



Northern Ireland
Assembly

Committee for Health, Social Services and
Public Safety

OFFICIAL REPORT (Hansard)

Health (Miscellaneous Provisions) Bill:
DHSSPS Officials

1 October 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Ms Maeve McLaughlin (Chairperson)
Ms Paula Bradley (Deputy Chairperson)
Mr Roy Beggs
Mr Mickey Brady
Mrs Jo-Anne Dobson
Mr Kieran McCarthy

Witnesses:

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

The Chairperson: You are very welcome. Thank you for attending. We have Dr Kilgallen, the deputy Chief Medical Officer; Gerard Collins, from the health improvement policy branch; and Jenny McAlarney, also from the health improvement policy branch. I will hand over to you and then open it up to questions from members.

Dr Anne Kilgallen (Department of Health, Social Services and Public Safety): Thank you, Chair. I will say just a few short words to set the context for you. Thank you for this opportunity to discuss the proposed age-of-sale provisions for nicotine-containing products in the draft Health (Miscellaneous Provisions) Bill. I will give the Committee a brief overview of Part 1 of the Bill, which deals with provisions relating to nicotine-containing products, otherwise known as NCPs, and also some background on the decision taken to include those provisions in the draft Bill.

You will no doubt be aware that, in the last three or four years, there has been an exponential growth in the use of the novel NCPs, which are usually in the form of an e-cigarette. E-cigarettes are perceived to be less dangerous than regular cigarettes as they do not involve the burning of tobacco, which results in the production of tar and other carcinogens. The liquid in e-cigarettes generally contains nicotine along with propylene glycol and glycerine. The liquid is heated and a vapour is released, which is inhaled by the user. That has given rise to the term "vaping", which is commonly used by e-cigarette users to describe the practice rather than "smoking".

While we do not have any specific information for Northern Ireland, the latest available intelligence suggests that there are around 2.1 million of those products in the UK. It is also estimated from a study in 2012 that some 7% of European citizens aged 15 years and over have tried e-cigarettes.

A study carried out by the University of California in January of this year found that there were over 466 brands available for sale online and over 7,000 unique flavours.

E-cigarettes are a rapidly evolving global market that the multinational tobacco companies have now entered. At present, that market is unregulated, therefore the quality and safety of the products on the market cannot be verified. We do know, however, that the release of nicotine and the amount of nicotine present can vary from batch to batch. Also, as e-cigarettes are relatively new products, it has not been possible to determine whether the vapour inhaled into the lungs of users will cause damage to the organs in the long term. The same applies to the impact of second-hand vapour exhaled by the user.

A recent report by the World Health Organization considered the emerging evidence on the health risks associated with NCPs. It concluded that there is sufficient evidence to caution children and young people against using those products. Nicotine is a highly addictive substance, and adolescent nicotine exposure is known to have long-term adverse consequences for brain development.

In terms of the toxicity levels of the refill liquid, I am aware of at least two incidents to date where children in Northern Ireland have ingested the liquid, which has led to emergency medical treatment being required. The ingestion of a sufficient quantity of nicotine can be lethal. Overall, the World Health Organization recommended that retailers should be prohibited from selling NCPs to minors. However, for the sake of balance, I point out that it is most likely that vaping produces lower exposure to toxicants than is the case for tobacco smoking.

While the e-cigarette industry is currently unregulated, that position is shortly to change. From May 2016, the new EU tobacco products directive will require all NCPs that contain less than 20 mg per ml of nicotine to be regulated as consumer products. The practical implications of the directive for manufacturers include the following: nicotine levels will be restricted to below that level of 20 mg per ml; products will be required to be childproof and tamper-proof; health warnings will appear on packaging; there will be restrictions on advertising and sponsorship; and manufacturers will be required to provide information on the ingredients contained in products and emissions resulting from their use. Application to the Medicines and Healthcare Products Regulatory Agency (MHRA) for medicines licensing is an option for those manufacturers wanting to promote their product as a smoking cessation aid or wanting to sell products that contain more than 20 mg per ml of nicotine.

Currently, no age restrictions are applied to the sale of e-cigarettes, and there is no requirement in the EU directive for member states to introduce such restrictions. In addition to concerns that the availability and promotion of e-cigarettes is reversing progress made by smoke-free legislation to de-normalise smoking, there is a risk that they could cause nicotine addiction in young people and act as a gateway to tobacco smoking. The tobacco industry's expansion into the e-cigarette market only reinforces those concerns.

In order to address concerns around youth access to e-cigarettes, a Government amendment was included in the Children and Families Act 2014 to provide England and Wales with regulation-making powers to restrict the sale of NCPs, including e-cigarettes, to persons over the age of 18. Northern Ireland was not included in that amendment as the timetable for the passage of the associated Bill through Parliament did not allow for the necessary Executive, Committee and Assembly approvals to be obtained. In Scotland, officials have advised that a policy decision will be made in due course. In the Republic of Ireland, consideration is also being given to legislation to allow for restrictions on the age of sale for NCPs.

Following the decision by England and Wales to include powers to restrict the sale of NCPs in the Children and Families Act, the agreement of the Northern Ireland Executive was obtained for the inclusion of relevant provisions for Northern Ireland in the draft Health (Miscellaneous Provisions) Bill. Part 1 of the draft Bill contains provisions that will enable the Department to make regulations prohibiting the sale of NCPs to minors. A provision to allow the Department to create an offence in relation to the proxy purchasing of those products is also included. It is not intended that the legislation will apply to licensed nicotine replacement therapy products currently on the market as aids to smoking cessation. The majority of those products are sold as general sales list medicines available in pharmacies and supermarkets to persons aged 12 years and over. In order to exempt existing nicotine replacement therapy products, the regulation-making powers will allow the Department to apply the age-of-sale restrictions to all nicotine products, nicotine products of a specified kind or nicotine products subject to specified exceptions.

Schedule 1 to the draft Bill amends the Tobacco Retailers (Northern Ireland) Act 2014 to allow for offences in relation to the underage sale of NCPs to be included as an offence which could lead to an application for a restricted sale order or a restricted premises order. In practice, that will mean that if a retailer commits an underage sale offence in relation to an NCP, the enforcement officer can include

that as one of three offences that could result in a retailer being banned from selling tobacco and/or nicotine-containing products for a period of up to three years.

The consultation exercise on the draft Health (Miscellaneous Provisions) Bill commenced on 1 September and will conclude on 21 November. Provisions in Part 2 of the draft Bill relate to technical amendments to the Health (Miscellaneous Provisions) Act (NI) 2008, and it is my understanding that relevant officials from the Department will brief the Committee on those provisions in the coming weeks. Dependent on the consultation responses, the Department will aim to finalise the Bill and seek ministerial and Executive agreement to introduce it into the Assembly by February 2015.

Thank you, again, for the opportunity to discuss the proposed provisions with you at this early stage. Your views and any questions will be most welcome.

The Chairperson: Thank you for that. I am sure that we all agree that it is important to get this legislation right, when we see the impact that there is, particularly on children and young people. The Committee is all too aware, not only from discussing the Tobacco Retailers Bill but the debate around standardised packaging, of the impact that such products, unfortunately, have in relation to becoming addicted to nicotine at whatever level in life. I think that it is important to get this right. Equally, are you aware that Chest, Heart and Stroke, for example, has requested that the Bill be widened to look at the whole issue of banning smoking in cars that carry children?

Mr Gerard Collins (Department of Health, Social Services and Public Safety): Yes, we are aware of that, and we are aware that other health charities have been lobbying, recently, again, for movement to be made on banning smoking in cars with children. We intend to brief the Minister on the issue, next week, in response to the calls from the charities. As you know, we had Executive approval, back in December 2012, to go ahead with a consultation on the policy around banning smoking in cars. Due to the fact that a lot of the other tobacco control measures arose around the same time, they were prioritised over 2013 and the first half of this year. We focused on standardised packaging, the tobacco products directive and the Tobacco Retailers Act. However, we will brief the Minister, this week, and we expect him to give a clear direction shortly thereafter on where we will go with banning smoking in cars.

The Chairperson: OK. At this point, I am hearing that it is not ruled in or ruled out.

Mr Collins: It is back on the horizon again; the Minister will give some thought to where we will go with it.

The Chairperson: If it is the Minister's view that the Bill could be extended to include an amendment that would include a ban on smoking in cars carrying children, would the Department consider taking that out to public consultation? How would that happen?

Mr Collins: There are options. We could go out to public consultation on the policy issue. Alternatively, if the Minister decides that we should go forward, it is possible that we could include an amendment in the Health (Miscellaneous Provisions) Bill including enabling powers to develop regulations on banning smoking in cars, and then we could consult on draft regulations. So, we have options at this stage, and a lot will depend on the timetable for the Bill, because, obviously, we would need a legislative vehicle to take forward the ban.

The Chairperson: OK. Can you keep the Committee informed, particularly of the ministerial view in relation to the suggested amendment to the Bill, and share that with the Committee as soon as it is available?

Mr Collins: We can do that.

Mr Brady: Thanks very much for your presentation. It was very informative. You have probably answered one of my questions. One of the things that I have noticed more recently is that there is a real proliferation of e-cigarettes. You see them virtually everywhere now, whereas, previously, they were relatively rare. Is 20 mg not a fatal dose if it was ingested, particularly by children? Presumably it is not restricted.

Dr Kilgallen: Indeed, although the total quantity in the container would be at issue. At the moment, we do not know what the contents are because it is not regulated. So, there is a great deal of uncertainty.

Mr Brady: So, there is a need for regulation.

Dr Kilgallen: There is a real need for regulation to know what the quantity is in the container.

Mr Brady: The other issue is around smoking in cars. There was a debate on it in the Assembly a couple of years ago, and one of the things that struck me from the scientific evidence was that if somebody smokes a cigarette in a car, the toxins remain for at least an hour. So, even if the person stops smoking and children get into the car, they are still inhaling all the stuff that would most affect them. From that point of view, it is more of an education process and common sense for parents, because it would be difficult to enforce. How could it be enforced by the PSNI or whoever might be tasked with that duty? I imagine that it would be quite difficult to enforce the ban on smoking in a car.

Mr Collins: There would be difficulties around enforcement. We know that in California, the police enforce similar legislation and have been known to stop cars. Obviously, the age of the child would have to be proven before any prosecution could take place, but you are quite right, there is that educational element and the deterrent element if legislation is to be passed on banning smoking in cars.

Mr Brady: Thank you.

Ms P Bradley: Can I just get one thing clarified? When we talk about banning smoking in cars, is that banning smoking in cars, period, or with children in the car?

Mr Beggs: Are you declaring an interest here?

Ms P Bradley: Yes. I have made it known in the Assembly that I am a smoker, and I absolutely wish that I had never started. It is horrible. It is disgusting. But are we talking about banning smoking in cars, period, or with children in cars?

Ms Jenny McAlarney (Department of Health, Social Services and Public Safety): We are really looking at banning smoking in cars carrying children.

Ms P Bradley: That is fine. I just want to clear that one up. I have a lot of friends who use e-cigarettes. I bought one, but I did not like it, although I know a lot of people who use them and have stopped smoking, albeit that they are getting nicotine into their system from them. I was going to ask you about the application for MHRA approval. Obviously, nobody has applied for that.

Ms McAlarney: We are aware of at least two companies that have applied. One company was granted a licence a couple of weeks ago. It is not exactly an e-cigarette; it is more similar to an inhalator product, but it is a novel nicotine containing product. It is not a nicotine replacement therapy product.

Ms P Bradley: There are already inhalators that you can buy in the chemist.

Ms McAlarney: Yes, so it is not really a first in that way, but it is a novel product, as opposed to nicotine replacement therapy. It has already been granted, and they are expecting to grant the first e-cigarette licence in the next few months. We will keep you updated about that. There have been two applications to MHRA to date.

Ms P Bradley: With that information then, I know that one of our local radio stations in Northern Ireland frequently advertises on how good e-cigarettes are. How is that going to work? We do not allow advertising of nicotine products in Northern Ireland.

Ms McAlarney: The tobacco products directive, which will have to be implemented by all member states by 2016, will place restrictions on advertising and sponsorship of e-cigarettes from that date. Until then, they can advertise.

Ms P Bradley: I do not know if anybody has heard it, but I have heard it many times. I only listen to two radio stations; one plays adverts and one does not, and it is the one that does not. It makes them sound extremely appealing, especially to young people. I would be the biggest protester when it comes to young people being encouraged to take up this disgusting, filthy habit. We do not know what is in them. If I were a young person looking at the advertising, I would think that it was really cool and that I might get one. I think that we need to look at the advertising as well, because they are being advertised now.

Mr Collins: There will be restrictions on advertising when the directive comes into force, and that will be around 2016. Those restrictions will prohibit advertising that targets young people. Also, if it is not a licensed product, the manufacture cannot make claims, for example, about smoking cessation or health, when the legislation comes into place.

Mr Beggs: The advertising ban is due to come in in 2016, which is two years away. Is there nothing that can be done to implement such a ban sooner? You are relying on the EU to do it. Can we not do something ourselves?

Mr Collins: One of the aims of the tobacco products directive is to harmonise legislation relating to e-cigarettes across Europe, and that was one of the fundamental planks that was in place to get all member states to sign up to the directive. It is also about harmonisation of trade and laws. In light of that, there would probably be little opportunity for member states to go ahead before that and introduce their own advertising restrictions.

Mr Beggs: Would a miscellaneous Bill not present such an opportunity, or is that determined at Westminster level?

Mr Collins: The EU legislation is UK-wide in terms of a member state.

Mr Beggs: My question is about us trying to take action in advance of 2016.

Mr Collins: There could, in theory, be challenges to such a move by a part of a member state to break ranks and go ahead with its own legislation.

Mr Beggs: It seems crazy.

Mr Collins: If there were challenges, those challenges would hold up the passage of any legislation, and you would probably end up back in 2016 anyway.

Mr Beggs: I am glad you clarified earlier that the ban that you are looking for is for smoking in cars with children. It needs to be at a balanced level or there would be dangers in going too far and, perhaps, not being as successful as you would wish. Can you clarify that that can be carried by amending the existing miscellaneous Bill?

Mr Collins: Yes.

Mr Beggs: If the Department decides not to take it forward, the Committee should consider its own amendment. I do not know the views of the rest of the Committee on that, and whether we should do something formal.

The Chairperson: I think that we can discuss that. It is important to start with the ministerial direction and the Department's direction on it, but it is something that we should certainly consider.

Mr McCarthy: I welcome what you are doing, and I appreciate Paula's openness and honesty. It is great to see an honest politician. To give her some encouragement, I was in a similar situation a number of years ago, and I did not think that I could give up smoking. However, I did, and if I can do it, you can do it, so stick with it.

Is there any danger that the legislation will overtake or crowd out the very important mental capacity legislation that you are working on — the joint Justice and Health Mental Capacity Bill?

Mr Collins: A number of issues have been raised about the use of e-cigarettes, for example, on hospital premises, and I know that there was an exception brought to that because there was concern that any outright ban on the use of e-cigarettes on health and social care premises might have a potentially adverse impact on people attending mental health services. As you all know, people with mental health conditions tend to have a higher prevalence of smoking. So an exception on the outright ban of e-cigarettes was made for mental health premises.

Mr McCarthy: Yes, but I am asking whether the work that you are engaged in now will push the Mental Capacity Bill beyond this Assembly mandate.

The Chairperson: I take your point, and it is a critical piece of legislation. However, it is completely separate and something that the Committee would —

Mr Collins: A completely separate resource in the Department is working on the Mental Capacity Bill.

The Chairperson: You are right to raise it, Kieran, but there is a letter coming through in the correspondence updating us on it. So, we need to keep track of that as part of our role.

Mrs Dobson: Apologies for missing your briefing. My question may have already been covered. Are you aware that, in certain cases, the PSNI has used the substance Act to curb the sale of e-cigarettes? That is sporadic, and legislation would be needed to make a real impact. So, have you liaised with the PSNI in bringing forward this legislation?

Mr Collins: We see the enforcement of the legislation as the responsibility of district councils as opposed to the PSNI, and that is in keeping with age-of-sale legislation around tobacco. The PSNI would be involved if, for example, there was illicit tobacco but not in terms of age of sale. Similarly, enforcement of the age of sale for e-cigarettes will fall to the environmental health officers in the various councils, and we have been engaging with the councils on that issue.

Mrs Dobson: But not the PSNI.

Mr Collins: Not the PSNI.

Mrs Dobson: In meetings that I have had with the PSNI on various issues, they have outlined their concerns. I have never smoked, and so I do not know a lot about e-cigarettes, but is it the fluid that can be used by teenagers or whatever for —

Mr Collins: There is a danger that, if the fluid is ingested, it can be lethal.

The Chairperson: It is up to organisations like the PSNI to respond to the consultation, as opposed to the Department going out and asking, I would have thought. This is currently out for consultation.

Mrs Dobson: Have they responded?

Ms McAlarney: We have not heard anything, and we were not aware of any issues around the PSNI and the use of e-cigarettes. They have not been in contact with us at all about it.

Mrs Dobson: Have other members encountered this in meetings with the PSNI, Chair?

The Chairperson: No.

Ms McAlarney: At the minute, there are no age restrictions on e-cigarettes legally. Some of the manufacturers impose rules and say that the product is only suitable for use by a person who is over 18, but that is not a legal requirement at the minute. That is what we are trying to bring in now, but, at the minute, a person who is 16 is legally entitled to go in and buy an e-cigarette.

Mrs Dobson: It has been raised with me in meetings, and I just wondered if there is a link or correlation. I appreciate that councils will be enforcing that. So, the PSNI has not responded to the consultation.

Ms McAlarney: Not as yet, no.

Ms P Bradley: I assume that this will fall under the Tobacco Retailers Bill that we discussed when I was on the Health Committee a year ago. The councils are saying that it is their responsibility and so it will fall under the same legislation.

Mr Collins: Yes, the Tobacco Retailers Bill will be amended to include provisions about this and similar sanctions.

Ms P Bradley: So, councils are responsible then.

The Chairperson: Jo-Anne, are you OK with that?

Mrs Dobson: Yes, it is just something that the PSNI raised with me in meetings, and I thought that it maybe should be feeding into the consultation or whatever.

Ms McAlarney: The consultation does not close until 21 November, so there is still time. It only went out a few weeks ago. Hopefully, we will hear something from them.

Mrs Dobson: I must raise it with them at the next meeting.

Mr Collins: They may be aware of the incidents where the two young people in the north-west ingested the liquid. They were possibly called out to that scene, and that maybe generated their interest in the issue.

The Chairperson: Thank you for that. You have heard the views of the Committee that it is critical to get this right. It would be very useful, as soon as is practically possible, to share a view in relation to the proposed added clause or the amendment to the Bill, if that is a possibility. We look forward to that response, hopefully in the foreseeable future.

Mr Collins: We will let you know as soon as possible.

The Chairperson: OK. Thank you.