

HEALTH (MISCELLANEOUS PROVISIONS) BILL

EXPLANATORY AND FINANCIAL MEMORANDUM

INTRODUCTION

1. This Explanatory and Financial memorandum has been prepared by the Department of Health, Social Services and Public Safety in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.
2. The Memorandum needs to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. Part 1 of the Bill contains provisions to prohibit the sale of nicotine products to those under eighteen. Since the introduction of the Smoking (Northern Ireland) Order 2006, the sale of non-licensed nicotine-containing products, such as e-cigarettes, has grown in popularity and there are now thought to be over 2m users in the UK. There are presently no restrictions on selling these products to children, therefore, the main aim of the provisions in the draft Bill is to prevent young people from accessing nicotine-containing products, primarily electronic cigarettes. The provisions will also allow for an offence of an adult purchasing such products on behalf of a person under the age of 18. In addition, Part 1 of the Bill contains a provision to increase the level of fine applicable for sales of tobacco from a vending machine. These provisions are set out in clauses 1 to 5.
4. Part 6 of the Health and Personal Social Services (NI) Order 1972 (“the 1972 Order”) contains the legislative powers for the administration of general dental services, general ophthalmic services and pharmaceutical services in Northern Ireland. Amongst other matters, the Health (Miscellaneous Provisions) Act (NI) 2008 (referred to in this memorandum as “the 2008 Act”) made various amendments to these powers in the 1972 Order, including the creation of contractual legislation for dental services in Northern Ireland. The draft Bill now contains amendments to give full effect to this 2008 Act policy intention.
5. The Department is also using the Bill to amend the general ophthalmic and pharmaceutical services listing systems provisions. Further detail on these changes is set out in the following paragraphs. All these provisions are contained in Part 2 of the Bill.

Dental services - the introduction of the new dental contract including the creation of performers' lists

6. At present, general dental services may only be provided by dental practitioners. One of the main policy aims of the 2008 Act was to change the way dental services are organised in Northern Ireland. These provisions will be known as primary dental services and, once commenced, the Health and Social Care Board (HSCB), will either provide primary dental services itself or arrange for their provision. Primary dental services will be provided through general dental services contracts or primary dental services agreements. Primary dental services may be provided by a wider range of providers not just dental practitioners.

Performers' lists

7. Linked to contractual legislation is the introduction of performers' lists which will place wider requirements on individual dentists. Dentists will have to provide detailed information and undertakings prior to listing and will be subject to certain HSCB powers of suspension as well as possible disqualification by a Tribunal. No dentist will be able to perform primary dental services unless their name is held on the professional list of performers maintained by the HSCB.

Amendments to the primary dental services legislation

8. The Department needs to amend specific wording and legislative references in the 2008 Act. These amendments are technical in nature and the original policy is unaffected. The amendments are set out in clauses 6, 9 and 10 in the attached draft Bill.

Amendments to general ophthalmic and pharmaceutical services provisions

9. Currently, the HSCB maintains lists of those with whom it has an arrangement to provide either general ophthalmic or pharmaceutical services. These are not lists of individual professional opticians or pharmacists. Rather, they are lists of providers, who may be professionally qualified, but may also be corporate bodies or (for pharmaceutical services) individual non professional providers. Once on a list, these providers are subject to specific terms of service and the HSCB has certain disciplinary powers over them. A Tribunal has the power to suspend and ultimately disqualify a provider from the list.
10. The policy intention of the 2008 Act was to extend the general ophthalmic and pharmaceutical services listing procedures to include pharmacists and opticians employed by providers. At the same time the HSCB and the Tribunal were to have widened powers over all those listed. The Department proposes to revisit this policy and, in the meantime, return the general ophthalmic and pharmaceutical services provisions to their pre 2008 Act position. Any future extension to listing to include all professionals carrying out general ophthalmic services and pharmaceutical services will, dependent on Ministerial and Executive agreement, be subject to detailed policy development, consultation and legislative change. This will require further primary legislation. The relevant amendments are set out in clauses 7 and 8 respectively in the attached draft Bill.

Other amendments to the 2008 Act

Charges for services provided to persons not ordinarily resident in Northern Ireland

11. The 1972 Order authorises the Department to make available any services provided under the Order to persons not ordinarily resident in Northern Ireland. The Department may determine charges for such services and also prescribe exemptions from these charges. The 2008 Act, in rewording this provision, removed the phrase “subject to such exemptions as may be prescribed” from the 1972 Order. To avoid any ambiguity and for clarity, the Department wishes to make the minor amendment of restoring these words. These amendments are set out in clause 11 in the attached draft Bill.

CONSULTATION

12. A consultation on the draft Bill was carried out from 1 September to 21 November 2014. The consultation attracted 26 responses from a variety of sources. A summary report of the consultation is available at: <http://www.dhsspsni.gov.uk/showconsultations?txtid=73241> With regards to Part 1 of the draft Bill, the Department will undertake a further consultation on the detailed regulations on nicotine-containing products before they are made. In relation to Part 2, the policy intention to introduce contractual legislation for dental services remains unchanged. Any extension of listing to include employed opticians and pharmacists requires further policy development and consultation outside of this Bill. Other amendments to Part 2 of the Bill are either presentational or have been included to avoid any ambiguity.

OPTIONS CONSIDERED

Age of sale restrictions on nicotine-containing products

13. A primary legislation vehicle was required in order to grant the Department the necessary powers to make regulations prohibiting the sale of nicotine-containing products such as e-cigarettes to children and young people. In order to keep pace with England and Wales, where similar powers were granted through the Children and Families Act 2014, the inclusion of provisions in the draft Health (Miscellaneous Provisions) Bill was deemed the most suitable way forward. Regulations to be made under the draft Bill will be consulted on in due course.

Dental Services

14. In order to give full effect to the 2008 Act policy intention to introduce the new dental contract the only viable option open to the Department is to amend the 2008 Act.

General ophthalmic services and pharmaceutical services listing

15. In order to return the general ophthalmic and pharmaceutical services provisions to their pre 2008 Act position it is necessary to restore the pre 2008 Act powers to allow for the continued listing of those who have an arrangement with the HSCB to provide these services. Before legislating again on this matter, the Department will carry out a full public consultation. Any subsequent legislation will be taken forward in a further Assembly Bill.

Charges for services provided to persons not ordinarily resident in Northern Ireland

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OVERVIEW

17. The Bill has 16 clauses and 2 schedules and is split into 3 parts:-

Regulation of sale of nicotine products and tobacco – consists of 5 clauses and provides for regulations to be made prohibiting the sale of nicotine products both to under 18s and from vending machines. It provides, through schedule 1, for amendments to be made to the Tobacco Retailers Act (Northern Ireland) 2014 and, separately, for an amendment to the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991. It also makes provisions for interpretation of Part 1 of the Bill.

Miscellaneous provisions – consists of 6 clauses to amend the 2008 Act provisions in respect of primary dental services, general ophthalmic services, pharmaceutical services and charges for services provided to persons not ordinarily resident.

General – consists of 5 clauses and makes provision in respect of interpretation of the Bill, subordinate legislation and repeals, and sets out the title and commencement dates.

COMMENTARY ON CLAUSES

A commentary on the provisions follows below. Comments are not given where the wording is self-explanatory.

Commentary on Clauses in Part 1 of the Bill

Clause 1: Prohibition of sale of nicotine products to persons under 18

Provides a regulation-making power for the Department to prohibit the sale of nicotine products to a person under 18. The penalty for committing this offence is a fine not exceeding level 5 on the standard scale. There is an exemption for persons employed in the industry and

a due diligence defence. Clause 1 also includes a regulation-making power for the creation of an offence in relation to the proxy purchasing of nicotine products.

Clause 2: Prohibition of sale of nicotine products from vending machines

Provides a regulation-making power for the Department to prohibit the sale of nicotine products from an automatic vending machine. Regulations made under this power must state who would be responsible for breaching the ban, the penalty for which is a fine not exceeding level 5 on the standard scale.

Clause 3: Amendments consequential on sections 1 and 2

This clause makes consequential amendments to integrate the new age of sale offence for nicotine products into the existing age of sale legislation for tobacco products. Consequential amendments to Article 6 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 apply the enforcement regime for tobacco age of sale offences to offences under clauses 1 and 2. Consequential amendments to sections 5, 6, 8, 9, 10, 11, 12, 16 and 22 of the Tobacco Retailers (Northern Ireland) Act 2014 integrate the offences under clauses 1 and 2 into the existing regime for repeated tobacco age of sale offences.

Clause 4: Amendment of the Order of 1991

Increases the penalty for selling tobacco from an automatic vending machines from a level 4 offence to a level 5 offence. This is in line with similar offences for underage sales of tobacco products.

Clause 5: Interpretation of Part 1

“Nicotine product” is defined in this clause. Examples include an electronic cigarette and part of an electronic cigarette. Tobacco products, which are already subject to a prohibition on sale to persons aged under 18, are not nicotine products for the purposes of this clause. Through subordinate legislation, the Department may provide for exceptions or make provision in relation to nicotine products of a specified kind, such as licensed NRT products, or all nicotine products.

Commentary on Clauses in Part 2 of the Bill

Clause 6: Persons performing primary dental services

The purpose of this clause is to provide the Department with the necessary legal powers to introduce the new dental contract provisions including the introduction of performers’ lists for dentists. By changing certain wording (so that the words “providing” and “provide” now read “performing” and “perform”) it gives full effect to the 2008 Act policy intention. Changes to other references (so that Article 61 now reads Article 60A) are also made.

Clause 7: Ophthalmic services

This clause revokes the provisions in the 2008 Act and restores the pre 2008 Act listing provisions.

Clause 8: Pharmaceutical services

This clause revokes the provisions in the 2008 Act and restores the pre 2008 Act listing provisions.

Clause 9: Disqualification by the Tribunal

This clause amends Schedule 11 to the 1972 Order (disqualification of persons providing Part 6 services) which sets out the powers of a Tribunal to consider a case against a listed individual or body. As the Bill will restore the pre 2008 Act position of listing only general ophthalmic services and pharmaceutical services providers, the Tribunal's powers are to revert to pre 2008 Act position. The Tribunal's extended powers for performers will not apply to general ophthalmic services or pharmaceutical services. Consequently, the Tribunal will have to consider cases from two different types of lists:

- lists of those who have an arrangement with the HSCB to provide general dental services (until primary dental services are introduced), general ophthalmic services and pharmaceutical services; and
- lists of primary medical services (and future primary dental services) performers.

The powers of the Tribunal vary, depending on the type of list, and the amendments in clause 9 address these differing situations.

Clause 10: Provision of medical or dental services: Article 15B arrangements

Article 15B sets out an alternative system for providing primary dental services other than through general dental services contracts. This clause amends Article 15B of the 1972 Order to ensure it gives full effect to the 2008 Act policy intention.

Clause 11: Charges for services provided to persons not ordinarily resident in Northern Ireland

This clause makes specific reference to the power to prescribe exemptions.

Commentary on Clauses in Part 3 of the Bill and Schedules

Clauses 12 – 16 and the Schedules support the main provisions of both Part 1 and Part 2 of the Bill. They define the meaning of certain phrases (clause 12, Interpretation); provide detail on subordinate legislation processes (clause 13, Regulations and Orders); provide for repeals (clause 14, Repeals); commencement dates for the introduction of specific powers (clause 15, Commencement) and set out the title of the Bill (clause 16, Short title). The Schedules deal with amendments and repeals.

FINANCIAL EFFECTS OF THE BILL

18. There are no new significant financial implications for the Department as a result of implementing the policy to inform the Bill.

HUMAN RIGHTS ISSUES

19. The provisions of the Bill are compatible with the European Convention on Human Rights.

EQUALITY IMPACT ASSESSMENT

20. As part of the original policy development process, the Department carried out a preliminary screening of the policy proposals and, as part of this screening process, concluded that an Equality Impact Assessment was not necessary. The Department is content that there would be no adverse impact on any of the groups listed under section 75.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

21. It is the Department's view that a RIA is not required at this stage. There may be minimal costs to dental practitioners in time spent in completing applications for performers' lists, however in relation to Part 2 of the draft Bill, it is not envisaged there would be an adverse impact to business, charities, the social economy or voluntary sector. With regards to Part 1 of the Bill which deals with age of sale provisions for nicotine-containing products, the Department would intend to carry out an RIA to accompany the regulations which will be made under the Bill.

LEGISLATIVE COMPETENCE

22. The Minister of Health, Social Services and Public Safety has made the following statement under section 9 of the Northern Ireland Act 1998:

"In my view the Health (Miscellaneous Provisions) Bill would be within the legislative competence of the Northern Ireland Assembly."