



Northern Ireland
Assembly

Committee for Health, Social Services and
Public Safety

OFFICIAL REPORT (Hansard)

Tobacco Retailers Bill: NIIRTA/NIRC
Briefing

29 May 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Sue Ramsey (Chairperson)
Mr Jim Wells (Deputy Chairperson)
Mr Roy Beggs
Ms Paula Bradley
Mr Mickey Brady
Ms Pam Brown
Mr Gordon Dunne
Mr Samuel Gardiner
Mr Kieran McCarthy
Mr Conall McDevitt
Ms Maeve McLaughlin

Witnesses:

Mr Aodhán Connolly	Northern Ireland Retail Consortium
Mr Glyn Roberts	Northern Ireland Independent Retail Trade Association

The Chairperson: Welcome, Aodhán and Glyn. You are old hands at this, but that does not mean to say that you are old. Please give your presentation, and then we will open the meeting to members' questions and comments. If proposing amendments, please refer to specific clauses.

Mr Glyn Roberts (Northern Ireland Independent Retail Trade Association): Thank you, Chair. I will go first, and my colleague Aodhán will follow. We welcome the opportunity to make sensible and pragmatic changes, of a fairly technical nature, to the Bill. We do not in any shape or form oppose the Bill; we support it, and we think that responsible shop owners have absolutely nothing to fear from it. The Northern Ireland Independent Retail Trade Association (NIIRTA) and our colleagues in the Association of Convenience Stores, an organisation that represents convenience stores in England and Wales, are very happy to make this presentation. We are very much committed to ensuring that retailers play their part in tackling the ongoing problems of smoking, particularly underage smoking. The Bill should not be taken in isolation from the need for the better education of young people. It is crucial that we do that and tackle the problem and all its roots. We also want the Bill to do more to tackle the problem of illicit trade, and I will touch on that in a moment.

It is worth pointing out that, for an average convenience store, tobacco contributes an average of 20% of turnover. For smaller newsagents, it contributes upwards of 80%. Obviously, they will take this issue very seriously and ensure that they comply with the law. On the question of tobacco registration, the Minister made it clear in an Assembly debate last month that there was widespread support for there being no registration fee. If that is the case, any reference to a fee should be removed from the Bill. We make that clear in one of the amendments that we would like to be made.

Scope for tackling illegal tobacco products should be extended. In the debate in the Assembly, the Committee's support for that was made very clear. There is also some engagement with Her Majesty's Revenue and Customs (HMRC) to ensure that we get that right. The three strikes should be an integral part of that. This highlights the wider problem of a culture of acceptance in many communities of illicit tobacco products. I have come across incidents regularly over the past couple of years. In one incident last year, when one of our members on the Ormeau Road, Belfast was robbed, the criminals stole only tobacco products. One of the main points that we need to get across, to retailers who sell illicit tobacco and, more importantly, to the people who buy those products, is that they are directly contributing to organised crime. That needs to be made very clear. We need to tackle the culture of acceptance whereby it is somehow OK to buy illicit tobacco products — it is not. I am very worried that, as a result of a lot of work to prevent some of the illegal tobacco coming in, particularly from China, some indigenous criminal gangs are targeting local retailers to replenish stocks that they may have found difficulty in getting elsewhere. So this is a broader issue, and I would be very interested to hear the police response to it.

I think that that covers our proposed amendments. We very much support the Bill. We have a role to play, and we are very willing to play further roles, particularly in educating young people. I believe that the independent retail sector, particularly many of our convenience store members, provide many housing estates with their only access to five fresh fruit and veg a day. We want to play a greater role in community health. We want the Change4Life programme, to which multiple and independent retailers sign up, brought to Northern Ireland. We suggest a couple of fairly technical or minor amendments, but, by and large, we support the Bill, and we want to engage further with the Department on how our members can play a greater role in tackling the problem.

Mr Aodhán Connolly (Northern Ireland Retail Consortium): Like NIIRTA and its members, the Northern Ireland Retail Consortium (NIRC) members support the Executive's objective of reducing the prevalence of smoking in Northern Ireland. We are committed to playing our part in restricting the availability of tobacco to young people. Our members take their responsibilities as retailers very seriously and have implemented robust systems and successful policies, such as Challenge 25, across our stores. Under Challenge 25, instead of retailers just challenging someone who looks 18, anyone who looks 25 or under will be challenged.

The Chairperson: It happens to me every week.

Mr Connolly: Unfortunately, it does not happen to me. The Challenge 25 policy ensures that tobacco products are not sold to those under the age of 18. Consistently, our members' record in test purchasing is better than that of any other sector. Overall, our members remain unconvinced that a registration scheme is necessary or would in any way help the Executive to achieve their aims. Members feel that an emphasis on the enforcement of existing legislation would be a better way forward. However, we understand that the Executive are minded to pursue that option, and we want to work with the Minister, Department and Committee to ensure that the system is proportionate and not overly burdensome on retailers.

As far as the proposals are concerned, our members have specific concerns about the potential for disproportionate application of the sanctions included in the Tobacco Retailers Bill. Current licensing arrangements provide retailers with a legal framework within which to operate and which, therefore, gives stability to licensing operations. The current proposals suggest that failing a specific number of test purchases within a proposed time will mean removal from the register and, therefore, the imposition of a ban to stop a retailer being able to sell tobacco within a given period. A clear understanding of how that approach to test purchasing will be applied is essential to ensure that local enforcement officers approach it in a constructive, measured and certain manner across Northern Ireland.

You asked us to refer to specific clauses. At clause 7(8)(b), we feel that the three-year period for holding test purchase failures on record is disproportionate and should be amended to reflect the Scottish model of two years. That would also be more appropriate given the nature of retail employment and its comparatively high turnover of staff.

At clause 2(7), given the current economic climate, we, like NIIRTA, feel that retailers should not have to pay for registration. We understand that the Executive have suggested that additional regulations would be required to introduce such charges. We support that position. The priority of the Executive

should be to increase private sector job growth, productivity and competitiveness and to encourage investment rather than making it more difficult for responsible businesses to thrive.

Lastly, as far as the clauses are concerned, is clause 8. NIRC members seek clarity on where any list of individuals subject to a restricted sales order would be kept. Our members, and any retailer conducting thorough pre-employment checks, would find it beneficial to have access to that information to ensure that they are not unintentionally breaching any of the new conditions by hiring a person who has not declared a ban. It also gives the extra safeguard that retailers are not hiring someone who has already faced a restricted sales order.

Finally, as far as illegal tobacco products and the criminality element are concerned, we share NIIRTA's concerns. Our members are responsible retailers. More should be done against people who sell and bring illicit tobacco products into this country.

The Chairperson: Thank you. On clause 2(7), which concerns the regulation on a charge for registration, Glyn, you said that there was widespread support for no registration fee. I may be wrong, but I think that you went on to say that the Minister had said that during the Assembly debate.

Mr Roberts: About the fee? Yes, I understand that that was so. The reference to a fee is in the Bill, but the situation could change. I am saying that we would prefer the removal of any reference to a fee from the Bill.

The Chairperson: So there is the possibility that, if a reference is there, it could be used. If not, —

Mr Connolly: If we take the Bill as a proportionate response, we feel that our members have been at the forefront of tackling underage sales, and, particularly given the economic climate, retailers should not have to pay for this registration scheme.

Mr Roberts: Although a retailer being caught out by the test purchasing regime makes the headlines, it is worth pointing out that there are also hundreds, perhaps thousands, of refusals to sell every day. So retailers play their part in tackling that problem. Aodhán referred to Challenge 25. There are a lot of good case studies of successful challenges, but those who do not challenge make the headlines. Retailers, however, by and large, particularly independents, realise the role that they have to play. They are part of the community, understand the issues there and take that role ever more seriously.

Mr Connolly: We have seen that Challenge 25 cuts out not only underage sales of alcohol and tobacco but cuts down on proxy sales to people aged 18, 19 or 20 who buy cigarettes for those who are underage.

The Chairperson: Many members are indicating that they want to come in with questions. For the sake of focus, I suggest that we get one response to each question because I think that both of you are saying basically the same thing.

On clause 2, in general, I know that you are asking what the point is of having a clause there if the indication is that it will not be used, yet there is always the possibility that it could be used because it would become law. Have you any evidence from the councils or the Department to suggest that they would use it in the future?

Mr Roberts: Nothing that springs to mind, but circumstances change. Look at the amount of new legislation in this area, from the display ban right through. Retailers did not oppose, as such, the display ban; they wanted some sensible changes to its timing, which they ultimately got. However, it still cost an awful lot of money to make the necessary changes to shops, particularly small shops. By and large, those changes have been made. So we just want to give peace of mind to retailers who have enough on their mind, such as the 18% increase in electricity bills that Power NI announced last week. Removing the provision for a registration fee would give them that bit of certainty that this is not another payment that will be landed on them. I think that the Minister gets that. From reading the Hansard report of the debate in the Assembly last month, I think that that is the Committee consensus.

Mr McDevitt: On clause 2, there will be no fees, so the question is whether we want to reserve the power to, by way of secondary legislation, introduce them at a future stage. I am trying to understand why the sector's representatives would oppose the Executive's reserving that power. If circumstances changed and there was a consensus that we needed to introduce fees at a future point, not reserving

this power now would mean that we would have to go through the much more expensive and cumbersome process of amending primary legislation. Is it not good law to keep the power now in the certainty that it will not be used unless circumstances change?

Mr Connolly: If the power is in statute, there is no certainty. Our members on both sides like certainty, so if it is not to be brought in, remove it altogether. If it is to be brought in, it needs to be in the Bill.

This Executive's priority — this Government's priority — should be to increase private sector job growth, productivity and competitiveness and take into account that our members have been at the forefront of tackling underage sales. Given the current economic climate, we do not think that this is the right time to ask retailers to take on an extra burden.

We already abide exactly by and beyond the letter of the law on enforcement. Instead of Challenge 18, we work to Challenge 25. Our members would be a lot happier if there was certainty that paying for registration would not come in.

The Chairperson: Roy, do you want to come in quickly on the same point?

Mr Beggs: My question is about a different issue.

The Chairperson: OK. I will bring you in later

Ms Maeve McLaughlin: Thank you, folks. I want to talk about clause 3. Last week, we heard from NILGA (Northern Ireland Local Government Association) and environmental health officers that they favoured an amendment so that any changes to the register would have to be notified within 28 days as opposed to three months. Do you, collectively or as individual organisations, have a view on that?

Mr Roberts: It is not a huge issue and certainly not our top issue. In the grand scheme of things, it is about building an effective partnership with retailers to tackle this problem. If we can get some sensible and pragmatic changes, we can get an effective regulatory system. You also need to build goodwill with retailers, and I know that the Assembly is taking a bit more time to look at these changes. I do not think that there would be any fundamental objection to the amendment that you are talking about.

Ms Maeve McLaughlin: Following on from that, I picked up on what you said about the existing powers and that although they are not insufficient, they could be used more. Over the past number of weeks, we have heard evidence on test purchasing. I think that the figures were that local authorities were conducting about 15% of visits as opposed to 52%. The case was put that that was because the guidance is quite restrictive. Is that what I sense coming from you? I am trying to tease out whether you are saying that what is in place just needs to be better enforced. Is that what you are suggesting?

Mr Connolly: Our members feel that an emphasis on fully and proactively enforcing the existing legislation would have been a better way forward. In saying that, however, we understand that the Executive are minded to pursue the option of this Bill.

I will reiterate what Glyn said, which is that we are talking about a model of partnership with the Department and the local councils that will work with the legislation as it is, with a view to making it the least burdensome option possible for retailers and working with them on enforcement.

Mr Gardiner: What sort of relationship do retailers have with enforcement officers, particularly council environmental health officers, when it comes to legislation?

Mr Roberts: It depends on the council. As you know, local Chambers of Commerce and local traders' groups have varying relationships with local councils. Sometimes, we get feedback from traders saying that, for example, a council has used a test purchaser who is, say, six feet two inches tall and looks older than he is. The law is the law. If the young person is underage, the law must be adhered to. Retailers need to be responsible.

As I said at the outset, responsible retailers have nothing to fear from the legislation. That needs to be the starting point. Our members have been involved in thousands of refusals, and I think that is playing an important role. In fact, they are policing this on the ground, to some degree, along with the

enforcement officers. Obviously, that requires a hands-on partnership approach with the local council and the Department. We are going to crack this problem only if we have partnership not just among all those agencies, but with HMRC and schools, because it is an education process.

One of the most interesting things that I am seeing now is the growth of electronic cigarettes. I was at the national convenience store trade show, and every other stand was promoting a brand of electronic cigarettes to try to tackle the problem. There are some interesting developments. A lot of our members on the pharmacy side are developing smoking cessation options. The more we can build that partnership, the easier the problem is going to be for us to tackle.

I noted the Southern Health Minister's comments. I think it is about making smoking no longer the norm; it is about addressing that. The more effective we can be in doing that, the better. We all have a role to play.

Mr Gardiner: Do retailers have any information on the plans that the local councils hope to implement?

Mr Roberts: That very much depends on the council engaging with the local traders.

Mr Gardiner: Are they not engaged with you at the moment?

Mr Roberts: By and large, there is engagement, but it varies from council to council.

Mr Gardiner: Would you like to name the councils that are not co-operating?

Mr Roberts: I do not have that information.

Mr Gardiner: We do not want this to be a two-tier system. It is for all, and it must be carried out to the highest degree. I think that that is something that you have to look at very carefully.

Mr Roberts: It would be worth engaging with NILGA on that, because I think we need to work at all the relationships to get it right.

Mr Gardiner: You have a job to do.

Mr Brady: Thank you for the presentation. My question is about the length of the banning orders. Last week, NILGA and the environmental health officers said that they favoured an amendment to extend the restricted premises order on sales from one year to three years. What is your view on that?

Mr Roberts: It strikes me that there is nothing that causes huge problems. Quite often, the implementation of legislation will be the key issue. That is why we need to be hands on with the Department if there are any issues that we need to get right. With the best will in the world, legislation is not worth the paper it is written on unless it is effective and implemented on the ground. We will keep a close eye on that. We need to monitor it carefully in the first year. If further legislation is required to tighten things up — or even loosen things — in some areas, we will have to approach that in a pragmatic way.

Mr Brady: So if enforcement is effective, you would not have particular problems?

Mr Roberts: I think we have got to look at that. Perhaps it would be worth looking at some sort of implementation paper with the Department, environmental health officers and local councils so that we can make sure that the right information is out there for traders so that they are clear about what is required from them under the law and so that nobody can claim that ignorance is an issue.

The Chairperson: We had a presentation last week from NILGA and the environmental health group, as was touched on earlier. They told us that councils visit between 15% and 20% of premises to carry out test purchasing. That means, in reality, that a retailer could receive only one visit every five years, yet the legislation as drafted states that a person or a premises needs to be convicted of an offence three times in three years. If they are getting a visit only once every five years, it is highly unlikely that that is going to happen. Let me tease this out. I know you mentioned Scotland, Aodhán, but where do

you stand on the possibility of amending the legislation to specify three offences committed in five years?

Mr Connolly: As I said, our members would like to follow the Scottish model of three offences in two years. You said that they could be tested every five years. If someone fails the test once, you can be very sure that they will be tested again, and with a certain amount of regularity.

The Chairperson: But that does not allow you to be proactive. You are then dealing only with the ones who are already in the system.

Mr Connolly: As far as us being proactive —

The Chairperson: Sorry; I am not talking about retailers; I am talking about councils. If they have only the ability to test one shop every five years and somebody is breaking the law, human nature means that you will concentrate on those but how, then, do you allow councils to be proactive with this legislation to catch those who might never get a visit?

Mr Connolly: As Glyn said, the responsible retailer has nothing to fear from this. If someone is caught out, they have two years to sort their ship out. It should not take that long. Any responsible retailer, if something is found to be wrong, should address that immediately, and that is what our members would say. If the legislation specifies two times in three years, I think that is an onerous burden because it does not allow people the chance to implement the changes that are needed if they are caught. I believe that if a retailer has been caught once, as far as the environmental health officers are concerned, I am sure that they will become a priority. I do not think that responsible retailers have anything to fear.

The Chairperson: I agree, for the record, that there are a lot of people out there who are very responsible, but the reality is that there are some who are not. If the council and NILGA are telling us that there is a possibility of a premises being visited once every five years, three offences in three years is not going to happen. We need to ensure that, whatever powers are given to councils, they are continually proactive.

Mr Roberts: There are clearly resource issues for councils, particularly the smaller ones of the existing 26. Obviously, we are in a big state of flux with local authorities over the next couple of years, so there will be a lot of issues for local authorities to work through with resources and who will take on this responsibility, as well as all the other additional powers they will have. There is a big job of work to be done around resources, and we would be very keen to engage with NILGA and the 11 new councils as we go forward.

Mr Beggs: If my memory is right, NILGA indicated that there would normally be one test purchasing session in most councils each year. If there are three failures in two years, it would be impossible to catch anybody out unless there were extra test periods, and that would mean additional costs. Why should the councils — the ratepayers — pay additional costs, when you do not even want the possibility of paying a fee? Would it not be reasonable to keep an extended period, whether five years or four years, and perhaps have a more efficient system by applying pressure on the retailers to make sure that they do not fail, because you would still have to fail three out of three before you are in trouble? That is a very poor performance rate and would show that there is a major management problem in any retailer. What do you say to that?

Mr Connolly: It is definitely a resource issue for the councils. If the councils want to be proactive about it, I believe that they should have the resources to do that. What I do not believe —

Mr Beggs: Do you accept that, if there is a longer period, there will be increased pressure on retailers to make sure that they do not fail?

Mr Connolly: What I will say is that responsible retailers should not have to pay for the indiscretions of people who are not responsible. I have mentioned Challenge 25, which runs across all our stores, and our idea of having available the list of individual subjects of the restricted sales order. That shows that we are taking this very seriously. One of the reasons why we would like to have two years, the same as the Scottish model, is because, as I said, anything that provides certainty and standardisation allows our member retailers to plan for the future and make sure that whatever is working in one area works in another.

Mr Roberts: There is also a training issue. We need to ensure that retailers train their staff in the very simple approach of, "No ID, no sale." You will see that phrase displayed very clearly in a number of our member stores. There is an onus on the retailer. There are obviously resource issues for smaller retailers, but they need to ensure that their staff are fully trained and fully aware. It is very simple: if there is any doubt, staff must ask for ID.

Mr Beggs: I have another question for Glyn. You indicated that there are examples of people running quite large tobacco retailing businesses from their homes and you advocate giving council officers powers to enter private dwellings. What is the evidence of large tobacco businesses being operated from homes?

Mr Roberts: It is largely the illicit trade. It can be stolen tobacco. At the start of my presentation, I mentioned the real problem of many local retailers being the victims of robberies in which only tobacco products are stolen. Obviously, the people who are behind those robberies will not put the stolen tobacco on public display. It is about taking a zero-tolerance approach to the illicit trade. That is a response that the PSNI and HMRC have to make. However, I also have to say it is the culture in the community that it is somehow OK to buy hooky tobacco out of a sports bag, whether in a social club or any other setting. That is not OK. We have to reinforce the point that, if you buy illicit tobacco, you are contributing to organised crime. It is somehow seen as a victimless crime, but it is clearly not. As we stated in our presentation, if retailers are selling illicit tobacco products, they should face the rigour of the law.

Mr Beggs: If there are —

The Chairperson: Roy, I will let you in for a supplementary. Let me bring in others and then I will come back to you.

Mr McCarthy: I want to ask about a requirement to display a notice advising of a ban. Last week, environmental health officers and NILGA informed the Committee that they favour an amendment to the legislation to require shops that are the subject of a restricted premises order or restricted sales order to display a notice stating that. What is your reaction to that?

Mr Connolly: It is not something that I have discussed with our members at any length. I can go back to them and provide you with a written response.

Mr Roberts: Likewise, we would like to take soundings on that from our members. As I said, a lot of our members pride themselves on stopping and policing this problem on the ground. Retailers who have stepped out of line should be aware that they will face the rigours of the law. If they do get caught, they need to ensure that they do not get caught again. I have experience of members who have been caught and then made doubly sure that they do not get caught again. They refresh their staff training and ensure that, if there is no ID, there is no sale. The more that we can do that, the better.

There is a particular need in respect of shops that are near schools. There is also a need to engage with the schools. We need to ensure that we get the right relationship between the local retailer and the local school and that they push the line that this is not acceptable. It is a constant process of ensuring that there is effective staff training. I could take you into a lot of our member stores and show you the signs that state very clearly, "No ID, no sale." If there is any doubt on the part of the shop worker, they should ask for ID. If the person does not have ID, they should not be sold the product. There are no ifs or buts. We could not be more black and white about it.

Mr McCarthy: You understand where the environmental officers and NILGA are coming from about having a sign, but you are happy enough with the arrangement as it stands.

Mr Roberts: One of the things that probably both Aodhán and I will take out of this session is to have a meeting with NILGA to try to work through some of those issues and see whether we can come up with a sensible agreement on how to take those forward.

Mr Connolly: You have heard both of us say that the Tobacco Retailers Bill will not be a panacea or silver bullet. We already have the display ban, which our members have put into place. The Department has a body of work to do to educate future generations. We are already working with the

councils, we are already working with the Department, and we are already working as responsible retailers. We feel that the best model to really tackle this issue, as far as both sets of members are concerned, is a partnership model. We have been not only enforcing that partnership model but working within it.

The Chairperson: That is a good suggestion, but I will nudge you and say that you need to sit down with NILGA and the environmental health people sooner rather than later.

Mr Connolly: A phone call will be made as soon as we leave.

The Chairperson: We have only a number of weeks to look at this legislation before it goes to the Assembly. We would not want any suggestions or proposals coming back to us after the summer recess.

Mr McDevitt: I have a related supplementary question. Another issue on which we sense that you and NILGA might benefit from a conversation is the length of time that a person is banned for. They suggested extending banning orders to three years, but I understand that you are quite content with the Bill as it stands. Can you confirm that?

Mr Roberts: Again, that is probably something that we should sit down and discuss with them.

Mr Connolly: Is that the ban on individuals?

Mr McDevitt: They told us last week that banning orders on restricted premises should be extended from one year to three years. The Bill provides for a one-year ban on premises, and they suggest that that should be extended to three years. Could you come back to us and let us know whether a consensus view emerges?

Mr Connolly: Yes.

Mr Dunne: Aodhán and Glyn, thanks for your submissions. Aodhán, in the consortium's submission, there is a suggestion that there should be a register of people who are subject to the restricted sales order. That could be used by retailers as part of a pre-employment check. Who should hold that register and who should manage it?

Mr Connolly: It is not within my scope to tell you exactly who should hold it. What I can say is that, as far as our members are concerned, it needs to be very clear who has the register, who updates it and who looks after it, and it needs to be easily accessible. As I said, our members and Glyn's members are very responsible in what they do. As for pre-employment checks, if someone is subject to a restricted sales order, they should not be anywhere near tobacco sales. I cannot give an answer on where is the best place to hold the register. However, it needs to be easily accessible and easily checked. There also needs to be a quick turnaround for the people who are applying for a job. There needs to be a very quick turnaround so that we can give them an answer as to whether they are fit for an interview.

Mr Dunne: Would you favour a regional list?

Mr Connolly: I would say so. As with most things, one regional list is a lot easier to check than having to go through two or three different people. Even if the number of councils is reduced from 26 to 11, there will still be 11 checks to be made instead of one.

Mr Dunne: Would you like to see that centralised?

Mr Connolly: I feel that that should be centralised because of the importance of the restricted sales order. That would provide clarity to the retailer as far as employment is concerned. It also provides the public an assurance that people are selling tobacco who should not be. It also sets down a marker for people who are subject to a restricted sales order who might go to another council district to try to get a job. As with most things that we are asking for, it is to provide clarity and a line in the sand for people who want to be irresponsible.

Mr Dunne: So the responsibility is likely to fall to local government?

Mr Connolly: Well, there are no better people. At present, we have many changes going through. This is an important responsibility and one that we cannot really farm out to 26 councils, as is, or to 11 super-councils as will be. The importance of having a regional register cannot be taken away from because of the simple reason of that clarity.

Mr Dunne: At the end of the day, you are suggesting that the ratepayer will be responsible for it.

Mr Connolly: I have not seen the proposed regulations that would say who holds that responsibility. I look forward to having that conversation with NILGA and the Department. I can say that there is a need for an easily accessible register.

Mr Dunne: OK. Thanks very much. Thanks, Chair.

The Chairperson: You are welcome, Gordon. Before I bring Pam in, I need members to state whether they need to declare an interest.

Ms P Bradley: I have an interest as a local councillor.

Mr McCarthy: So do I.

The Chairperson: I need to register this. That is Paula, Pam and Kieran.

Mr Beggs: My dad is a local councillor.

The Chairperson: Is he? I did not know that. Is there anybody else?

Mr Dunne: Yes. I happen to be a double-jobber.

The Chairperson: Apologies for that. That was my fault. I do not get carried away too much with technicalities. However, it needed to be done.

Ms Brown: Thank you, Chair. It is good to get the confessions out of the way. It is good for the soul. *[Laughter.]*

Thank you, Glyn and Aodhán, for your submissions. NIIRTA proposes amendments to enforce penalties on illicit traders. I am sure that you are aware that the Department has informed the Committee that it intends to introduce an amendment to the Bill to allow an offence that is committed under the Tobacco Products Duty Act 1979 and/or the Customs and Excise Management Act 1979 to be counted as a tobacco offence with regard to the three offences that are required for a restricted premises order. Are you happy with the Department's proposed amendment?

Mr Roberts: Yes. However, it remains to be seen whether it is actually effective. One thing about tobacco smugglers is that they adapt very quickly. As with a lot of legislation, we need to look at its implementation to ensure that it is actually effective. There are several conversations with PSNI and HMRC on all of that. This has changed since I took on this job five years ago. When I started, the big issue was a lot of illicit tobacco coming from China. Now, thanks to a lot of the work that HMRC has done, that has largely dried up. It has now become an indigenous problem in that gangs are targeting local retailers to replenish their stocks. We have to make provisions in such a way that we can crack down on those guys. The lack of real convictions for tobacco smuggling and those who sell illicit tobacco worries me. We need to see a zero-tolerance approach to that.

What can the community do? They can really hammer home the important message that buying illicit tobacco is not OK. The more that we tackle that culture of acceptance, the easier it will be to deal with the problem. That is one thing that no legislation can do. That can be done only through effective engagement and education.

There are several agencies concerned with this issue, including the Organised Crime Task Force, HMRC and the PSNI. Both our organisations are part of the business crime forum, which takes in the main business organisations and a lot of the main agencies in the legal framework. Again, we could

hold discussions with them to ensure that all business organisations and agencies are singing from the same hymn sheet.

Mr Beggs: I like your suggestion of removing the exemption for searching a private dwelling. I agree that there has been a lack of action by HMRC, and that there is a danger of having a very high standard for all the legal retailers, while there is the sale of illicit tobacco to younger users. Do you accept that, in order for councils to carry out those types of investigations, they may have to be accompanied by the PSNI, just as they might be if they were patrolling for underage drinking? Are your members picking up much chatter? If there is hard evidence, it goes to the police. Do you think that there is a considerable amount of illegal tobacco on sale and making its way to underage users?

Mr Roberts: Absolutely. There is also a danger that legitimate retailers could be selling illicit tobacco unknowingly, and that worries me. We make it clear that retailers should buy their tobacco from recognised legal suppliers only. Likewise, we are telling the community that they should buy, if they choose, tobacco products from recognised retailers only. There is almost a supply-chain issue, and we need to ensure that it is got right. It may well be that, as we crack down and drill down into the problem, the police might be required to be there. There is a slight issue if we are going down the route of ensuring that the illicit tobacco trade is tackled in the legislation. Clearly, there will be law-enforcement issues and there will be resource issues for local councils, and we need to have that wider dialogue.

Mr Beggs: Madam Chair, just on that —

The Chairperson: It is well that I am in good form today, Roy.

Mr Beggs: As it currently stands, the legislation indicates that a lay magistrate may exercise the power to authorise the search. However, even if evidence is given to convince a lay magistrate to allow a search, private property is exempt. Surely, if there is evidence that a significant quantity of illegal sales is happening at a premises, they should be allowed to search it.

The Chairperson: We will raise that issue with the Department. I do not think that you are in a position to answer that.

Ms P Bradley: My question is on the back of that. To my mind, that seems more like a customs and excise issue, which has much more power than the police when it comes to searching premises. Therefore, it is not even a police issue: it is a customs and excise issue. How does that fit in with the Bill? I am strongly for the Bill, and I want to see it as tight as we can possibly make it, because I was addicted to tobacco as a teenager. Therefore, if I can stop any other teenager going through that, I will say it a hundred times over: I want this Bill to be watertight. You are quite right that responsible shop owners have nothing to fear, and the majority of them are responsible. However, we need to take this away from our young people, and we need to make it as difficult as possible for them. With regard to the clause, I agree, but I do not see it fitting in with the Bill, because it is more a customs and excise matter.

Mr Roberts: Obviously, if you are drilling down the issue of effective enforcement, there are issues for the Department of Justice. You have HMRC, the Organised Crime Task Force and the PSNI. You have a multitude of enforcement agencies there, and I think that it will require a bit of work to get it right. If you want it watertight, you must have effective enforcement. For too long, as Roy said, the legitimate retailer has been the focus of our efforts. We need to ensure that the illicit tobacco smuggler and those who sell illicit tobacco face the rigour of the law. One of the positive things is that we have some real, good, effective convictions that can demonstrate to those guys that the Government mean business. I think that Conall referred, during the debate last month, to a seizure at the Port of Belfast worth £7.9 million. That is a lot of money. This is big business. In the discussions that we have had in the business crime forum and with the Organised Crime Task Force, this brings in a lot of other issues, so we have that important dialogue. It might be a case of the Committee looking at what is the appropriate law enforcement agency.

Ms P Bradley: I think that it goes beyond this Bill.

The Chairperson: I think that you are right, and we need to be careful that we are not going into areas that do not fall within our remit. However, there is nothing wrong with raising it, and we have raised it during the debate in the Assembly. We should not shy away from the fact that around 20% of

retailers failed the test purchasing. So, it is about tackling that as well. It is not about the illegal tobacco alone, it is about illegal sales by legit retailers.

The other issue that we should not shy away from is one that you mentioned in your opening remarks. A small, and I stress small, percentage of retailers are selling illegal products as well. So, there is a multitude of reasons here, but it is about how you enforce this legislation. From the start, we need to get the legislation right. It is how you enforce it.

Out of today, I am going to say again that it is important that both your organisations talk to NILGA and look at how this can be implemented on the ground and then come back and let us know. We have mentioned the involvement of HMRC in this, and the Minister has taken that on board. We will raise other issues, but we need to concentrate on this legislation to ensure that we get it right. If you can come up with any proposals that make it easier for your members and council environmental health officers to implement it, feel free to bring those recommendations forward. However, we also have a duty around public health and a duty to accept that some retailers are failing in the Challenge 18 or Challenge 25 campaigns.

Mr Connolly: Absolutely, Chair. Both of us said in our opening remarks that we support what the Executive are trying to do to reduce the prevalence of smoking in Northern Ireland and to restrict the availability of tobacco products to young people.

What our members have asked for mirrors your comments. There needs to be clarity in the regulations about the responsibilities of environmental health officers and local councils. There needs to be clarity on these new proposals and guidance on how they will be applied. There also needs to be clarity and guidance for retailers, which is where we need to step up to the plate. We would then know from day one what is expected from us to make the right decisions and to continue to be responsible retailers.

The Chairperson: Yes, and nobody would disagree with that, Aodhán. In reality, most if not all retailers are our people. They are members of our community, our neighbours and constituents. So, we want to make sure that we get it right to tackle the issue of public health. As I said, if you have any ideas or suggestions, feel free to let us know in the remaining weeks that we have to look at this legislation. It would help if you, NILGA and local councils were to agree on some of those proposals or suggestions, OK?

On behalf of the Committee, thank you very much for your paper and your presentation.