco legislation.

The Chairperson (Ms Maeve McLaughlin): What are the costs associated with the administration of the register?

Mr Collins: We would need to establish a registration authority in the first place. Belfast City Council has agreed to act as the registration authority for the Tobacco Retailers Act (Northern Ireland) 2014. The start-up costs are somewhere in the region of £35,000 and the ongoing maintenance costs for the register will be about £20,000 a year.

The Chairperson (Ms Maeve McLaughlin): It does not seem to be an extreme cost. When we balance it out with the public health issue it does not seem to be excessive.

Mr Collins: It is not a huge cost. Given that we are so far advanced in establishing the tobacco retailers' register, we will want to get that up and running to see how it works and learn from it before we intend going forward with a register for e-cigarette retailers.

The Chairperson (Ms Maeve McLaughlin): We can reflect on that, but why the wait-and-see?

Mr Collins: One of the issues is that we did not consult on this issue as part of the consultation on the Bill, so there would be issues involved in bringing in an enabling amendment at this stage.

The Chairperson (Ms Maeve McLaughlin): We are bringing forward other potential amendments to the Bill.

Mr Collins: Our view was that we would wait and see how the tobacco retailers' register pans out. The other issue was about whether we were being excessive in putting burdens on businesses if there is no, or limited, evidence that retailers were selling e-cigarette products to under-18s. We carry out surveys and we know from enforcement on underage sales of e-cigarettes whether or not compliance is high. Our view is that if compliance is high, do we really need to take the extra step of requiring retailers of these products to register? Also informing our thinking is our knowledge that the use of e-cigarettes is much less harmful than the use of tobacco. Public Health England estimated that it was something in the order of 20 times less harmful. We do not have the same public health onus to register the sellers of e-cigarettes as we do the sellers of tobacco.

The Chairperson (Ms Maeve McLaughlin): I am just wondering about the Bill being able to provide for enabling legislation to do that.

Ms Jenny McAlarney (Department of Health, Social Services and Public Safety): It would be tricky to provide an enabling power. The best way of doing that, if we were to do it, would be to amend the Tobacco Retailers Act (Northern Ireland) 2014 and extend it to include e-cigarette retailers. That is what the Office of Legislative Counsel (OLC) would recommend. Maybe you could do that and not commence it yet; that would be one option. It would not be commenced until we thought that there was an issue or we needed to do it.

The Chairperson (Ms Maeve McLaughlin): Part of this conversation is about evidence generally for different parts of the scenario — robust evidence and our commitment to seek that. Again, we can explore this, but I certainly think that there is merit in looking at the notion of enabling that power through the Tobacco Retailers Act so that we can test the evidence base but have the enabling legislation there. Is that something that you would explore, are exploring or could explore?

Mr Collins: Likely levels of compliance?

The Chairperson (Ms Maeve McLaughlin): No, in terms of what Jenny has just said.

Mr Collins: Yes, we could look at that. If the Department introduced an amendment requiring e-cigarette retailers to register, it would have to go to the Executive for clearance. As you know, we have a very tight timescale of 10 weeks on this legislation, so any hold-up on that could potentially hold up the whole —

The Chairperson (Ms Maeve McLaughlin): Sorry, Jenny was talking in terms of the potential extension of the Tobacco Retailers Act.

Mr Collins: Yes, doing it separately.

Ms McAlarney: We would have to consider whether we have to table an amendment to this Bill to allow us to amend the Tobacco Retailers Act. It would depend on whether that was seen as a considerable policy shift from what we are doing if we do not have Executive agreement to do that.

The Chairperson (Ms Maeve McLaughlin): Can I ask for that to be explored at least, and for it to be brought back to us?

Mr Collins: We can look at that.

Still on clause 1, the BMA proposed an amendment calling for a ban on smoking in cars carrying children under 18. We have covered that issue. Fontem Ventures supports the introduction of a requirement on retailers to have an age-verification policy in place to prevent anyone under 18 from accessing nicotine-containing products. The departmental response is that we have no plans at present to introduce a requirement for an age-verification process. Again, as you are aware, that issue has not been consulted on. It would place an additional burden on retailers. We do not have an age-verification process in place for tobacco retail.

It is intended that the new age-of-sale requirement for e-cigarettes will be enforced along the same lines as the age of sale for tobacco products, ie that enforcement officers from the district councils will carry out test purchases to ensure that retailers are compliant. That way, the enforcement officers will have proof of purchases to hand. To introduce an age-verification process would be another offence that retailers would be guilty of, when, if they sell to under-18s when the Bill becomes an Act, they will already be breaking the law on that ground. Test purchases are the normal way we have of ensuring compliance.

The Chairperson (Ms Maeve McLaughlin): OK. Is there anything else in relation to clause 1?

Mr Collins: Still on clause 1, Fontem Ventures also believes that a regulatory approach should be adopted aimed at preventing the uptake of e-cigarettes by under-18s while encouraging tobacco smokers to shift to e-cigarettes as a cessation tool. To date, we have no hard evidence on the effectiveness of e-cigarettes as a cessation tool. That would require a policy shift in the Department to focus on e-cigarettes as a cessation tool. Without the evidence, we do not propose to do that. At the minute, two nicotine products have been granted licences and can be marketed as cessation aids. As with all licensed products for smoking cessation, it is a matter for the prescribing practitioner to assess the client who is accessing those services and to decide which licensed product is most appropriate for a client's particular needs. When those licensed products come on stream, GPs or smoking cessation practitioners can recommend those products without any particular policy shift from the Department to focus on non-licensed e-cigarette products.

The Chairperson (Ms Maeve McLaughlin): Does it say in the Bill that the legislation does not apply to licensed nicotine products?

Mr Collins: No. When we write the regulations, we will ensure that it is written that licensed products are exempted.

The Chairperson (Ms Maeve McLaughlin): Should that not be more explicit in the Bill?

Ms McAlarney: Originally, we had something in the Bill saying that the legislation could apply to all nicotine products, certain nicotine products or those that could be defined by the Department. However, OLC took that out because, according to it, the Interpretation Act already allows for any provisions in legislation to apply to some, all or any named ones, so it said that that was not necessary because it was in the original piece of legislation. It means that, when we draft the regulations, we can

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The Chairperson (Ms Maeve McLaughlin): I am just thinking about products like patches.

Ms McAlarney: Those nicotine products are licensed for general sale to children over the age of 12. A child can buy those products. The novel nicotine products that we are talking about now, which may become licensed, will probably be for sale only to adults but will be available on prescription to 12- to 18-year-olds if their GP or practitioner says that they are recommended for smoking cessation. At the minute, the regulations will exempt any nicotine replacement therapy (NRT) products that are currently available for sale to children.

The Chairperson (Ms Maeve McLaughlin): What I am hearing is that it does not need to be explicit in the —

Ms McAlarney: Not in the primary legislation, but it will be in the regulations.

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

Mr Collins: Finally on clause 1, JTI supported the introduction of legislation to make it an offence to allow a person under 18 to sell nicotine products unless specifically authorised to do so by a responsible person. The Department has no plans at present to make it an offence to allow under-18s to sell nicotine products. We believe that such legislation may have a negative impact on the employment prospects of young people, particularly in rural areas where part-time employment is limited. The present position on tobacco is that under-18s can sell tobacco products. The other issue with regard to that recommendation is that the definition of an authorised or responsible person would be very difficult to tie down.

The Chairperson (Ms Maeve McLaughlin): OK. Members, are there any comments, questions or observations on clause 1 at this stage? Earlier, I commented on the potential impact of this legislation to support the extension of the Tobacco Retailers Act to include e-cigarettes.

Mr Collins: And the register, yes.

The Chairperson (Ms Maeve McLaughlin): Are you committing to take a look at that and come back to us with options or scenarios around that?

Mr Collins: Yes.

The Chairperson (Ms Maeve McLaughlin): Is there anything else on that? Are members comfortable enough to move on to clause 2?

Mr Collins: Clause 2 is on the prohibition of the sale of nicotine products from vending machines. A number of tobacco manufacturers and those involved in the vending machine business responded on this issue and they do not agree with the prohibition of the sale of e-cigarettes from those machines. While we are not aware of any premises where e-cigarettes are sold from vending machines at present, we wish to future-proof the legislation by including that regulation-making power. While the provision was not included in the original consultation, a number of the respondents requested that provision. Before sales of tobacco from vending machines were banned, they were the most common source of tobacco for under-18s. At present, it is intended that the regulation-making powers in relation to vending machines would be used only if there were evidence to suggest that young people were able to obtain e-cigarettes from those machines.

In short, there are no such machines in place at present but we want to make sure that, if such a source of supply were to become commonplace and young people were accessing products from that source, we had the power to ban that form of supply.

The Chairperson (Ms Maeve McLaughlin): OK. Are members content to move on to clause 3?

Mr Collins: There were no particular comments from stakeholders on clause 3.

The Chairperson (Ms Maeve McLaughlin): OK. Are members content to move on to clause 4?

Mr Collins: Again, on clause 4, which deals with increasing the penalty for selling tobacco from automatic vending machines, we just want to ensure that it is in line with similar offences for underage sales of tobacco products. No issues were raised on that clause.

The Chairperson (Ms Maeve McLaughlin): OK. Thank you. We will move to clause 5.

Mr Collins: Clause 5 is on the interpretation of the definition of a nicotine product. Imperial Tobacco expressed concern that the definition of a nicotine product does not cover new and emerging products sufficiently. I will cite an example. A heat-not-burn product is currently being developed and coming to the market. It passes a heated vapour over tobacco and allows the inhalation of nicotine and whatever else comes off the tobacco into the lungs. Our view is that the main purpose of the provisions in Part 1 is to prevent the sale of nicotine-containing products. The heat-not-burn products referred to by Imperial Tobacco will not be available for sale to under-18s anyway because they contain tobacco. The sale of such products to minors is already banned. We had that confirmed by the Departmental Solicitor's Office.

The other issue is the interpretation of the definition of a nicotine product. Clause 5 states that, for the purpose of defining a nicotine product:

"It does not matter ... whether the device is also intended to enable any other substance to be consumed".

That may be non-nicotine-containing liquid. In other words, within the definition of clause 5, the sale of a device that can be used for the inhalation of a liquid containing nicotine is already banned. Such a device could be used for the inhalation of a non-nicotine-containing liquid, but the device itself is still banned. That means that, if this regulation comes into force, a young person would not be able to buy one of those devices whether they intend to use it for a nicotine-containing liquid or a non-nicotine-containing liquid, but they could purchase a non-nicotine-containing liquid. We feel that the definition of a nicotine product is well enough covered as it is.

The Chairperson (Ms Maeve McLaughlin): Are members comfortable with what they heard there? OK, we will move on.

Ms Margaret Glass (Department of Health, Social Services and Public Safety): We will move to Part 2 of the Bill, which amends the Health (Miscellaneous Provisions) Act 2008. On clause 6, the only response came from the British Dental Association (BDA) and its comments also apply to clauses 9 and 10. Clause 6 deals with persons performing primary dental services. Clause 9 is about disqualification by the tribunal, and clause 10 is on the provision of medical or dental services, article 15B arrangements. The BDA essentially said that it was content with all the amendments that we have made. One of its comments was about performers lists, which is the wording that will now be in the revised legislation. The BDA has an interest in what detail those lists will contain. As it rightly recognises, that detail is not in the Bill but will be in the regulations that will come afterwards. The BDA will be involved in any consultation on that, as will the Health Committee. The BDA was originally to attend today but, as you mentioned earlier, it decided that it was not necessary.

The Chairperson (Ms Maeve McLaughlin): It felt that what it had submitted was sufficient. OK. Are there any other issues on clause 6? OK.

Ms Glass: The only response on clause 7 was from the General Optical Council simply to say that it is content with those provisions. There were no responses on clause 8. The comments made by the BDA equally apply to clause 9, as they do to clause 10. There were no comments on clause 11.

The Chairperson (Ms Maeve McLaughlin): Are there any comments from officials on clauses 11 or 12?

Ms Glass: Clause 12 is interpretation.

The Chairperson (Ms Maeve McLaughlin): OK. Clause 13.

Mr Collins: The only comment on clause 13 was from Imperial Tobacco. Clause 13(2) states:

"Regulations and orders made by the Department under this Act may contain such incidental, supplementary, transitional, transitory or saving provisions as appear to the Department to be necessary or expedient."

That is a standard clause in practically all primary legislation. It enables the Department to change the regulations when circumstances have changed. It is built into all Bills. Imperial Tobacco has called on the Committee to ensure that any such changes to regulations and orders under the Act are evidence-based and subject to scrutiny by the Assembly. It notes that the Department has committed to hold a further consultation on draft regulations relating to nicotine products and it welcomes the opportunity to participate in those discussions. We just noted that. That is standard practice. We would not make any substantial changes without bringing them before the Committee and the Assembly.

The Chairperson (Ms Maeve McLaughlin): OK. There were no comments on clauses 14 to 16, but do officials want to make any comments?

Mr Collins: Nothing specific.

The Chairperson (Ms Maeve McLaughlin): OK. Do members have any questions on clauses 14 to 16? OK. Are there any other issues that members want to raise at this point? No. OK, thank you. I advise officials that, obviously, we will discuss the evidence that we have heard today and decide on any actions flowing from that. Where we decide to seek an amendment to a clause, we will write to you formally to ask whether you will make the amendment. If that is the case, a response, including the text of the amendment, will be required for the meeting on 20 January. As you will be well aware, we are working to a very tight timeline on all of this, given that that is the last date for the Committee deliberations. That means that the text of any amendment must be with the Committee office by noon on Thursday 14 January. I thank all three of you for attending today.