



Northern Ireland
Assembly

Committee for Health, Social Services and
Public Safety

OFFICIAL REPORT (Hansard)

Tobacco Retailers Bill: DHSSPS Briefing

20 March 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 Gordon Dunne
Mr Kieran McCarthy
Mr Conall McDevitt

Witnesses:

Mr Gerard Collins	Department of Health, Social Services and Public Safety
Ms Jenny McAlarney	Department of Health, Social Services and Public Safety
Dr Elizabeth Mitchell	Department of Health, Social Services and Public Safety

The Chairperson: I apologise for keeping you waiting. It is sometimes the nature of the beast. You could be here early and we are not ready, or we keep you late. Apologies for that. Liz, I assume that you will take the lead.

Dr Elizabeth Mitchell (Department of Health, Social Services and Public Safety): I will take the lead, and Gerard and Jenny will support me. Good afternoon, and thank you for inviting us to speak to you again on the Tobacco Retailers Bill, which we hope to introduce to the Assembly in April. Today, I want to focus on the main provisions of the Bill and set out in real terms what the legislation will mean to those who will be affected by it.

The Department of Health, Social Services and Public Safety (DHSSPS) is committed to tackling the high levels of premature death and preventable ill health that are caused by tobacco. One of the key objectives of the tobacco control strategy that was published in 2012 is to reduce the number of smokers in Northern Ireland and, in particular, to stop children from taking up smoking. The Tobacco Retailers Bill will help us to achieve that objective by making it more difficult for young people to start smoking.

The majority of smokers take up the habit before they reach adulthood. In fact, 82% of adult smokers in Northern Ireland took up the habit in their teens. Therefore, preventing children and young people from accessing tobacco is crucial. We know from the latest survey results that around 8% of 11- to 16-year-olds in Northern Ireland are current smokers. Although that figure has reduced consistently from 14.5% in 2000, it still remains too high. We also know that a significant percentage of under-18s are able to purchase tobacco from shops in spite of legislation, which makes that activity illegal for retailers. As the law stands, a retailer in Northern Ireland who sells tobacco products to a person who is under 18 years of age is guilty of an offence and is liable to a fine not exceeding £2,500. That

legislation is enforced by environmental health officers in district councils, the majority of whom use test-purchasing exercises as a means to ensure that retailers comply with the law. Between 2008 and 2011, a total of 1,393 tobacco retailers were visited as part of a test-purchasing exercise. In approximately one in five of those visits, tobacco was sold to an underage child. Clearly, most retailers operate within the law and apply a no ID, no sale policy. However, the evidence shows that a significant number of retailers will continue to sell tobacco to underage children unless stricter sanctions are introduced. In bringing forward the Tobacco Retailers Bill, our policy aim is to ensure that the minimum-age-of-sale policy is applied more rigorously by retailers. The introduction of tougher measures for non-compliance is the means by which that will be achieved.

Members of the Committee for Health, Social Services and Public Safety recently received an advance copy of the Tobacco Retailers Bill and the accompanying explanatory and financial memorandum. Rather than going into great detail on individual clauses and the Bill at this stage, I want to draw the Committee's attention to its key provisions. These can be summarised as follows. The Bill requires district councils to keep a register of all tobacco retailers in their area. A duty is placed on retailers to notify councils of all premises from which they sell tobacco products and also to notify certain changes to the register. The definition of "premises" covers any place, vehicle, vessel, stall or movable structure. Tobacco offences on the retail register have been created. They include failing to register and failing to notify the council of changes in connection with the register. Maximum fines that are proposed for those offences range from £500 to £5,000. A further provision enables a court to ban the sale of tobacco either on a named premises or by a named person for up to 12 months. A ban will apply only if three tobacco offences are committed within a three-year period. An additional tobacco offence of breaching a banning order has been created, which carries a maximum fine of £20,000. Finally, the Bill allows for fixed penalty notices to apply for a number of offences, including that of selling tobacco to underage children.

The registration element of the Bill will assist district councils in their enforcement of tobacco control legislation by providing a list of all businesses that are involved in the retail of tobacco products. In order to minimise the burden on retailers, there will be no charge for registering. Registrations will be kept on a local district council area basis. Although the Bill introduces new offences and penalties, they will apply only to those retailers who operate outside of the law — that is, those retailers who regularly sell tobacco to under-18s and/or those who seek to avoid registering with a local council.

Enhanced retailer sanctions have already been introduced in other jurisdictions. The Tobacco Retailers Bill includes components of various pieces of legislation that have been in operation throughout the UK and Ireland since 2009 and would bring Northern Ireland closer into line with the other UK countries.

During our previous discussions on the Bill, members raised concerns about illicit tobacco sales by retailers. The illicit tobacco trade is a concern for the Department in that it impedes efforts to reduce smoking prevalence through tax increases on tobacco. However, Minister Poots has been quite clear that the main purpose of the Tobacco Retailers Bill is the prevention of underage sales of tobacco products, whether or not they are duty-paid. That was also the basis for the public consultation. The Department's view is that sanctions against retailers for selling illicit tobacco is a matter for HM Revenue and Customs (HMRC) to deal with through its existing legislation. Our primary concern is preventing young people from accessing tobacco whether it is legal or illicit.

As you are aware, the Bill and its accompanying explanatory and financial memorandum are with the Executive for comment. It is hoped that the Bill will be cleared for introduction to the Assembly at the next Executive meeting on 28 March. We then aim to introduce the Bill to the Assembly in April.

Thank you for providing the opportunity again to discuss the provisions of the Tobacco Retailers Bill. We are happy to hear your views and to answer any questions.

The Chairperson: Members have indicated that they want to ask questions. I just want to be conscious of the time that I am giving.

Mr McDevitt: Obviously, I welcome the Bill. I just want to place on record — I will try not to rehearse it during the plenary debates on the Bill in the House — that I am still disappointed that we are dodging HMRC issues. I understand that it is a health Bill and that you are coming to it from a health perspective, but I still think that we are missing an opportunity here. I suppose the question that I can intelligently ask is this: is there a way, perhaps through building some instruments into the Bill, to allow this to dovetail with a future improved or more integrated approach with HMRC? Can we build into the architecture of the Bill? I do not see that in the Bill, but perhaps it is there and you simply

need to point it out to me. Is it possible, perhaps through an affirmative order so that it would have to come back to the House, of having fewer legislative consent motions coming back in to strengthen these provisions, in the event that HMRC or other authorities think that it would be useful to strengthen the legislative framework here?

Dr Mitchell: We can certainly explore that and come back to you. It is certainly our intention, through our work providing guidance to environmental health officers in enforcing the legislation, to highlight the issue of illicit tobacco to them and to try to get them to develop protocols with HMRC, such as those being developed in England between district councils and HMRC. We certainly want to try to strengthen that and ensure that there is good working together. We will explore whether there is any need to amend the Bill to ensure that that can be effected.

Mr McDevitt: I guess that it is still the case that we are not aware of a single prosecution under the 1979 Act?

Dr Mitchell: I understand that you have written to the Department of Justice (DOJ).

Mr McDevitt: I think that we have.

Dr Mitchell: Have you received a response yet?

Mr McDevitt: I am not aware of that. It passed me by, but I am pretty certain —

Mr Gerard Collins (Department of Health, Social Services and Public Safety): We are fairly certain that there has not been a prosecution under the Tobacco Products Duty Act 1979.

Dr Mitchell: Certainly, from our discussions with them, it appears that their main focus is on trying to intercept large containers, and they are fairly up front about that. I think that it is about us trying to make sure that local people on the ground, through district council enforcement, highlight areas in which there are issues. We will work closely with them to try to make sure that that loophole is more effectively closed.

Mr Dunne: Thanks for your presentation. The responsibility lies with a retailer to register with a council. Have you had any feedback about how effective you feel that will be? Is there a risk that people may avoid doing that?

Dr Mitchell: There are fines if people avoid registering.

Mr Dunne: Will that be enforced by councils?

Dr Mitchell: Yes.

Mr Dunne: What about the demand on council resources? Councils complain bitterly about the lack of funding for such additional duties. It is loaded onto the ratepayer every time.

Dr Mitchell: We have given funding to councils, through the Public Health Agency (PHA), for previous work on tobacco control. We understand from discussions with environmental health personnel that there is good compliance now and that they feel that they can divert some of those resources into enforcing the Bill. We have ongoing discussions with them about the resource commitment that is required, and we will continue to do so.

Mr Collins: The whole point of negative licensing and a register is to cut down on the amount of paperwork and bureaucracy involved in maintaining a register and actually registering. The register is kept at district council level, and it can be kept electronically, so there is not a huge amount of effort on the part of the retailers to register or on the part of councils to maintain the register.

Given that the legislation on smoking in public places is fairly well embedded and that there are very high levels of compliance, the resources that the Department has already allocated to district councils through the PHA for additional tobacco control officers can be skewed towards checking the registers and the Tobacco Retailers Bill for underage sales.

Mr Dunne: The Bill refers to "additional powers of enforcement". Is that really what a lot of this is about — the additional powers that the Bill gives to councils?

Dr Mitchell: The power to create a register is new. It also has new penalties —

Mr Dunne: Increased penalties?

Dr Mitchell: No; fixed penalty notices.

Mr Dunne: Which will be carried out by council enforcement officers?

Dr Mitchell: In the main, yes.

Mr Dunne: Have the police any role?

Dr Mitchell: Police can confiscate tobacco or cigarettes from an underage smoker. However, the policy is not intended to criminalise the activity by young people, so that would be the end of the police action.

Mr Dunne: What about premises and so on?

Dr Mitchell: Enforcement will primarily be through district councils and their tobacco control officers.

Mr Dunne: Would police act through the councils then?

Dr Mitchell: Yes.

Mr Dunne: They would bring it to the council's attention —

Dr Mitchell: If they were aware of issues, yes.

Mr McCarthy: Wise minds think alike. I am a councillor, and I know that councillors are always wary about extra work and the additional resources needed to implement such work. You have answered my question, which is: will there be any further resources for additional tobacco officers? I fully support what we are doing. In fact, I would go further; had you the power to ban tobacco altogether, I would give my 100% support to doing so. That is a bit loud, but I feel so strongly because I smoked in my young days. Thank God that I discarded them when I did. It is only when you get older that you think that, had you smoked on, you would be struggling to get up every morning. So I am grateful for that. I must say that my council — Ards Borough Council — is actively anti-smoking. You mentioned smoking at work. In one case, a guy was caught smoking in his taxi but repeatedly denied it. The council had to go back to him and the case had to go to court, which was to his disadvantage because he had to pay up and look pleasant. So will there be resources for councils?

Dr Mitchell: As I said in answer to Mr Dunne, councils have advised us, through our work with environmental health officers, that they have sufficient resources. Should that not be the case, they would make representations to us.

Mr McCarthy: I am surprised.

Dr Mitchell: I can speak only for the ones that —

Mr McCarthy: I will check that out.

Dr Mitchell: However, if it comes to light that that is not sufficient, we can certainly examine it. For the moment, the information that we have been given is that they should be able to use the current resource.

Mr Collins: We also need to bear in mind that councils already have duties under the existing age-of-sale legislation to check that retailers are not selling to people who are underage, which is why they

carry out test purchasing. By and large, the additional workload comprises maintaining a register, and, as I said, we have tried to make that as streamlined as possible.

Dr Mitchell: We have tried to make this as unbureaucratic as we can so that it involves as little extra work as possible for everyone. We recognise the need for that.

Mr McCarthy: I absolutely support you in that.

Dr Mitchell: I will pick up on what you said about being a smoker in your younger days: we are also conscious that the health risks are much greater to those who start when they are younger, say in their teens, than for those who start in their mid-20s. So trying to stop underage smoking is particularly important.

Mr Beggs: The first of my two questions concerns the definition of a tobacco offence. A restricted premises order and a restricted sale order would be applied when a fixed penalty notice is given or there is a conviction for a tobacco offence. Will you clarify what a "tobacco offence" is? Does that include selling illegal cigarettes? What exactly is it?

Ms Jenny McAlarney (Department of Health, Social Services and Public Safety): The tobacco offences are listed in the Bill and include selling tobacco to an underage person of any —

Mr Beggs: I looked through the Bill to try to find the definition. Where is it?

Ms McAlarney: I think that it is under clause 10.

Mr Collins: It is important to remember that the offence is selling tobacco. That tobacco can be legal, duty-paid or illicit. The Bill does not differentiate the nature of the tobacco and whether tax has been paid on it or it is counterfeit. The offence is selling tobacco.

Mr Beggs: Have you clarified that selling illegal tobacco to an adult will not be offence under this Bill?

Mr Collins: Not under this legislation.

Mr Beggs: I am slightly disappointed to hear that. I would have thought that all relevant offences would have been included.

I used to be a councillor and dealt with entertainment licences. When there were noise issues, it could be very expensive when you ended up in court. It can cost perhaps £10,000 to £15,000 if an individual opposes the charge and goes to court. Do you envisage councils having to foot those sorts of bills if people use the mechanisms in the Bill? The Bill refers to court. Could councils be landed with high court costs if they take action and are subsequently opposed for whatever reason?

Dr Mitchell: One of the provisions in the Bill is that money that is recouped from fixed penalty notices will go to councils for their work in tobacco control and the implementation of the Bill. Some of that resource will go to the councils.

Ms McAlarney: We see the Bill as reducing court costs. At present, if an enforcement officer catches a retailer selling tobacco to an underage child, he or she would generally take the retailer to court. This Bill will allow councils to introduce fixed penalty notices, which will probably be given in the first instance. Retailers would pay those, which would save councils having to prosecute. We see this as saving court costs rather than increasing them.

Mr Beggs: The clause that deals with restricted sale orders suggests that councils would have to be proactive and go to court to get such an order. What do you expect the typical cost for that to be?

Dr Mitchell: I am not sure —

Mr Beggs: What level of court would that be?

Ms McAlarney: It is the summary.

Mr Beggs: I have not recognised —

Ms McAlarney: The Bill refers to "A court of summary jurisdiction". We do not envisage the cost being overly high. The regulatory impact assessment (RIA) anticipated only about three cases being brought to court a year. A retailer would have to be caught selling tobacco to an underage person three times within a three-year period, so people would not be brought to court to get a banning order very often.

Mr Beggs: I am disappointed that all related tobacco offences are not included. Thank you.

Ms P Bradley: I have no questions. As a smoker, I welcome the Bill. We need to do everything in our power to stop our young people taking up this vile, disgusting, horrible habit. I only wish that those powers had been in place not quite 30 years ago, when I was a teenager and was buying cigarettes in shops. There was never a problem with that then.

I know that there are a lot of responsible retailers, and I have been in premises where they are responsible. However, other retailers are completely flouting the law. I am the vice-chair of the all-party group on heart disease and stroke, and we have been working on this issue. I would make the Bill 100 times tighter than it is. As a smoker and someone who is addicted to and within the grip of nicotine, I would not want any child to become my age and be the way that I am. The all-party group has received figures of the thousands — not hundreds — of children who are becoming addicted to tobacco products every year in Northern Ireland. We cannot go far enough with this legislation. It is very welcome.

Dr Mitchell: Thank you. I would emphasise that this is just one element of our tobacco control strategy, policy and legislation.

Mr Collins: We estimate that, every year, about 2,000 children between the ages of 11 and 16 become regular smokers. That is what we are trying to prevent.

Ms P Bradley: As a smoker, that would make me weep. It is so sad that that number of children are taking up this vile habit. We need to do everything in our power.

Dr Mitchell: I thought that the all-party group on —

Ms P Bradley: Stroke and heart disease.

Dr Mitchell: Yes, exactly. I thought that the meeting on standardised packaging was excellent. Thank you very much for organising that. I have my sample of what the standardised packaging would look like here.

The Chairperson: I have a packet in my drawer. What about the time frame, Liz? You said that you hope to bring the Bill to the Assembly for April and to the Executive on 28 March. Does that mean that the Executive have a paper on it already?

Dr Mitchell: Yes; the paper went to Executive colleagues.

The Chairperson: Between now and 28 March, are there any proposed changes based on the comments that you picked up here or will that be the same paper?

Dr Mitchell: It is with them at the moment. We have received some comments from Executive colleagues, and we are still waiting for some to come in. We will take those comments on board.

The Chairperson: If any proposed changes — I am not talking only about this Bill but in general — come out of the Executive, will we know about them before the proposed introduction to the Assembly in April?

Dr Mitchell: I would think so, Sue.

The Chairperson: Did you say that there were 1,193 test purchases last year?

Ms McAlarney: No; it was between 2008 and 2011.

Dr Mitchell: It was over a number of years.

The Chairperson: How do you get the kids for that?

Dr Mitchell: Twenty-five out of 26 district councils use test purchasing, and they have very strict guidelines on how they do it. The one council that does not has concerns about using children.

The Chairperson: What council is that?

Dr Mitchell: Dungannon and South Tyrone.

The Chairperson: I am not even saying that it is an issue; I am just wondering how the young people are recruited for that.

Ms McAlarney: Quite often, they tend to be the children of environmental health officers. They are not openly recruited and paid for it, but there are very strict guidelines when using a child. They do it on a volunteer basis.

The Chairperson: Fair play to them for that. That is interesting. In general, if any legislation goes through the Executive, it is important that we hear about it and are kept in the loop. Thanks very much and apologies, once again, for keeping you waiting.

Dr Mitchell: Thank you.