



Northern Ireland
Assembly

Committee for Health, Social Services and
Public Safety

OFFICIAL REPORT (Hansard)

Tobacco Retailers Bill: Informal Clause-by-
clause Consideration

18 September 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

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

Witnesses:

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

The Chairperson: I refer members to the Committee Clerk's paper, which summarises our discussions to date on each of the clauses. The indication last week was that the Committee was content with the majority of what the Department is proposing and that there are just a few issues that need to be ironed out.

The purpose of today's meeting, therefore, is for the Committee to consider each clause and ascertain whether we need any further information before our formal clause-by-clause scrutiny, which is scheduled for next week. I emphasise that we are not taking any formal decisions today. We will take each clause in turn. Officials are present and are available to come to the table if required. I refer members to the black and red paper, which shows amendments that the Department proposes to make. That has been tabled separately for ease of reference.

The Department has proposed an amendment to clause 1 to allow for a registration authority to maintain the register. The registration authority will hold the details of those who are subject to fixed penalties, convictions, restricted premises orders and restricted sales orders. That information will be shared among all the councils by means of an amendment to clause 16. That means that the councils will have the necessary information to enable them to seek restricted premises orders and restricted sales orders because they will know whether someone has committed three offences in five years. A protocol is also being established between the councils and HMRC, so details of illicit tobacco offences will also be shared with the councils.

The Committee raised the issue of whether the public would have access to details of convictions and fixed penalty notices. The Department is not in favour of that for the following reasons: it could be

subject to challenge under human rights legislation; it would make the register more complex and cost more to administer; and, if the register contained details of convictions, it would have to be kept up to date continually because any inaccurate information could result in legal action against the registration authority.

The Committee also received its own legal advice. I remind members that that is privileged and cannot be discussed in open session. I make the point, therefore, that the primary purpose of the register is to assist the councils in carrying out inspections and enforcing the legislation. The initial purpose of the Bill was not to make public the names and addresses of people who have been convicted of offences. We should also remember that, where a restricted premises order is in place, shops will have to display a notice that, in effect, tells the public that they have broken the law.

Given all the arguments on the issue, I suggest that we accept the Department's position that to make the details of convictions and fixed penalty notices available would present a range of difficulties. Are members in agreement?

Members indicated assent.

The Chairperson: The Department has proposed an amendment to clause 2 so that a person who has been convicted of an illicit tobacco offence resulting in a custodial sentence, whether suspended or not, shall not be allowed to register as a tobacco retailer for a period of five years from the date of the conviction.

At the meeting on 11 September, the Committee asked whether a retailer who was on the register and who was subsequently convicted of an illicit tobacco offence resulting in a custodial sentence, again, whether suspended or not, would be automatically removed from the register. The Department agreed to consider that and report back to the Committee today. The officials are here, so I ask them to come forward to present on clause 2.

Dr Elizabeth Mitchell (Department of Health, Social Services and Public Safety): Thank you very much for allowing us to come back today to give you an update on this. As you stated, during discussions last week, officials agreed to look at whether any further amendment could be made to take on board your suggestions. The Minister agreed that we can redraft the clause, and some work has been taken forward in discussion with the Office of the Legislative Counsel (OLC). I will ask Jenny to tell you what we think is possible in the redraft, which we hope to be able to share with you very shortly.

Ms Jenny McAlarney (Department of Health, Social Services and Public Safety): As Dr Mitchell said, we spoke to the OLC, and we thought that the best place to include an amendment would be in clause 4, which is around changes to and removals from the register. There has been a redraft and, as Liz said, we hope to get that to you this week some time, after the Minister has approved the wording of the amendment. It would be around removing a registered person's entry from the register if it is found that he has been convicted of an offence under section 170 or 170B of the Customs and Excise Management Act 1979. Similar to the amendment to clause 2, that would relate to an offence for which a person had been given a custodial sentence, whether suspended or not. The time frame is for an offence that had occurred within the previous five years, rather than leaving it open ended.

The Chairperson: OK. Do members have any comments on that?

Mr Wells: You are no fun at all. We were all prepared for a battle that has not happened. This was suggested by the Committee, and I am very pleased that you have been so responsive.

Mr Beggs: Having highlighted the issue, I am content with the way in which you have progressed it.

The Chairperson: We are going to see the wording later this week. If somebody were taken off the register, how long would they remain off it?

Ms McAlarney: If they were taken off the register, they could not reapply within five years of that offence being committed because clause 2 states that, if the applicant has committed an offence within a period of five years, they cannot apply to be registered.

The Chairperson: I take it that members are comfortable with that amendment to clause 4. The Committee will be given access to the wording.

Members indicated assent.

The Chairperson: The other issue in relation to clause 2 was the power to allow regulations to be made to allow councils to charge a registration fee. Last week, members indicated that they were content with the Department's position on that issue. Are members content to move to the next clause?

Members indicated assent.

The Chairperson: The Department proposed an amendment to clause 3 to change the period for notifying a change of name or address or for notifying that tobacco business is no longer being carried out at premises from three months to 28 days. Last week, members indicated that they were content with the proposed amendment. Are members content to move to the next clause?

Members indicated assent.

The Chairperson: Last week, members indicated that they were content with clause 4, bearing in mind the amendment that we have just discussed resulting from clause 2. Are members content to move on to the next clause?

Members indicated assent.

The Chairperson: Given the amendments to clause 1 to create a registration authority, the Department is proposing to remove clause 5. Last week, members indicated that they were content with that proposal. Are members content to move to the next clause?

Members indicated assent.

The Chairperson: Given the amendments to clause 16 to create a duty on councils to share information with other councils, the registration authority and the Department, the Department is proposing to remove clause 6. Last week, members indicated that they were content. Is that still the view?

Members indicated assent.

The Chairperson: The Department proposed an amendment to clause 7 to do the following: three offences in five years will result in a restricted premises order; the minimum period of a restricted premises order will be 28 days; and the maximum period will be three years. Illicit tobacco offences will be included as relevant tobacco offences for restricted premises orders and restricted sales orders. Last week, members were content with the proposed amendment. Are members content to move to the next clause?

Members indicated assent.

The Chairperson: I ask members to switch off mobile phones because they are interfering with the recording system.

The Department proposed an amendment to clause 8 to do the following: three offences in five years will result in a restricted sales order; the minimum period of a restricted sales order will be 28 days; and the maximum period will be three years. There was consensus on that last week. Are members content to move to the next clause?

Members indicated assent.

The Chairperson: The Department proposed an amendment to clause 9 to do the following: require premises subject to a restricted premises order to display a sign, and require premises subject to a restricted premises order to remove tobacco from the retail area. The Department does not propose to require premises to display a notice if any of the employees are subject to a restricted sales order. It has advised that that could be open to challenge under human rights law. The Committee has also

received its own legal advice. I again remind Members that that is privileged. Last week, members indicated that they were content with the Department's position on that issue. Are members content to move to the next clause?

Members indicated assent.

The Chairperson: The Department proposes an amendment to clause 10 to do the following: to create an offence for failing to display a notice if subject to a restricted premises order, at level 3, and to create an offence for failing to remove tobacco products from the retail area if subject to a restricted premises order, at level 5. Again, last week, members had indicated that they were content with that proposed amendment.

I want to check that members are content with the levels of fines that are set out in clause 10. The fine for not registering as a tobacco retailer is at level 5, which is £5,000. The Department explained that that is the maximum fine in a court of summary jurisdiction. The fine for not notifying a change to the register is at level 2, which is £500. The fine for selling tobacco when subject to a restricted premises order or a restricted sales order is a maximum of £20,000. The fine for failing to display a notice if subject to a restricted premises order is at level 3, which is £1,000. The fine for failing to remove tobacco products from a retail area if subject to a restricted premises order is at level 5, which is £5,000. The Department also proposes to bring in fixed penalty notices for a range of offences. They will, however, be brought in by means of statutory rules, subject to draft affirmative resolution, which means that they would have to go through the Committee, as usual, and will have to be approved by the Assembly.

Are members content with the levels of fines that are set out in clause 10?

Members indicated assent.

The Chairperson: Are members content to move to the next clause?

Members indicated assent.

The Chairperson: The Department proposes to remove clause 11 because it is no longer necessary due to the amendments to clause 12. Are members content?

Members indicated assent.

The Chairperson: The Department has proposed an amendment to clause 12 to consolidate in one place all the enforcement provisions on powers of entry, fixed penalty notices and obstruction of officers. Again, last week, members indicated that they were content with that amendment. I ask again whether members are content.

Members indicated assent.

The Chairperson: The Department has proposed an amendment to clause 13 to allow for fixed penalty notices to be issued for sales from vending machines, selling unpackaged cigarettes, and failure to display a warning notice. Last week, members indicated that they were content with the amendment. Are members content to move to the next clause?

Members indicated assent.

The Chairperson: No issues were raised with regard to clauses 14 and 15. Are members content to move on?

Members indicated assent.

The Chairperson: The Department has proposed an amendment to clause 16 to increase the fine for obstructing an officer from level 3, £1,000, to level 5, £5,000. The amendment also requires every council to make available to every other council, the registration authority and the Department information on fixed penalty notices, convictions, restricted premises orders and restricted sales orders. Again, members were in agreement last week. Are members content?

Members indicated assent.

The Chairperson: There were no issues with clause 17. Are members content?

Members indicated assent.

The Chairperson: The Department proposes an amendment to clause 18 to increase the fine for selling tobacco to people under 18 years of age from level 4 to level 5 — from £2,500 to £5,000. The amendment also creates an offence of proxy purchasing. Again, last week, members were content with that. Are members content to move on?

Members indicated assent.

The Chairperson: There were no issues with or proposed amendments to clauses 19 to 21. Are members content to move to the next clause?

Members indicated assent.

The Chairperson: The Department is proposing technical amendments to clauses 22 and 23. Are members content?

Members indicated assent.

The Chairperson: There are no proposed amendments to clauses 24 to 26. Are members content?

Members indicated assent.

The Chairperson: I advise members that, next week, although no formal decisions have yet been taken, we will carry out clause-by-clause consideration of the Bill and take formal decisions on each.