

TOBACCO RETAILERS 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. The Department of Health, Social Services and Public Safety is committed to tackling the high levels of premature death and preventable illness caused by tobacco. Smoking is responsible for around 2,300 deaths in Northern Ireland each year and is a major risk factor for coronary heart disease, strokes and other diseases of the circulatory system.
4. The primary policy objective of the Department which underpins the Tobacco Retailers Bill is to prevent young people from taking up smoking by making it more difficult for those under the age of 18 to access tobacco products. The Bill is also intended to assist authorised officers of district councils in carrying out their duties with regards to tobacco control by providing them with a register of tobacco retailers.

CONSULTATION

5. A formal consultation on the policy proposals informing the Bill was carried out from 14 December 2009 to 12 March 2010. The consultation attracted 64 responses from a variety of sources including: the general public; local councils, health and social care organisations; individual shops and retail outlets; larger supermarkets; the voluntary and community sector; tobacco manufacturers; and the Northern Ireland Police Service. A summary report of the consultation responses can be found at <http://www.dhsspsni.gov.uk/consultation-report-underage-sales-of-tobacco-products.pdf>

OPTIONS CONSIDERED

6. A number of options were considered and explored in detail within the context of a Regulatory Impact Assessment which assisted the Department in identifying a preferred option. The other options considered were discounted either because it was felt that they would create an undue burden on retailers and district councils, for example, the option of introducing a licensing system, or that they wouldn't satisfactorily meet the Department's objectives.

7. The preferred option, which has informed the Bill, is the introduction of a registration scheme alongside provisions which will enable the courts to prohibit retailers from selling tobacco for a set period of time if they commit a number of relevant tobacco offences. This will provide a further deterrent to retailers from selling tobacco to persons under the age of 18, as well as providing an authorised officer of a district council with a list of tobacco retailers in the district of that council. Following consideration of comments received during Committee Stage, the registration system has been changed from a council by council system to a central registration system. Provisions in the Bill will also allow for fixed penalty notices to be issued for a number of tobacco-related offences, including that of selling tobacco to persons under the age of 18. An offence of purchasing tobacco on behalf of a minor has also been added following representations from stakeholders during Committee Stage.

OVERVIEW

8. The Bill has 26 clauses and comprises 6 headings:-

Register of tobacco retailers - consists of 4 clauses and covers the requirement for all tobacco retailers to register with a registration authority in accordance with the Bill. It covers the application process for registering, including setting out the circumstances under which a retailer may not register and those which may lead to a retailer being removed from the register. It also places a duty on retailers to notify of certain changes to the register.

Persistent commission of tobacco offences - contains 5 clauses which set out the circumstances under which a court of summary jurisdiction can make a restricted premises order or a restricted sale order to prohibit the sale of tobacco either on a named premises or by a named person. It also sets out the process for appealing such an order and requires businesses subject to a restricted premises order to display a notice and to remove tobacco products from the retail area during the period of the order.

Offences - contains only 1 clause which covers all the new tobacco offences which will be created as a result of the Bill. These offences relate to the register, to selling tobacco in contravention of a restricted premises order or a restricted sale order, and failure to display a notice or remove tobacco from the retail area when subject to a restricted premises order.

Enforcement powers, etc. - comprises 7 clauses and relates to the enforcement of provisions in the Bill, including powers of entry. The clauses also outline fixed penalties for certain offences and deal with the obstruction of officers in exercise of their functions under the Bill, as well as offences by bodies corporate. They also place a duty on councils to share enforcement information.

Supplementary - consists of 3 clauses providing for an amendment to the Health and Personal Social Services (Northern Ireland) Order 1978, an amendment to the Land Registration Act (Northern Ireland) 1970 and a regulation making power.

General - consists of 6 clauses and makes provision in respect of the delivery of notices in electronic form, interpretation of the Bill, subordinate legislation 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.

Clause 1: Register of tobacco retailers

Provides that a registration authority must keep a register of persons carrying on a business involving the sale of tobacco and must make this information available to district councils and to members of the public.

Clause 2: Application for registration

Provides for a person to apply to the registration authority to be registered, or to add further premises to an existing entry in the register. It also sets out the information required to be included in the application and provides that the registration authority can only refuse an application if: not all the information required is provided; or if the application is not made in the correct form and manner; or if the premises stated in the application are subject to a restricted premises order; or if the applicant is subject to a restricted sale order; or if the applicant has been convicted of an illicit tobacco offence which resulted in a custodial sentence being applied. The clause also allows for the making of regulations to permit the charging of fees for making an application.

Clause 3: Duty to notify certain changes

Requires a registered person to inform the registration authority of any changes in the person's name or address or if the person ceases to carry on a tobacco business. The registration authority must be informed within 28 days of the date of the change.

Clause 4: Changes to and removal from the register

Provides for the registration authority to correct the register as it considers appropriate. It also requires the registration authority to remove premises subject to a restricted premises order from the register or to remove a registered person's entry for 5 years if that person has been convicted of an illicit tobacco offence which resulted in a custodial sentence being applied. This clause allows the registration authority to remove a person from the register if it is not satisfied that the person is carrying on a tobacco business. If such a person is removed from the register and that person notifies the registration authority within a specified period of time that he or she is still carrying on a tobacco business, it must reinstate the person in the register. The registration authority is required to notify a registered person of any changes to his or her entry as soon as is reasonably practicable.

Clause 5: Restricted premises orders

Provides that a court can, following an application by a council, make a restricted premises order banning the sale of tobacco on premises if three or more relevant offences (as defined in subsection (2)) have been committed in relation to those

premises by a person within a five-year period. A restricted premises order has effect for a minimum period of 28 days and a maximum period of three years. This clause requires that a council must give notice of the application to every person affected by it. It provides that persons affected by the application for a restricted premises order may make representation to the court and set out the circumstances under which the court may vary or discharge the order. While a restricted premises order has effect, it is a statutory charge. "Tobacco offence" is defined in this clause.

Clause 6: Restricted sale orders

Provides that a court can, following an application by a council, make a restricted sale order banning a particular individual from selling tobacco or having any management functions in relation to the sale of tobacco. The ban also applies in relation to any machines which may be held on the premises for the sale of tobacco products. This clause provides that the court may only make a restricted sale order if the individual has committed three or more relevant offences (as defined in subsection (2)) within a five-year period. The period of the order must be for at least 28 days and cannot exceed three years.

Clause 7: Appeal against the making of an order under clause 5 or 6

Provides that a person may appeal against a restricted premises order or a restricted sale order made under clause 5 or 6. It provides that the order will not apply until either the period within which an appeal may be made has expired, or if an appeal is ongoing, until that appeal has been determined or withdrawn.

Clause 8: Restricted premises orders: display of notices

Provides that where a restricted premises order is in place, a notice stating the period of the order must be displayed. Regulation-making powers to specify the dimensions and wording of the notice are included in this clause.

Clause 9: Restricted premises orders: no tobacco in retail area

Requires that while a restricted premises order is in place, all tobacco products are to be moved from the retail area of the premises.

Clause 10: Offences

Creates a number of offences both in relation to the register and in relation to breaching a restricted premises order or a restricted sale order. It also sets out the different levels of penalty for offences.

Clause 11: Powers of entry

Provides an authorised officer of a district council with a power of entry in relation to premises (other than premises only used as a private dwelling house) for the purpose of the proper exercise of the officer's functions under this Bill and for relevant offences under the Health and Personal Social Services (Northern Ireland) Order 1978 and the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991. An authorised officer may take possession of documents and records and require other people to provide him or her with information and assistance under this clause.

Clause 12: Fixed penalties for certain offences

Provides that an authorised officer of a council may give a fixed penalty notice to a person if the officer believes the person has committed an offence under clause 10 (1), (2) or (3) of the Bill. It also allows for fixed penalty notices to be issued for a number of relevant offences under the Health and Personal Social Services (Northern Ireland) Order 1978 and the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991. It sets out the information which a fixed penalty notice is required to contain including information on the amount payable, deadline for payment and discounted amount for early payment.

Clause 13: Use of fixed penalty receipts

Requires that a council must only use payments received from fixed penalty notices for the purposes of its functions under this Bill, or for such other functions the Department may specify by regulations. It also places a duty on councils to provide the Department with information on the use of fixed penalty receipts if required.

Clause 14: Withdrawal of fixed penalty notices

Provides that a council can withdraw a fixed penalty notice. In the case of a fixed penalty notice being withdrawn, no criminal proceedings for the related offence can be brought forward, and any payments made by the individual following receipt of the fixed penalty notice must be repaid by the council.

Clause 15: Obstruction, etc. of authorised officers

Provides that anyone who intentionally obstructs an authorised officer acting in the exercise of the officer's functions under this Bill commits an offence. It also provides that failure to comply with a requirement of an authorised officer or giving false information to such an officer is an offence.

Clause 16: Council's duty to share information about enforcement

Places a duty on councils to share enforcement information on relevant tobacco offences with other councils, the registration authority and the Department.

Clause 17: Offences by bodies corporate

Provides that, if an offence under this Bill is committed with the consent or connivance of, or is attributable to the neglect of a partner of a body corporate then that partner, as well as the partnership, is guilty of the offence.

Clause 18: Amendment of the Order of 1978

Amends the Health and Personal Social Services (Northern Ireland) Order 1978 to increase the maximum fine for underage tobacco sales and to include a new offence of purchasing tobacco on behalf of a person under the age of 18.

Clause 19: Statutory charges

This clause amends Schedule 11 to the Land Registration Act (Northern Ireland) 1970.

Clause 20: Vehicles, vessels, etc.

Provides that the Department may, if it considers it necessary or expedient, modify the Bill by regulations in its application to vehicles, vessels, stalls or moveable structures.

Clause 21: Service of notices in electronic form

Provides that relevant notices, as defined within the clause, may be delivered in electronic form. Such notices may only be delivered electronically if the recipient has agreed to an electronic address and the electronic form for the notice. The clause specifies that such notices will be considered to have been delivered at 9am on the working day following the day on which it is transmitted. The clause also gives the Department the power to make regulations amending the provisions about the delivery of notices in electronic form.

Clause 22: Interpretation

Provides definitions for specific terms used throughout the Bill.

Clause 23: Transitional provision

Provides that clauses 5 and 6 do not apply where any of the offences mentioned in the respective clauses were committed before the commencement of the respective clauses. The same also applies in relation to offences mentioned in clauses 11(1)(a), 12(1) and in subsection (2) of clause 18.

Clause 24: Regulations and orders

Contains provision about the Assembly's control over regulations under the Bill.

Clause 25: Commencement

Provides that all of the clauses, except for clause 22, 24 and 26 come into operation on the day or days appointed by the Department.

Clause 26: Short title

Specifies the name of the Bill.

FINANCIAL EFFECTS OF THE BILL

9. The Bill would not impose any significant additional costs to retailers and the enforcement would not have any significant additional costs for local district councils. There will be a cost to the Department of establishing and maintaining a central registration system.

HUMAN RIGHTS ISSUES

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

EQUALITY IMPACT ASSESSMENT

11. The aim of the measures within the Bill is to protect the public's health by making it more difficult for persons under the age of 18 to access tobacco products. The Department carried out a preliminary screening of the policy proposals and, as part of the screening process, concluded that an Equality Impact Assessment was not necessary. The Department is content that there will be no adverse impact on any of the groups listed under section 75 of the Northern Ireland Act 1998.

12. Specific questions on section 75 issues were included in the consultation document. None of the responses received indicated that any of the proposed measures would have an adverse impact on any of the nine section 75 groups of people.

SUMMARY OF THE REGULATORY IMPACT ASSESSMENT

13. The Department carried out a partial Regulatory Impact Assessment (RIA) covering the various options for increasing sanctions and retailers. The RIA also examined the potential impacts on business and sought to quantify the possible health impact of the options considered.

14. The recommended outcome of the RIA was that a registration system should be introduced alongside provisions which will enable the courts to prohibit retailers from selling tobacco for a set period of time if they commit a number of relevant tobacco offences. It also recommended that authorised officers of district councils should have the power to issue fixed penalty notices to retailers found to be selling tobacco to persons under the age of 18.

15. A final RIA has been produced taking account of views offered during the consultation period. No substantive changes were made with regards to the recommended outcome of the RIA as a result of the consultation responses.

LEGISLATIVE COMPETENCE

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

“In my view the Tobacco Retailers Bill would be within the legislative competence of the Northern Ireland Assembly.”