



Northern Ireland  
Assembly

Committee for Health, Social Services and  
Public Safety

# OFFICIAL REPORT (Hansard)

Tobacco Retailers Bill: DHSSPS Briefing

11 September 2013

# NORTHERN IRELAND ASSEMBLY

## Committee for Health, Social Services and Public Safety

### Tobacco Retailers Bill: DHSSPS Briefing

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**Members present for all or part of the proceedings:**

Mr Jim Wells (Deputy Chairperson)  
Mr Roy Beggs  
Mr Mickey Brady  
Ms Pam Brown  
Mr Gordon Dunne  
Mr Samuel Gardiner  
Mr Kieran McCarthy  
Ms Maeve McLaughlin

**Witnesses:**

Mr Gerard Collins	Department of Health, Social Services and Public Safety
Ms Jenny McAlarney	Department of Health, Social Services and Public Safety
Mr Nigel McMahon	Department of Health, Social Services and Public Safety

**The Deputy Chairperson:** I welcome the officials. We have Gerard Collins and Jenny McAlarney from the health improvement policy branch, and Nigel McMahon, who is the chief environmental health officer from the public health advice directorate. Thank you for coming this long distance to be with us and to help us with this issue.

Over the summer, we received letters from the Minister regarding his position on the Bill. We also have a red-and-black copy of the Bill that shows the amendments that the Department plans to make. A copy has been tabled separately for ease of reference. You may recall that, when we last discussed the Bill, on 26 June, a substantial amount of information was provided by the Department. Some clauses simply required clarification, and we will not go over those clauses again today. The clauses that I want to focus on today are those about which the Committee still has a number of questions and those on which you agreed to do further work, including drafting possible amendments.

With clause 1, we asked for an exploration of the possibility of a central register, either as well as or in place of the 26 council registers. You might remember that that issue came up many times. The number of councils will, of course, drop because of the review of public administration (RPA), but, at the minute, it stands at 26. We suggested that a central register would contain details of premises and also people convicted of or given fixed penalty notices for tobacco offences and people convicted of illicit tobacco offences. We felt that that was important for enforcement purposes. The Department stated that it would consider that. I am glad to say that the Department has listened and now proposes to create a single registration authority and to amend clause 1. I think that that would be in line with most members' thoughts. I do not think that there is any problem with that, and we are agreed.

Can we talk through the amendments that you propose in clause 1 and what they mean in practice? Although you are pushing an open door, it would be useful to say why you came to that situation.

**Mr Gerard Collins (Department of Health, Social Services and Public Safety):** Thank you very much again for inviting us to be here, Chair and members. The Committee seems to bring us to unusual places. It was Conway Mill last time, and it is the Niamh Louise headquarters this time. It is good to get out and about from Stormont.

As you know from our brief, quite a number of suggestions were made for proposed amendments to clause 1 at the past number of meetings. We have been through those in detail. As you will see, there are quite a number of amendments. The Committee was very keen on the idea of a centralised register that would be held online as opposed to the original clause, which had a requirement on each council to hold a register for the premises registered in its area. The Committee felt that a centralised register would be more streamlined and would provide more information for the public. It would also mean that people could see in one place whether a tobacco retailer was registered in one council but also had registered premises in other council areas. We have come up with an amendment that identifies, rather than the councils, a registration authority. We have not specified who that registration authority should be at this stage, but it would be a registration authority that maintains a central register that is available to the public on request. We do not specify in the Bill that it will be held online, but we expect that, for all intents and purposes and in practice, the register will be held and available online, with hard copies of sections of the register available on request for anyone who does not have access to the internet.

**The Deputy Chairperson:** I think that that is very much in line with what we agreed. Some horrendous figure was quoted from Scotland on costs. However, I assume that, with modern IT, it should not be an expensive operation.

**Mr Collins:** We looked into that and found that there will be an expense. There will be a set-up cost. The set-up cost for Scotland was in the region of £120,000.

**Ms Jenny McAlarney (Department of Health, Social Services and Public Safety):** In Scotland, it was £35,000. In the South of Ireland, it was €120,000.

**Mr Collins:** The South of Ireland was more expensive because there was password access to certain parts of the register for certain users. The more complicated a register is and the more detail it contains, the higher the costs for setting up and maintaining the register. In Scotland, was it £20,000 a year?

**Ms McAlarney:** It was £5,000. It was €20,000 in the South for maintenance.

**Mr Collins:** There is an administrative cost for holding a centralised register. That cost depends on the complexity of the register, the amount and type of information that is held, and whether there should be any password access to different fields of the register.

**The Deputy Chairperson:** I would like to think that we will not adopt the Republic of Ireland model, with passwords to get into various parts of it. Can we take it that anybody can walk in off the street, push a button on a computer and get any information they require anywhere from Strabane to Ballycastle if they want to?

**Mr Collins:** We hope so. I think that Jenny found that the experience in Scotland was that, if you want information on different areas, it is not —

**Ms McAlarney:** It is a very basic system. I think that you can segregate the information according to the type of premises, such as whether it is an off-licence, a supermarket, and so on. However, people can look at the information only under one area, so they select a local authority area and then select the type of premises that they want to look at — a supermarket, and so on. That then gives a list of those premises.

**The Deputy Chairperson:** If I lived in Enniskillen, I would just put in "Fermanagh", and that would give me —

**Ms McAlarney:** Yes.

**The Deputy Chairperson:** I would have thought that that is what folk need. That leads on to another issue: what information will be there? Are you proposing that it will be basic, such as Mr Smith's corner shop, Tesco or something like that? Nothing more —

**Mr Collins:** That is right. There would also be the type of premises, the address and the name of the registered owner.

**The Deputy Chairperson:** If members of the public want more detailed information, I presume that they could approach the Department and ask for it. The portal will simply be to provide an initial port of call so that people can get basic information. If they want anything deeper, is it a freedom of information (FOI) job? Will it mean writing to the Department, or is that as good as it gets?

**Ms McAlarney:** It depends on the nature of the information and whether it is sensitive data and would be allowed to be revealed under data protection. I imagine that the general public would be interested only in seeing the tobacco retailers in their area, for example. Businesses may use it to find other businesses that sell tobacco to use for marketing purposes. I do not imagine that members of the public will want to look at or ask for other information in the register.

**Mr Collins:** A concerned member of the public who thinks that someone is operating in selling tobacco might want to check whether that person is registered as a tobacco retailer. We envisage that aspect of public use. A member of the public may follow up with a query as to why a certain person who is selling tobacco is not on the register.

**The Deputy Chairperson:** On that basis, the overall cost will be quite low.

**Ms McAlarney:** Yes, it should be.

**The Deputy Chairperson:** Initial concerns were expressed about cost, but given the model that you are adopting, it is not a huge amount. It becomes relevant later, when we come to the fact that you have still left the potential to charge for registration. The sorts of figures that you are quoting could not be used to justify charging for that aspect.

**Ms McAlarney:** The Scottish version is pretty basic, and it cost £35,000 to set up.

**The Deputy Chairperson:** Yes, but that is for a much bigger part of the country than here. We have only 1.8 million people.

**Ms McAlarney:** I am not sure. We have not looked at whether it would cost more for more premises to be put on or whether it is just the initial setting up of the programme. We would have to look into that a wee bit further.

**Mr Collins:** I think that we would move to considering charging a fee for access to the register only if it contained more detailed information that went further, as it does, for example, in the South of Ireland.

**The Deputy Chairperson:** That leads to the obvious next question: will the register contain details of convictions, fixed penalty notices, restricted premises and restricted sales orders? Will it go down to that level?

**Mr Collins:** At the minute, we do not propose that the register would hold that information.

**The Deputy Chairperson:** How would a member of the public obtain that information if it is not on the register?

**Mr Collins:** The proposal in the Bill is that there is a requirement for councils to share that information with the Department and the registration authority. The information would be used to improve enforcement. If, for example, one council had two fixed penalty notices against a trader who owned premises in more than one council area and had another fixed penalty notice in another area, we could move towards a restricted sales order for that individual. However, there are issues about holding information on convictions in a register that is open to the public. We have been advised that, for example, when people pay a fixed penalty notice, they have discharged their liability and there

would be human rights issues about holding that information centrally and making it available to the public.

**The Deputy Chairperson:** So it will not be as effective a tool as we thought. Under clause 16, you are creating a duty on the councils to share all the information about restricted premises, restricted sales orders, registration details, and so on, with other councils, which is understandable. How will you enforce that? How will you make sure that all that will happen?

**Mr Collins:** The fact that that is a requirement in the Bill means that there is a duty on councils to share that information and to provide it in whatever way the Department sees fit. The intention would be that that information would be shared with the registration authority and made available to any council on request.

**The Deputy Chairperson:** So the registration authority will have all that information, but it will not be on the website?

**Mr Collins:** It will not be on the public website. If a council applies for a fixed penalty notice against an individual retailer, it would be able to ask the centralised register whether there are any other convictions for illicit tobacco or fixed penalty notices against that retailer so that they can be counted towards the three convictions and move towards a restricted sales or a restricted premises order.

**The Deputy Chairperson:** Would it be an offence for Dungannon council not to tell Craigavon council, for instance, that they have had penalties against a retailer that has been operating in both districts? What is the sanction if they do not do that?

**Mr Collins:** There is no sanction in the Bill as it stands, but there is a requirement for councils to make the information available. Councils must make that information available.

**The Deputy Chairperson:** What happens if they do not?

**Mr Collins:** There is no penalty as such.

**Ms McAlarney:** There is a statutory duty.

**Mr Collins:** There is an expectation that the statutory authority will comply with the legislation.

**The Deputy Chairperson:** Do members have any questions on this aspect? We are broadly in agreement with what you are doing.

**Mr Gardiner:** I note that the Bill makes councils responsible for enforcement, but it does not make a named official in the council responsible. I have drawn that to the attention of the Department previously.

**Mr Collins:** As you will see from the changes that have been made, I think that clause 22 — interpretation — mentions an "authorised officer" —

**Mr Gardiner:** Who is the authorised officer? They have to be named.

**Mr Collins:** It means any person, whether or not an officer of the council, who is authorised by it in writing to act in matters arising under this Act. The authorised officer who enforces the legislation would be identified in writing by the council.

**Mr Gardiner:** So the public would know who that authorised officer would be.

**Mr Nigel McMahon (Department of Health, Social Services and Public Safety):** That would be a matter for the council to decide who it chooses to authorise —

**Mr Gardiner:** Would it be known publicly?

**Mr McMahon:** Our assumption is that it will be environmental health staff as they currently enforce all other tobacco control legislation.

**Mr Gardiner:** So we will have a named officer. Will that come through the Department?

**Mr Collins:** It will be different for each council. If individuals want to know who the named officers are, they would write to or contact that council, which would provide the information.

**Mr Gardiner:** Would you not ask for that?

**Mr McMahon:** We would not normally ask for it. It is to do with a practical issue about the warrant cards that inspectors carry. Environmental health staff, for example, are trained in different areas — food safety, health and safety, tobacco control — and they each carry a personalised warrant that states the legislation under which they are authorised by the council to do their inspections. Any staff working in the area of tobacco control would need the relevant list of tobacco control legislation, including whatever comes in under this Bill, on their specific warrant to carry out that work.

**Mr Gardiner:** I am putting a simple question to you, and I am asking for a simple answer so that the public can recognise who in the council is responsible.

**Mr Collins:** Members of the public can contact the council, and the council would be required to tell them who is responsible.

**The Deputy Chairperson:** I think, Sam, that the Department is saying that it cannot put in legislation who that person is.

**Mr Gardiner:** I appreciate that, but from the council's point of view —

**The Deputy Chairperson:** In the vast majority of cases, it will be the environmental health department or the chief environmental health officer, but there may be variations in that. However, a ratepayer can go to the council and ask whom they can contact if they feel —

**Mr Gardiner:** We would need to know.

**The Deputy Chairperson:** I do not think that the Department can stipulate in legislation exactly who that is, but it is important that ratepayers can ascertain who it is in their area.

**Mr Gardiner:** I hope that that is how it is dealt with.

**Mr Beggs:** My experience has been that officers have to be authorised in different parts of the legislation. A council approves that a certain officer be authorised for a certain aspect of environmental health duties. Therefore, there will be a minute, somewhere in the council, indicating whether all the officers were authorised or individual officers were authorised. That is the normal practice that I have seen.

**Ms Brown:** Thank you for your attendance today. I welcome the fact that the register will now be centralised. I think that that is very positive and should make things work much more easily. I also understand the reason behind that; we do not want to spend a huge amount of money on the actual computer programmes, because that is what it is going to be.

I want to put the idea out there that, if a little more information were held online that would be available to the public, such as whether there are any orders against premises, it might work well as a deterrent. If retailers knew that any orders taken out against them would be made public, they would play ball and keep their slates clean. It would be similar to a restricted premises order being displayed in a window. That may be a good deterrent.

**Ms McAlarney:** As the legislation is written at present, it does allow us to prescribe the information that can be made available to the public. Although we would not want to put up information on fixed penalty notices or convictions against individuals, there is perhaps a case for considering putting on the website whether a premises is subject to a restricted sales order or a restricted premises order for

the duration of the order so that people can look it up and find out that the shop can sell tobacco but, subject to an order, cannot sell tobacco for that period of time.

**Ms Brown:** So it may be displayed.

**Ms McAlarney:** Yes.

**The Deputy Chairperson:** I am not entirely convinced. We may need to revisit the logic of not putting notification of fixed penalty notices on the central register that the public can access. Occasionally, I run into difficulties with the PSNI for driving offences. Fixed penalty notices are quoted against you in court as previous convictions. A register of fixed penalty notices is kept under that legislation. If someone has transgressed the law in this field, I do not see why there should not be a note on the register to say: by the way, Joe Smith has, on three separate occasions, incurred a fixed penalty notice. That would alert the public to the fact that there is something worth watching here. The fact that he has agreed to the fixed penalty notices indicates that he has accepted his guilt. Therefore, I do not see where data protection comes in on that aspect.

**Ms McAlarney:** Our legal advice is that accepting a fixed penalty notice is not an indication of guilt. It is a way of discharging liability for a minor offence. A record of fixed penalty notices for anything else would not be kept on a website that the public could access. Our legal advice is that somebody could challenge that under article 8 of the European Convention on Human Rights, which is about the right to a private life.

**The Deputy Chairperson:** I can assure you that I have paid any fixed penalty notice that I have been given, because I knew that I was jolly well guilty. I never thought of it as a way of dispensing with something that I did not do.

It would be worth exploring that. I think that, as far as the public are concerned, as much information as possible is the best thing.

**Mr Dunne:** Who will be responsible for funding the registration authority? Will each council have to make a contribution towards it?

**Mr Collins:** Our understanding is that the Department will be responsible for funding the registration authority. Councils were not going to be funded separately for holding registers at council level, so we would not expect them to have to contribute to the funding of a centralised register.

**Mr Dunne:** Will councils be expected to hold their own register as well?

**Mr Collins:** No, not under the way in which the legislation has been revised.

**The Deputy Chairperson:** The £35,000 that you will spend will be saved by 26 councils not having to run their own registers. It is probably a good value-for-money decision.

**Mr McMahon:** In the evidence from the councils, they said that they thought that there would be negligible costs to setting up their own registers, simply because they have a range of registers for other issues and already have a platform for them. They were not pushing for any funding from the Department to establish registers.

**The Deputy Chairperson:** Even if the sum is £500 for each council, that is effectively being saved by the fact that there is a central register. The net cost to the ratepayer/taxpayer is not £35,000; it is less than that. Instead of having 26 registers, you will have one.

**Mr Collins:** That is a fair point. The councils are not maintaining their own separate registers, although they would want access on a council-by-council basis to the centralised register that would hopefully hold the same information that the councils would previously have held under their local registers.

**The Deputy Chairperson:** A much more serious aspect of the Bill is the fact that there is no mention of a duty on HMRC to share information with the registration authority on convictions for illicit tobacco. I accept that we are dealing with two totally different animals: the Department and HMRC, which is not

devolved. I accept that there is a totally different structure. We are not talking about fixed penalty notices but convictions for very serious offences. A chap in Warrenpoint was caught with around six million cigarettes in a lorry, and he argued that they were for personal consumption. The judge said that, at 3,000 an hour, it would take him 10 years to smoke them all, so clearly they were not for personal consumption. He was dealing with local traders and shopkeepers with illicit tobacco. I think that anyone who is convicted of that should be on the register as such. What are the legal difficulties in doing that?

**Mr Collins:** We do not have the legal authority to require a UK-wide organisation such as HMRC to share its information on convictions with a registration authority. We are working with the Department of Justice (DOJ) on a protocol that HMRC will put in place with local councils so that they will be made aware of any convictions under illicit tobacco legislation. Local councils will then make that known to the registration authority. It is a protocol that is not covered in the legislation, but we are working with DOJ on it to put in place, and have DOJ's support for, that protocol, in much the same way as it operates in England, where HMRC has protocols with local authorities and shares information about convictions. The local authorities also provide HMRC with intelligence about illicit dealers whom the tobacco control and environmental health officers might uncover.

**The Deputy Chairperson:** That is a step forward, but the next logical step is that whatever information HMRC provides to local councils then appears on the central register so that the public can see whether a certain shop or chain of shops has been involved in the sale of illicit tobacco.

**Mr Collins:** Again, it goes back to what we can put on the register. As we said, there is a requirement in the Bill for councils to share information on all relevant offences: fixed penalty notices, restricted sales and restricted premises orders and, as you saw, our amendment includes illicit tobacco offences as one of the contributory offences. Councils are now required to share that with the registration authority and then make it available to other councils. The registration authority makes that information available to other councils to support enforcement in their areas.

**The Deputy Chairperson:** That is fine, but what is stopping you going to the next step of putting that on the register so that people can log on and read what is going on in their district? People have told us that, in some areas, up to one third of the cigarettes being sold in Northern Ireland are illicit. They are smuggled, counterfeit and fake. It will clearly be very difficult to bring tobacco sales under control as long as that is happening, and, of course, it is being done for profit. Large amounts of money are being made on this, often by some very undesirable groups. If someone has gone through due process and been convicted, that information has been shared with HMRC and there is no doubt about the conviction, what would be wrong with the public knowing what is going on in each area of the Province?

**Mr Collins:** I do not think that there is an issue about having convictions; the issue is fixed penalty notices appearing on the centralised register. If we look at it in practical terms, we see that the people who are convicted of the serious illicit tobacco offences, as described in the order, tend not to be registered tobacco retailers. They tend to be criminal gangs who, as you say, are bringing in millions of cigarettes in one go. So, I expect that the actual number of registered tobacco retailers who have been convicted of an illicit offence is quite small.

**The Deputy Chairperson:** Can a retailer not be convicted of selling?

**Ms McAlarney:** Yes, but it is very unlikely that they would receive a conviction for that. Through this work, I have discovered that HMRC tends not to bring to court the case of someone caught selling 10 or 20 packets of cigarettes. It goes after the large-scale smugglers. So, it will confiscate the products and fine the person, but there will not be a conviction.

**The Deputy Chairperson:** In the very rare occasions in which there have been repeat offences and the person is convicted, should there not at least be the capacity to have that on the register? The public would see as a very serious step that that person had been caught and convicted of selling products that they knew to be contraband. I accept that it is unlikely that they are going to be convicted; I accept that. Again, it would be a deterrent if they knew that, if that unusual set of circumstances occurred, they would be on the register. Basically, I am trying to get as much as I can on to the register for the public consumption.



**Ms McAlarney:** As we were saying earlier, I am not sure where that would sit on the register. We are providing a register with a list of names of tobacco retailers in your area, and we are talking about keeping the costs down and trying to keep it as a fairly standard register. If you are having to add extra fields to allow people to look into such things as retailers' convictions, you would, obviously, be going into a different area, rather than having a list of the tobacco retailers in the area.

**The Deputy Chairperson:** Do members have any other questions on that clause?

**Mr Collins:** I should add that, as it stands, the Bill does not preclude illicit offences being included on the register. It is about the practical outworkings of how the register is held. The Bill does not exclude that possibility. Only serious illicit offences by people who are already registered as tobacco retailers would be listed. First, you would have to be a tobacco retailer and, secondly, you would have to be convicted of a serious offence in relation to illicit tobacco. I do not think that there is going to be too many of those in any one particular year.

There are other issues. The more material that we put on to the register, the more maintenance of it there will be. There will be questions about how long that information should reside on the register. Will it include convictions from the previous five years? Furthermore, some restricted sales orders will probably last for only 28 days. There would, therefore, be quite a bit in keeping that register up to date, and that would increase the administrative costs. It would also increase the risk to the authority that is maintaining the register, because if information were not taken off in time, it would leave that authority liable to some form of legal action from the person whose 28-day restricted sales order or restricted premises order were spent. So, the more that you put on about convictions, the more risk there is of the register not being up to date, and the more risk there is of legal action against it. That all adds to the cost of maintaining a register, so we need to bear that in mind in practical terms.

**Mr Dunne:** How are councils going to share information when they do not have a register of it?

**Mr Collins:** Councils will have access to the central register for their area.

**Mr Dunne:** So, does that mean that the sharing is not an issue, because everybody will have access?

**Mr Collins:** Yes, but if there is a fixed penalty notice against a retailer in one particular area, it is the enforcing council that brings that to court. It is, therefore, up to the council to share that information with the centralised registering authority, thereby meaning that other councils will have access to that information.

**Mr Dunne:** It is important that prompt updates are given to the central registration board.

**Mr Collins:** Absolutely. Again, that adds to the cost, but it is important that the centralised registry is as up to date as possible.

**The Deputy Chairperson:** Are members generally content with the Department's proposed amendments to clauses 1 and 16?

*Members indicated assent.*

**The Deputy Chairperson:** Again, this is not the Committee's formal view; I am just trying to assess its feelings.

We will now move on to the issue of barring people from registering as a retailer. At the previous meeting we asked you to explore the possibility of barring someone who has a serious conviction for selling illicit tobacco from registering as a tobacco retailer. You stated that you would consider that option, and, again, I thank you, because you have clearly done so. You are now proposing to have a provision in clause 2 to state that someone who has been convicted of an illicit tobacco offence shall not be allowed to register as a tobacco retailer for five years from the date of the conviction.

Again, it strikes me very clearly that you have been listening to what has been asked for. The sentence is not draconian, but it is certainly very stiff, which would act as a deterrent. Will you talk us through the proposed amendment and how you decided on the five-year period?

**Ms McAlarney:** We looked at similar types of offences and spoke to legal advisers. We considered a lifetime ban and thought that that might be a bit harsh, given the need for offender rehabilitation. It would not be fair to prevent someone ever being able to sell tobacco, because they might have committed the offence when they were younger and then regretted it.

We thought that five years would be a reasonable period. We also looked at the different offences to determine what a serious illicit tobacco offence was. We thought that a custodial sentence would be the most appropriate. The offences that are listed here under section 170 and section 170B of the Customs and Excise Management Act 1979 will be used to convict people of offences in relation to illicit tobacco retailing.

**Mr Collins:** We also wrote to NIACRO. At the previous session, we mentioned that we would look to speak to NIACRO about the rehabilitation of offenders and about ensuring that they had access to a legitimate business. NIACRO came back to us, but we were not entirely clear about that. It did not suggest a particular period, but it was concerned that an offender would have the ability after a period of time to set up as a tobacco retailer. To arrive at a reasonable deterrent and to allow rehabilitation of offenders, should someone who has been sentenced for an illicit tobacco offence at some stage in the future wish to set up as a tobacco retailer or as a general retailer, they would be able to do it. So, we came down on the option of the five-year period.

**The Deputy Chairperson:** It is not a maximum of five years; it is five years. Therefore, I think that someone who has been out of the trade for five years would realise that that is quite a deterrent from a business point of view. I think that that is a very good response to what we were asking for.

Do any of you folks have any questions? Gordon or Mickey, do you have any questions?

**Mr Brady:** Thanks for the presentation. I want to ask about the five-year period. Can general retailers who sold tobacco carry on retailing other things but have the tobacco removed?

**Mr Collins:** Yes, but they just cannot register as tobacco retailers. They can be retailers, but they cannot sell tobacco.

**Mr Brady:** So, it is specific to tobacco. It is a rhetorical question, I suppose.

**The Deputy Chairperson:** Having talked to the trade, I can say that tobacco is a lead item to get people in to buy other things. People buy a packet of cigarettes, a newspaper and their sandwiches, so it is far more of a deterrent than just simply the loss of the tobacco. So, I think that this is a very good idea.

**Mr Beggs:** The proposed new wording of clause 2(3) says that:

*"The registering authority must grant an application ... unless ... the applicant has, within the period of 5 years ... been convicted of an offence under ... the Customs and Excise Management Act 1979."*

What would happen if the applicant had been granted a tobacco retailing licence but was convicted of an offence while that licence was still in operation? The proposed new wording deals with a new application, but what would happen to someone who already has a licence? Would it be removed as a consequence of a serious offence?

**Ms McAlarney:** I think that, given the way that the Bill is currently worded, the licence would not be removed. When we were talking about this initially in the meetings, it was more to do with preventing someone who had been involved in serious illicit tobacco offences becoming a tobacco retailer. Obviously, if you wanted that to be in the Bill, we could probably go back and speak to OLC about amending clause 4.

**Mr Collins:** As it stands, if someone who is already registered as a tobacco retailer is convicted of an illicit offence, that counts as one of their three strikes, if you like, in five years, leading to a restricted premises or restricted sales order.

**Mr Beggs:** I have been pressing for it to be taken into consideration. We would want to review its severity, because it would depend on whether they were caught with two million cigarettes in a lorry or 200.

**Mr Collins:** On legal advice, we have described a serious offence as a custodial offence, whether it is suspended or not, so that we could have that definition of a serious offence. So, for example, if the sentence were purely a fine, it would not apply. However, the sentence is custodial, regardless of whether it is suspended or enacted.

**Mr Beggs:** I am pleased that that is being counted, but I want to look more closely at whether it is the equivalent of making one sale to someone under 18. What you referred to is to be included as one offence, so someone could be caught with —

**Ms McAlarney:** Do you mean for the purposes of removing somebody from the register?

**Mr Beggs:** Yes. I think that we need to look more carefully at the severity of the offence and of the conviction made against the person under the Customs and Excise Management Act 1979.

**The Deputy Chairperson:** That is a very useful point, Roy, and we will have a look at it. I think that the public would think that it was unfair if someone who already has a licence continues on when, if they had not applied for a licence, they would not be granted one. So, that is very useful.

This is just a technical issue, but why is there no reference in this clause to offences committed under the Tobacco Products Duty Act 1979?

**Ms McAlarney:** Any of the offences that are relevant offences under the Act do not result in a custodial sentence. That is why. They result only in a confiscation of goods and, I think, the offender being charged VAT on those duties.

**The Deputy Chairperson:** You included it in clause 7.

**Ms McAlarney:** Yes. That is because we still see that counting as an offence, but not a serious one. For the purposes of this clause, we talk about a list of serious tobacco offences. Whereas, it counts as an offence —

**Mr Collins:** Whereas any illicit tobacco offence counts as one of your three offences leading to a restricted sale or restricted premises order. This is a more draconian clause that stops someone being registered in the first place.

I take your point that we need to look again at the case of an existing retailer who has a serious illicit offence. There maybe needs to be a power to remove them for a period of five years, just to bring parity with the new applicant.

**The Deputy Chairperson:** Thank you. It is very helpful that you have taken that on board. Do any other members have questions on this clause? This is not a formal decision, but are members generally content with the Department's proposed amendments, subject at this stage to Roy's query? Are we content to move on?

*Members indicated assent.*

**The Deputy Chairperson:** We will now move on to a wee bit more of a thorny issue: the registration fee. The Bill allows for regulations to be [*Inaudible due to mobile phone interference.*] charging for registration. Since our previous meeting, the Minister has clarified the situation in Scotland. Their legislation does not contain this power. It is unusual for the Scots not to do that, but it is not there. You know that tobacco retailers and shopkeepers expressed a wee bit of concern about this issue. That is why we dwelt, to some extent, on the cost of registration, and we will be able to tease that out. What is your latest position on charging for the registration fee? Do you still believe that you should have the power that is required to do that?

**Mr Collins:** Yes; we believe that we should retain the power, but it depends. It goes back to the detail and the nature of the information that is held on the centralised register. We think that it is useful to retain the power in case we find that a fairly basic register is not giving us what we want and is not

proving effective. If there are calls for a more complicated and detailed register, it would be useful if the cost increased to retain the power to charge a fee for registration.

**The Deputy Chairperson:** For the benefit of the members who were not at that meeting, just talk us through what would happen if you woke up some morning and said, "This is terribly expensive. In our £4.65 billion budget, we cannot find the £35,000 to pay for this, so we are going to have introduce registration". What would be the mechanism for doing that? Would it be an SL1 or a statutory rule, or would you just decide to do it?

**Ms McAlarney:** No; we would have to make regulations, and those would be subject to draft affirmative resolution by the Assembly. So, they would be brought before the Assembly, and you would have the power to vote on them.

**The Deputy Chairperson:** Would there be public consultation with the retailers about that? Would they have a chance to give their input at that stage?

**Ms McAlarney:** I am not sure that we would necessarily consult on it. Would we?

**The Deputy Chairperson:** Could the Committee decide to consult on it? Could we ask you to put the decision on hold while we consult on it by putting an ad in the paper and that sort of thing? Would that be a way around it?

**Mr Collins:** The Committee certainly could, if we were bringing the regulations through for Committee comment and approval.

**The Deputy Chairperson:** Apparently, we would not do that. That is your work, not ours. *[Laughter.]* I just worry that it may be brought in by stealth. Retailers may suddenly wake up some morning and find —

**Ms McAlarney:** No, it could not be brought in without the Assembly's agreement. We do not envisage using it at the minute, but it is just always better to have these things included rather than to try to amend the legislation after a couple of years to allow for the power.

**Mr Collins:** It is better to have the power if the situation arises where there is substantial cost.

**The Deputy Chairperson:** Would it require primary legislation to amend it to include charging?

**Ms McAlarney:** If we did not include it now, yes.

**The Deputy Chairperson:** We know what that involves.

**Mr Brady:** It is an affirmative resolution that goes before the Assembly.

**Mr Collins:** That is right.

**Mr Brady:** Presumably, the Chair of the Committee will have to take some position on a Committee decision. Is that not the normal procedure? So, the Committee, as well as individual members, would have an input, presumably.

**Mr Collins:** Absolutely, yes. That is the process.

**Mr Brady:** Given that this is an enabling Bill, if you like, the regulations will flow from that. If there is affirmative resolution, the Assembly will decide. Presumably, at that stage, the Chair, whoever that may be, would then put forward the Committee's position.

**The Deputy Chairperson:** The Committee would go through the normal process, but the Chair would only be echoing the views of the Committee.

**Mr Brady:** Exactly. I am really saying that that decision would have been made if there were a consensus in the Committee, which would, presumably, then have some influence on the Assembly.

That may be the wrong word, however, because it is sometimes difficult to influence anything, but you get my drift.

**Ms McAlarney:** Yes, you would be able to state your views.

**Mr Collins:** The fact that it is an affirmative resolution means that there is balance.

**The Deputy Chairperson:** Do any other members have questions on this issue? Basically, the officials are saying that, if the Assembly does not agree to it, there will not be charging and that it is our decision. So, that is a safeguard.

We will now move on to clause 3. At the previous meeting, you stated that you were open to the suggestion that the period for notifying a change of name or address or for notifying that a tobacco business was no longer being carried out at a premises should be changed from three months to 28 days. You have now provided a proposed amendment making the change from three months to 28 days.

I suppose that that stops a lot of debate, because that was what we asked for and we are quite happy with that. Do members have any questions about the fact that the Department agreed to what we asked them for? That is good news. I assume that, practically, that can be done without causing any administrative problems.

**Mr Collins:** We think that keeping a register is quite a good move. As we say, it is important to keep it updated and as live as possible.

**The Deputy Chairperson:** I wish that life were as easy as that one.

Moving on to clause 4, I want to go back to clause 4(2). Stakeholders asked why people who are subject to a restricted sales order do not have to be removed from the register if they are registered as the owner of the shop. Clause 4(2) states:

*"Where a restricted premises order is made in respect of registered premises, a council must amend the Register so as to remove references to the premises specified in the order."*

Why are they not removed from the register?

**Mr Collins:** We envisage very few circumstances where, if there were a restricted sales order against the registered owner, they would not also have a restricted premises order, which would remove them from the register for the period of the restricted premises order anyway. We felt that it was better if, in those very rare occasions when the registered owner had only a restricted sales order against him, they remained on the register because they would still not be able to carry out any tobacco-related activity in relation to their business or any other business. If we removed them from the register, that would remove the ability of that shop and the workers in that shop to carry out any tobacco business at all. A restricted sales order applies to the individual, not the premises.

**The Deputy Chairperson:** So, does that mean that it will be highly unlikely that that will arise?

**Mr Collins:** Highly unlikely. However, if we included a provision to remove from the register an owner who was subject to a restricted sales order, that would, in essence, remove him from the register entirely, which would be the same as a restricted premises order.

**The Deputy Chairperson:** Would somebody reading the register be aware of that unusual situation, or would they just see that person as having a clean bill of health?

**Mr Collins:** They would see the premises as having a clean bill of health, given that it is on the register. However, if they went into that premises, the owner who has the restricted sales order against them would not be able to sell cigarettes or be involved in any way in the trade of cigarettes in that business.

**Mr McMahon:** There is also a related issue that goes back to the point about councils sharing information. It is probably better, for the benefit of other councils, that the premises remain on the

register with a note against it stating that the owner is subject to a restricted sales order rather than the premises being taken entirely off the register.

**The Deputy Chairperson:** Are members happy with the Department's explanation of that issue? Do we want to consider a Committee amendment to this clause, or do we just want to leave it? I now understand why we are where we are and the very unusual circumstances that this might pertain to. It grieves me to say this, but I think that the Department has given a very sensible explanation, and I do not think that the issue is worth pursuing. I now understand why we are where we are. I do not think that there is much merit in producing our own amendment to this very technical and very minor issue. Do we just want to leave it?

*Members indicated assent.*

**The Deputy Chairperson:** We will move on to clause 5. At our previous meeting, we discussed who would have access to the register. Of course, we have been through this before. You now propose to remove clause 5. You have touched on this, but, for the sake of the record, we will say that the register will be accessed online, as most things will be by the time that this is legislation. It will be free to access. People will just log on to the appropriate website and read the material. Again, I think that that is acceptable. I am sure that nobody has an issue with that, apart from those of us who struggle getting online in the first place; that is a different issue. Is that the case?

*Members indicated assent.*

**The Deputy Chairperson:** If we move on to clause 7, at our previous meeting, you stated that you were open to the suggestion that a restricted premises order would be made for three offences in five years. You are now proposing an amendment to make that happen — is somebody's phone ringing?

**Mr Collins:** Apologies, Chair. I thought that it was turned off. It is actually not working generally.

**The Deputy Chairperson:** At least you do not have an orchestra ringtone as some members do.

You propose to make an amendment to clause 7(8)(b), which currently states:

*"on at least 2 other occasions within the period of 3 years ending with the date on which the relevant offence was committed".*

You have stroked out "3" and put in "5". Will you briefly explain what is going on there? I think that it is self-evident.

**Ms McAlarney:** We listened to the Committee. It obviously feels, and we agree, that it makes much more sense to extend the period within which an offence can lead to a banning order. Given that test-purchasing exercises are usually carried out on an annual basis, we agreed that there was a concern that, unless a shop was tested every year and failed in every one of those three years, it would basically get away with it. Extending the period to five years makes it more likely that a repeat offender will end up with a conviction or a banning order.

**The Deputy Chairperson:** There was a lot of support for that from the consultees at the various hearings. So, I do not suspect that there will be any Committee opposition to that suggestion.

**Mr Collins:** We think that it strengthens the Bill substantially, because it raises the bar for the length of the period in which a premises has to keep its nose clean and be in compliance with the legislation.

**The Deputy Chairperson:** Is everyone happy with that?

*Members indicated assent.*

**The Deputy Chairperson:** I am afraid that all our potential battle grounds are being totally dissolved in front of us. The next one is exactly the same.

**Mr Gardiner:** The officials are doing a good job.

**The Deputy Chairperson:** At the previous meeting, you stated that you were open to the suggestion that the Bill should specify a minimum period for a restricted premises order. You also stated that you were open to the suggestion that the maximum period for a restricted premises order should be increased from one year to three years. You now propose a minimum period of 28 days and a maximum period of three years. Again, I think that we would very much welcome that, but, for the sake of the record, talk us through your rationale for arriving at those two periods: 28 days and three years.

**Mr Collins:** In looking at the application of similar legislation elsewhere and in other jurisdictions, we have seen that some magistrates have given very short periods — even an afternoon — in which a premises is restricted. We felt that that does not really give sufficient weight to the legislation. Looking at other minimum periods in other areas, we thought that the 28-day period was a realistic minimum and that a three-year period would be a realistic maximum. We also took advice from environmental health officers, who have experience in the field. They tell us that, very often, in applying banning periods, courts take a percentage of the maximum, which could be anything from 5%, 10% or 20%, depending on the severity of the offence. So, we felt that a three-year period, if there is a tendency to take 10%, which would work out at six months or so, is in reality the best that we could hope for.

**The Deputy Chairperson:** Yet again, there is consensus for that. Do members have any questions about it? I think that we can say that there are no questions, so are members generally content with the Department's proposed amendment? Again, that is not a formal question.

*Members indicated assent.*

**The Deputy Chairperson:** That is good news.

We will move on to including an illicit tobacco offence as a relevant offence. At our previous meeting, you stated that you are open to the suggestion that an offence for illicit tobacco should count towards the three offences that result in a restricted premises order or a restricted sales order. You are now proposing to extend the definition of a tobacco offence to offences that are committed under the Customs and Excise Management Act 1979 and the Tobacco Duty Act 1979. That is the legislation that I referred to earlier. Again, we suggested that, you are open to it, and you made the decision, which is in line with the Committee's views. Do members have any questions on that, given the new circumstances that we are now in? Are members content with that?

*Members indicated assent.*

**The Deputy Chairperson:** I think that that is logical and a very good move.

We are now moving on to the issue of displaying a notice. At the previous meeting, you stated that you were open to the suggestion that the shop would have to display a notice stating that it was subject to a restricted premises order. You propose to include a provision at clause 9 to require retailers to display a notice if they are subject to a restricted premises order. I presume that it would be prominent and that it would not be a little postage stamp sort of thing.

**Ms McAlarney:** No. We said that draft regulations would specify the dimensions and wording of the notice.

**Mr Collins:** And the size of the font.

**Ms McAlarney:** So, people would not just be able to put up a —

**The Deputy Chairperson:** So, it would have to be something that people could see readily and that would be an embarrassment to the shop and its owner.

**Ms McAlarney:** Yes.

**Mr Collins:** We also specified that the notice should be displayed no later than five days after the date on which the restricted premises order comes into effect. That is actually sooner than in Scotland, where 14 days is specified. Our concern was that, if a restricted premises order was in place for 28

days, for example, but you could wait 14 days, in effect, there would be only two weeks of display. So, we have brought that forward substantially.

**The Deputy Chairperson:** Right. Are members content?

*Members indicated assent.*

**Ms Brown:** That is common sense.

**The Deputy Chairperson:** You propose to create in clause 10 an offence of not displaying a notice, which, I think, is logical. The fine is at level 3. What is the rationale behind that? It might be cheaper to pay the fine than to stick up the poster. How did you come to a level 3 fine?

**Ms McAlarney:** I am not sure whether it is maybe a similar offence and on the same level that applies in Scotland.

**The Deputy Chairperson:** What is the maximum under level 3?

**Ms McAlarney:** Level 3 has a maximum of £1,000.

**The Deputy Chairperson:** That is the maximum. So, the court could decide that the fine is £200. I know that, if I were a shopkeeper, I would prefer to pay the £200 than to stick up a notice. When the fine is paid, is that it? Is there no way to compel the shopkeeper to stick up the notice once they have paid their fine?

**Mr McMahan:** It could be the same offence the next day if the notice is still not up —

**The Deputy Chairperson:** So, the £200 fine does not negate the need to put the banner up?

**Mr McMahan:** In fact, in practical terms, I think that most officers would demand to see some sort of sign up before they left the premises, assuming that that were feasible, even if they were proceeding with a court case.

**The Deputy Chairperson:** OK. Are members content with that section?

*Members indicated assent.*

**The Deputy Chairperson:** We will move to the requirement to remove tobacco products from the retail area. At the last meeting, we discussed whether shops that are subject to a restricted premises order will be required to remove tobacco from the retail area. You are proposing to include provisions in clause 9 to require retailers to remove all tobacco products from the retail area. Again, that looks eminently sensible to me. Are members content or are there any questions about that? All the paraphernalia would have to be removed from the store or, at least, removed from display.

**Mr Dunne:** Does that take it off the premises?

**Ms McAlarney:** No, it is just removed from the retail area of the store. It could not be anywhere where products are on display at all but would have to be in a storage area, storeroom or the warehouse part of the store.

**Mr Collins:** It would have to be outside any retail area, whether it is the part that sells soft drinks or whatever, so that customers could not see it. We did not go for removal from the premises entirely because we have concerns that that might require some small traders to take their tobacco stock home and store it there, and that would make them vulnerable to burglaries and whatnot. We thought that a separate area, generally a locked storeroom on the retail premises, would be sufficient.

**Mr Beggs:** I concur with that view. Some small shops may not have other suitable locations to take the product to. We want to be reasonable in what we do, and I think that removing it from the retail area would be reasonable.

**Mr Dunne:** What about the risk of unauthorised sales continuing?



**Mr Collins:** There is undoubtedly some risk. We were told by the environmental health officers that, if there is no provision to remove the products from the retail area, the retailer will often forget or will take the chance and sell. However, the fact that they would have to leave the premises and go to a separate room to make that sale decreases that chance quite substantially. That was the advice in practical terms from the tobacco control officers.

**The Deputy Chairperson:** There used to be legislation in England that prevented the sale of cars on a Sunday, but you could buy a cabbage at £9,000 and get a free Ford Mondeo thrown in. Out of interest, what is to stop that type of misuse? If you prohibit retail, they can throw the cigarettes in as an incentive for something else.

**Mr Collins:** That is a new one on me. *[Laughter.]* It is about the definition of retail. I do not think that, if a fixed penalty notice was brought against a retailer who was handing over cigarettes, the court would take a dim view and say, "You are giving that out free with a packet of chewing gum". It would be up to the courts to decide, but I expect that the councils would enforce the legislation if they saw a retailer who was barred from selling tobacco handing it over. Under the requirements of the legislation, I presume that, if an owner brings tobacco into a retail area when the restricted premises order is in place, and when the tobacco was to be held outside the retail area, they will breach the terms of the Bill anyway.

**The Deputy Chairperson:** What about something more subtle such as a free packet of cigarettes with every £50 of groceries that you buy? At the minute, Tesco is offering a free car wash when you spend £50.

**Ms McAlarney:** The legislation states that, on the day after the restricted premises order has effect, the owner must ensure that no tobacco or cigarette papers are in the retail area of the relevant premises. They cannot be in the retail area at all, even to give away.

**The Deputy Chairperson:** They could maybe drop a packet into the groceries at the end of the process.

**Ms McAlarney:** You have to get them through the retail area somehow. You would have to go out.

**The Deputy Chairperson:** That is useful to know.

**Mr McMahon:** On the issue of deterrents, it is worth pointing out that the potential fine for breaching the banning order is £20,000. It is not an insignificant fine for taking the chance.

**Mr Wells:** That is helpful, unlike the original question.

We will now move to clause 10, which is about the offence of not removing tobacco products from the retail area. You have pitched that at level 5. So, you regard that as more serious than not putting up the display to say that you have been banned. What was the rationale for level 5 for that one?

**Ms McAlarney:** We just felt that keeping the tobacco in the retail area would make it a lot more likely that someone would end up breaching the banning order, and a sales assistant could end up selling the tobacco to a friend or someone who came in. We just thought that we would give them more of an incentive to remove the tobacco from the retail area. Therefore, we associated a higher fine with that offence.

**The Deputy Chairperson:** What is the maximum fine for a level 5 offence?

**Ms McAlarney:** £5,000.

**The Deputy Chairperson:** Are there any questions on that issue?

**Mr Dunne:** The issue for me is that there is still a risk of unauthorised sales. It comes back to the point about what sort of monitoring is going to take place. What is there to stop people selling the tobacco in the evenings or at the weekends —

**Mr Beggs:** That is up to the local councils.

**Mr Dunne:** — when environmental health officers generally do not work? There is still that risk.

**Mr Collins:** There is undoubtedly a risk. If the retailer sells, they risk facing a fine of up to £5,000. On top of that, if the environmental health officers are aware that there is a restricted premises order in place for that premises, I would expect that they would keep a fairly close eye on that premises for the duration of the order to check for any further breaches of the legislation.

**Mr McMahon:** At the minute, tobacco control officers do some out-of-hours work on the smoke-free legislation and inspect pubs and clubs and things in the evenings. They would not normally be involved in looking at the sale of tobacco, but I imagine that, if it came to light that this was potentially an issue or there was intelligence to suggest that, there would be scope to use those officers out of hours.

**Mr Dunne:** OK. Thanks, Chair.

**The Deputy Chairperson:** During the previous meeting, you said that you were open to the suggestion of making restricted sales orders for three offences in five years. You have now proposed an amendment to do that under clause 8. Of course, that is in parallel with the previous decision and is very much in line with what the Committee suggested at various hearings.

Unless there are questions, I do not think that we need an explanation. We know what is going on here. Do members have any particular questions about that? There is logic in having both sanctions and triggering mechanisms for both to be three years and three offences in five years. Are there any questions on that? Are we happy enough to agree to it in general?

*Members indicated assent.*

**The Deputy Chairperson:** You were very open at the previous meeting. You also said that you were open to the suggestion of the Bill specifying a minimum period for a restricted sales order. You stated that you were open to suggestion of increasing the maximum period for a restricted sales order from one year to three years, and you have proposed a minimum period of 28 days and a maximum period of three years. Again, that is line with the previous decision. There is a consistency. Are members happy and generally content with that?

*Members indicated assent.*

**The Deputy Chairperson:** We are making very good progress.

At the previous meeting, we suggested that someone who was subject to a restricted sales order and who owned a number of shops should be prevented from selling tobacco in any of those shops, not just personally but the shops would not be allowed to sell tobacco at all. I think that there was a wee bit of a parting of the waves on this. I remember that you said that it was quite a move away from the original intention of the Bill and that you would consider it further. Do you have any further thoughts on that quite radical change in stance?

**Mr Collins:** We feel that it would move away from the original intent of the Bill. We also feel that it would penalise staff in the other shops who, to all intents and purposes, had been compliant with the legislation. The owner might be in those premises on a fairly regular basis, but not that often. If those shops were included in a restricted premises order, there would be a potential risk to the livelihoods of staff who work in those shops who had not been in breach of the legislation. We felt that that was a bit draconian in its extent and its potential adverse impact on members of staff in the other shops.

**The Deputy Chairperson:** Thinking this through, Tesco has scores of shops. Was the thought process that if one Tesco store contravened, they would all lose the right to sell cigarettes? That would be pretty draconian.

**Mr Collins:** It would —

**Ms McAlarney:** I do not think that Tesco would take that.

**Mr Collins:** — and the numbers of staff involved would be huge.

**The Deputy Chairperson:** Do members, chiefly those who suggested this, have any questions on the Department's stance on this issue?

**Mr Beggs:** I did not suggest it; I took a contrary view — the Department's view.

**The Deputy Chairperson:** I can see where you are coming from, but, obviously, there are members of the Committee who took a different view. Maybe they are not here today. That is what is called a probing amendment. *[Laughter.]* We were exploring it. There are now that many stores that are chains; they are owned by multinationals and maybe 20 or 30 stores are owned by the same company. It is up to members, but I think it is a very big change from what was consulted on in the legislation, and I can see problems with it. However, it is entirely up to the Committee as to whether we proceed with it or not. Does anybody feel strongly about it?

**Mr Beggs:** I think we should accept the explanation. I am aware of one local town where there is a chain of small corner shops, and potentially the whole chain could suffer not only closure for a period but perhaps total closure if they were all prevented from selling for a certain period, and you may end up with a dearth of shops available to the public.

**Mr Collins:** In most cases where there is a restricted premises order against the owner, there would also be a restricted sales order, so that owner would be prevented through the restricted sales order from being involved in the tobacco business in any of their other premises or shops.

**The Deputy Chairperson:** Yes, but that would not stop other staff —

**Mr Collins:** No, but other staff have not breached the legislation, so it would be disproportionate.

**Ms McAlarney:** You would like to think that if he received a restricted premises order for one premises, that would make him more wary of risking losing business in his other premises.

**The Deputy Chairperson:** Particularly as the sanctions have been increased and they have to display banners and things. Personally, I think you are probably right, but, as I say, it is the Committee's decision. There is no consensus for beefing up our view on it. We will have a last opportunity, but, at this stage, are we happy enough just to generally accept the view and move on?

*Members indicated assent.*

**The Deputy Chairperson:** At our last meeting we suggested that premises should be required to display a notice if any of their employees was subject to a restricted sales order. Your view was that that would not be appropriate, based on legal advice you had received on human rights issues. I think I know the answer to this question, but what is the Department's latest thinking on it?

**Mr Collins:** We went back and checked again, and we believe that our initial position was correct and that there would be issues with identifying individuals. If it was a small shop with one or two workers, people would know who was subject to the restricted sales order within that shop. I suppose they have received a punishment in terms of not being able to be involved in the tobacco trade in that shop. If it is a small shop, that could well lead to the loss of the job in that shop, so we felt that the additional requirement to put a sign up in the window would essentially identify them and possibly be in breach of their human rights.

**The Deputy Chairperson:** Are there any views on that? I suppose that, unless you built in a clause stating that it had to be a shop with more than five employees or something, I could certainly see problems. I cannot remember who raised the suggestion. Maybe they are not here, but are we happy to leave it at that, or do we wish to consider an amendment on that at a later stage?

**Mr Beggs:** I am content.

**Mr Gardiner:** I am inclined to agree with what is already in the pipeline for it.

*Members indicated assent.*

**The Deputy Chairperson:** At the last meeting we were told that the retailers suggested that there should be an accessible list of people subject to a restricted sales order so that they could do a pre-employment check to avoid employing that person. You stated that you would seek legal advice on the matter. Clearly, the last thing a shopkeeper wants to do is take on someone who has that restriction on them. In a small corner store, that could effectively prevent the shop from selling tobacco for quite a considerable period. What was the Department's view when you had a look at that?

**Mr Collins:** There could be quite a bit of administrative work with that, if you think about the Access NI checks and keeping a list up to date. Employers that felt that they needed to contact the registration authority or the Department to find out who is on that list could actually create a substantial amount of administrative work. As you know, in the retail sector, with part-time workers and whatnot, there is a very high turnover of staff. There could be quite a lot of work in maintaining that list and responding to queries from employers about potential employees and whether they are on that list. We felt that, like most lines of work, the onus should be on the candidate applying for a job to make a conviction under a sales order known to the employer during the job interview.

**The Deputy Chairperson:** Would it be legal for the employer to put a question to that effect on any application form?

**Ms McAlarney:** I am sure that it would be. We could check that out. I do not see why you could not ask the question.

**Mr Collins:** I cannot imagine how it would not be, because it is relevant to the type of employment. If the sale of tobacco is relevant to a tobacco retailer's business, I imagine that the tobacco retailer has the right to ask for information on any convictions in relation to tobacco sales.

**The Deputy Chairperson:** That may make life a lot simpler than going to a register.

**Mr Beggs:** We should try to minimise the bureaucracy involved in all this. The more you have, the more things can go wrong. There are costs involved. The Committee should check out whether an employer could put that down as a question. I assume that, if someone answered that question incorrectly, they would be in breach of their conditions in which they were employed. That would be a much simpler way of dealing with it. Someone would have to disclose it to the employer. They would know whether they were legally entitled to sell cigarettes and then would employ them on that basis. That would be a much simpler means of managing the whole process, provided that it would be legal to do so.

**The Deputy Chairperson:** If an employer is allowed to ask whether you have any criminal convictions, which is entirely legal, surely asking that question must be within the rules. If the person is later discovered to be restricted, they can be sacked and they have no comeback.

**Mr Beggs:** I assume that that would be the case. It would be a much simpler way of managing the process.

**Mr Collins:** In practical terms, the minimum period is 28 days. Given the courts' approach to this, the maximum period in most cases that anyone will be subject to a restricted sales order is probably five or six months. Most of them will probably be at the lower end. The period of time for which a restricted sales order is in place will be quite short. The need to maintain that information and then delete that information will create quite a bit of work for what is essentially a banning period of anything from four weeks to four or five months.

**The Deputy Chairperson:** An employer could argue that even a past restriction is relevant to someone's application to sell tobacco.

**Mr Collins:** I expect that a past or spent conviction would certainly colour an employer's judgement.

**The Deputy Chairperson:** Folks, we have had an explanation of the issue. What do members feel? Are we happy to leave it at that, or do we want to consider an amendment? Is everyone content?

*Members indicated assent.*

**The Deputy Chairperson:** We move to clause 12. You are proposing amendments to clause 12 to consolidate in one place in the Bill all the enforcement provisions. Will you give us a brief explanation as to the rationale for that?

**Ms McAlarney:** The Bill is becoming very long because we wanted to include some powers of entry. Obviously, we had powers of entry in relation to this legislation, but to bring the other pieces of tobacco control legislation up to date as well concerning powers of entry, we were going to amend the 1978 Order and the 1991 Order to include the same provisions for powers of entry. When Office of the Legislative Counsel (OLC) looked at this again a couple of weeks ago, it thought that it was becoming very long; it was just repeating the same powers of entry three times in the Bill. Therefore, it just included, under clause 12, all the relevant offences to which the powers of entry apply. It makes it a lot shorter.

**The Deputy Chairperson:** I do not think that there are any strong views on that. Are members generally content with the Department's proposed amendments? It is not a formal question; I am just getting a feel for the Committee's views. Are members content?

*Members indicated assent.*

**The Deputy Chairperson:** I think that that is an easy one.

We move to clause 13. It would be helpful if members keep up to date with this. At the previous meeting, we suggested that the Bill be amended to allow for a fixed penalty notice to be issued for tobacco sales from vending machines. You are proposing an amendment under clause 13 to do that as well as creating the provision for fixed penalty notices for selling unpacked cigarettes and for failure to display a warning statement. My understanding is that the vending machine legislation has been extremely successful and that there has not been much in the way of contravention of it. The latest I hear is that it is generally being adhered to.

**Ms McAlarney:** Although they would admit that compliance with the vending machine legislation is very high, if councils came across someone who was still selling from a vending machine, they would want the option of a fixed penalty notice to apply. We thought that that was a good idea.

**The Deputy Chairperson:** Yes, that makes sense. Can you just talk us through the second bit?

**Ms McAlarney:** When OLC were looking at that, they also looked at the other legislation relevant to tobacco offences, where someone can be prosecuted. The two other offences were the sale of unpackaged cigarettes — that is, the sale of single cigarettes in shops which is obviously an offence — and not displaying a sign to the effect that it is illegal to sell tobacco to under-18s. We just thought that, as we were already including fixed penalty notices for the vending machines and the underage sales, we should also include a facility for environmental health officers to issue fixed penalty notices for those other offences, rather than have them go through court proceedings for them.

**The Deputy Chairperson:** Unfortunately, younger people often pick up smoking by buying singles or a couple of cigarettes rather than a packet, and that leads to the addiction. Are members content with the Department's proposals on those proposed amendments?

*Members indicated assent.*

**The Deputy Chairperson:** Let us move to clause 16. At the last meeting, we discussed whether the fine for obstructing an authorised officer should be set as low as £1,000. Councils believe that a level-5 fine would be appropriate, which is £5,000, and your argument was that that level of fine was in line with other legislation. We felt that other legislation should come into line with it. You said that you would consider the matter and, lo and behold, you have come up with the same figure: you are going to agree to a level-5 fine, which is exactly what the Committee asked for. These sessions have become very quiet and mundane. The good old days when we were at each other's throats are gone. Let us have wee bit of a fight here. *[Laughter.]* Obviously, members will be content with that proposal. It is very good news.

*Members indicated assent.*

**Mr Gardiner:** That is cooperation.

**The Deputy Chairperson:** We move to clause 18. At our last meeting, we discussed the possibility of raising the fine for selling tobacco to under-18s. Currently, it must not exceed £2,500. You were proposing a fixed penalty notice of £200. You said that you would consider the matter further, and you are now proposing that it should go up to level 5. That, again, is a big jump, and it indicates the seriousness of this offence, as far as the Committee is concerned. Again, for the record, we have already said this, but the level-5 fine is up to a maximum of £5,000. What is the fixed penalty notice amount for this offence?

**Ms McAlarney:** We will have to consider fixed penalty notices for all the offences. We will be making regulations in relation to those, which will be subject to affirmative resolution procedure. We probably need some discussion with environmental health officers as to what they consider appropriate. I think that the fixed penalty notice fine is usually 10% of the maximum.

**The Deputy Chairperson:** I think that £500 would be quite a deterrent. As someone who has just paid £90 for a parking offence, I know that that was painful, so what must a fine of £500 be like? I will hold a collection later on.

Are members content with the Department's proposed amendment?

*Members indicated assent.*

**The Deputy Chairperson:** We now come to a serious issue, and one that has been brought to our attention by several organisations in the charitable sector: the issue of proxy purchasing. The Department is now proposing an amendment to clause 18 which creates an offence, again with a level-5 fine. The Chest, Heart and Stroke Association and the British Heart Foundation wrote to me about this. I think that that proposal is very much in line with what they were looking for. With a level-5 fine of £5,000, we are obviously taking the issue very seriously. This has exercised the Committee on several occasions. Are there any questions on this particular proposal?

**Mr Beggs:** It is very welcome here.

**The Deputy Chairperson:** Are there any issues with the level-5 fine for proxy purchasing on behalf of someone who is too young to smoke cigarettes?

**Mr Dunne:** Can I just clarify whether the hit is taken by the staff member or by the owner?

**Ms McAlarney:** In that case, it would be the person who was purchasing the cigarettes.

**Mr Collins:** On behalf of the young person.

**The Deputy Chairperson:** That is good news. At our last meeting, we asked you to consider whether clause 24(3) was absolutely necessary. It would be helpful if folk turn to page 20 and read it. It is quite technical, but we asked you to consider this matter further. What is your latest view on clause 24(3)?

**Ms McAlarney:** We still require clause 24(3). It is a fairly standard clause that appears in similar legislation. It is about making regulations and orders that are incidental, supplementary and transitional. For example, if we were making the commencement order, and we wanted to introduce provisions at different stages, we would need this clause to allow us make transitional provision for commencement orders. OLC has advised us that it is necessary.

**The Deputy Chairperson:** Do members have any thoughts on this? It is certainly not the most controversial part of the legislation. Is everyone content that we let it stay in?

*Members indicated assent.*

**The Deputy Chairperson:** The Department has gone a very long way to meet the Committee's concerns and issues. The legislation will have been strengthened and improved as a result of the cooperation. Clearly, that makes life much easier for us further downstream, because many of the issues that were contentious now seem to have disappeared, and we are left with a very small number of issues. Thank you very much. It is refreshing to see such good cooperation between the

Department and us. At the end of the day, if we can make it more difficult for people to take up this awful habit and endanger their health, then it will be a job well done.

**Mr Collins:** Thank you, Chair. We think that the amendments substantially strengthen the legislation and increase the deterrent. Given the recent figures that show that, every year, 7,000 young people in Northern Ireland aged between 11 and 16 take up smoking, we believe that preventing that is the main way of eventually reducing smoking prevalence.

**Ms Brown:** Once the Bill has been processed, has the Department any plans to launch a PR campaign, such as a television campaign aimed especially at deterring adults from purchasing cigarettes for children?

**Mr Collins:** We could certainly think about that. The Public Health Agency launched its campaign earlier this week, which is a new anti-smoking campaign that focuses on the impact of parents' smoking on children. We think that it is an effective way of addressing the issue of children smoking and the impact that families' and parents' smoking has on children. It is an effective way of getting that message through to people, and getting it in early.

**Mr Beggs:** It has just dawned on me that I should have declared an interest: my dad is a member of Larne Borough Council, which may have to implement the policies.

**The Deputy Chairperson:** As will other double-jobbers in the room. Let them confess — Pam and Alderman Dunne.

**Mr Dunne:** Absolutely and proud of it.

**The Deputy Chairperson:** They will be recanting in the next few months.

**Mr McCarthy:** I confess that I am a member of Ards Borough Council. I see that, in one of those forms, once again Ards Borough Council comes top of the list of those trying to prevent this.

**The Deputy Chairperson:** I can see a press release coming on. *[Laughter.]* Thank you very much.