



Northern Ireland
Assembly

Committee for Health, Social Services and Public Safety

Report on the Tobacco Retailers Bill (NIA Bill 19/11-15)

Together with the Minutes of Proceedings, Minutes of Evidence
and Written Submissions Relating to the Report

Ordered by the Committee for Health, Social Services and Public Safety
to be printed 9 October 2013

Report: NIA 137/11-15 (Committee for Health, Social Services and Public Safety)

Membership and Powers

The Committee for Health, Social Services and Public Safety is a Statutory Departmental Committee established in accordance with paragraphs 8 and 9 of the Belfast Agreement, section 29 of the Northern Ireland Act 1998 and under Standing Order 48.

The Committee has power to:

- Consider and advise on Departmental budgets and annual plans in the context of the overall budget allocation;
- Consider relevant secondary legislation and take the Committee stage of primary legislation;
- Call for persons and papers;
- Initiate inquiries and make reports; and
- Consider and advise on any matters brought to the Committee by the Minister for Health, Social Services and Public Safety.

The Committee has 11 members including a Chairperson and Deputy Chairperson and a quorum of 5.

The current membership of the Committee is as follows:

Ms Maeve McLaughlin (Chairperson)

Mr Jim Wells (Deputy Chairperson)

Mr Roy Beggs

Mr Mickey Brady

Ms Pam Brown

Mr Gordon Dunne

Mr Sam Gardiner

Mr Kieran McCarthy

Mr David McIlveen

Mr Fearghal McKinney

With effect from 23 January 2012 Ms Sue Ramsey replaced Ms Michaela Boyle

With effect from 06 February 2012 Ms Sue Ramsey replaced Ms Michelle Gildernew as Chairperson

With effect from 13 February 2012 Ms Michelle Gildernew was appointed as a member

With effect from 23 April 2012 Mr Conall McDevitt replaced Mr Mark Durkan

With effect from 02 July 2012 Ms Michelle Gildernew was no longer a member

With effect from 10 September 2012 Ms Maeve McLaughlin was appointed as a member

With effect from 15 October 2012 Mr Roy Beggs replaced Mr John McCallister

With effect from 04 September 2013 Mr Conall McDevitt was no longer a member

With effect from 16 September 2013 Mr David McIlveen replaced Ms Paula Bradley

With effect from 16 September 2013 Ms Maeve McLaughlin replaced Ms Sue Ramsey as Chairperson

With effect from 30 September 2013 Mr Fearghal McKinney was appointed as a member

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Executive Summary

1. The purpose of the Bill is to introduce stricter sanctions against retailers who sell tobacco to under 18s, and thereby ensure that the minimum-age-of-sale policy is more rigorously applied.
2. The evidence from stakeholders was overwhelmingly in favour of the Bill, although a few key issues did emerge.
3. The first key issue was the registration of tobacco retailers. As drafted the Bill proposes that each council would maintain its own register of tobacco retailers in its area. The Committee was concerned that without a centralised registration system, information necessary for enforcing the legislation might not be easily available to the councils. The Department accepted the Committee's point and drafted an amendment to create a registration authority.
4. The second issue concerned the eligibility of someone to register as a tobacco retailer. The Committee was of the view that a person who has a serious conviction for selling illicit tobacco should be prevented from registering as a tobacco retailer. The Department accepted this point and drafted an amendment 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. A similar amendment was also drafted to remove persons from the register who are subsequently convicted of such an offence.
5. The third issue also related to the matter of illicit tobacco offences. The Committee was of the view that an illicit tobacco offence should count towards the three offences which result in a restricted premises order or a restricted sales order. The Department agreed with the Committee's thinking and proposed an amendment to extend the definition of tobacco offence to include certain offences under the Customs and Excise Management Act 1979 and under the Tobacco Products Duty Act 1979.
6. The fourth issue related to the threshold for councils being able to seek restricted premises and restricted sales orders. As drafted the Bill states that three offences committed in three years can lead to either order. However, the Committee established that given the frequency of test purchasing exercises, three offences in five years would be more realistic in terms of securing a restricted premises or restricted sales order. The Department accepted the Committee's point and drafted the appropriate amendment.
7. The fifth issue concerned the minimum and maximum period of restricted premises and restricted sales orders. As drafted the Bill simply states that the maximum period for either order is one year – no minimum period is specified. Based on evidence from other jurisdictions, the Committee had concerns that very short orders could be made by the courts - a number of days – which it believed would have very little impact on retailers. Similarly, the Committee believed that a maximum of three years provided more scope for dealing with retailers who repeatedly flouted the law. The Department accepted the Committee's rationale and drafted the appropriate amendment.
8. The final key issue was that of proxy purchasing. A range of stakeholders suggested that the Bill should be used to create an offence for an adult to purchase tobacco on behalf of someone under 18. The Committee supported this proposal, as did the Department, and a departmental amendment was drafted to that effect.

Introduction

1. The Tobacco Retailers Bill (NIA 19/11-15) was referred to the Committee in accordance with Standing Order 33 on completion of the Second Stage of the Bill on 23 April 2013.
2. The Minister for Health, Social Services and Public Safety made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Tobacco Retailers Bill would be within the legislative competence of the Northern Ireland Assembly.”
3. The stated purpose of the Bill is to tackle the high levels of premature death and preventable illness caused by tobacco. The Bill aims to prevent young people from taking up smoking by making it more difficult for those under the age of 18 to access tobacco products. The Bill is also intended to assist authorised officers of district councils in carrying out their duties with regards to tobacco control by providing them with a register of tobacco retailers within the district of each council.
4. During the period covered by this Report, the Committee considered the Bill and related issues at fifteen meetings. The relevant extracts from the Minutes of Proceedings for these meetings are included at Appendix 1.
5. At its meeting on 24 April 2013 the Committee agreed a Motion to extend the Committee Stage of the Bill to 18 October 2013. The Motion to extend was supported by the Assembly on 28 May 2013.
6. The Committee had before it the Tobacco Retailers Bill (NIA 19/11-15) and the Explanatory and Financial Memorandum that accompanied the Bill. On referral of the Bill the Committee wrote on 30 April 2013 to key stakeholders and inserted public notices in the Belfast Telegraph, Irish News, and News Letter seeking written evidence on the Bill by 17 May 2013.
7. A total of 24 organisations responded to the request for written evidence and a copy of the submissions received by the Committee is included at Appendix 3.
8. Prior to the introduction of the Bill the Committee took evidence from Departmental officials on proposals on 20 March 2013. Following the introduction of the Bill the Committee took evidence from:
 - Departmental officials on 15 May 2013;
 - the Northern Ireland Local Government Association and the Chief Environmental Health Officers Group on 22 May 2013;
 - the Northern Ireland Independent Retail Trade Association and Northern Ireland Retail Consortium on 29 May 2013;
 - the Tobacco Manufacturers Association on 5 June 2013; and
 - Cancer Focus NI and NI Chest Heart & Stroke on 12 June 2013.
9. The Committee discussed the evidence received with Departmental officials on 26 June 2013, 11 September 2013 and 18 September 2013.
10. The Committee carried out clause by clause scrutiny of the Bill on 25 September 2013. At its meeting on 9 October 2013 the Committee agreed its report on the Bill and that it should be printed.

Consideration of the Bill

Background

11. Smoking is the main cause of preventable illness and death, killing around 2,300 people in Northern Ireland every year. The majority of people who take up smoking do so while they are still in their teens, before they have reached an age at which they fully understand the consequences of smoking and its addictive nature. Therefore, preventing children and teenagers from accessing tobacco is crucial to reduce the number of people smoking, which currently stands at 24% of the population.
12. The latest research shows that 8% of 11-16 year olds are current smokers. Half of those children who smoke regularly purchase tobacco from newsagents, tobacconists or sweet shops. That is in spite of legislation which makes it illegal to sell tobacco to anyone under the age of 18. We also know that the sale of tobacco to under 18s is occurring from the results of the councils' test purchasing exercises. Recent figures from test purchasing exercises carried out by the councils show that in one in five cases, tobacco was sold to an underage person.
13. Therefore, the evidence is clearly showing that a significant number of retailers are continuing to sell tobacco to underage children. The aim of this Bill is to introduce stricter sanctions against those people, and thereby ensure that the minimum-age-of-sale policy is more rigorously applied by retailers. This will in turn make it more difficult for children and young people to take up smoking.
14. The Bill will introduce a combined registration scheme with a negative licensing system for tobacco retailers. It also contains a provision for restricted premises and restricted sales orders which allows councils to seek banning orders against retailers who persistently commit tobacco offences. Provisions in the Bill will also allow for fixed penalty notices to be issued for a number of tobacco-related offences, including that of selling to underage children.
15. The Bill has 26 clauses.

Key issues

16. To inform itself of the key issues in relation to the Bill, the Committee took written and oral evidence from a range of stakeholders. It also held a number of oral evidence sessions with Departmental officials, who provided additional information and clarification on the points raised in the submissions. The negotiations with the Department, and their outcome, on the major issues regarding the Bill are detailed below.

The register of tobacco retailers – clause 1

Type of register

17. This clause proposes that there will be 26 separate registers, one for each council area. The register would contain the names and addresses of tobacco retailers within each council area. The Committee was concerned that a lack of a centralised registration system could result in information not being shared between councils as efficiently as it could be. In particular, members were concerned that details of people convicted of or given fixed-penalty notices for tobacco offences and people convicted of illicit tobacco offences would not be routinely shared between the councils. The Committee asked the Department to explore having a central register, either as well as, or in place of, the 26 council registers. The Committee was also in favour of a centralised register being available to the public online.

18. The Department's initial response was that the councils had advised that they were content to hold their own separate registers, given that they already maintain registers for other purposes – for example, food retailers. Council-based tobacco retailer registers would also allow inspection programmes to be co-ordinated, so a number of things could be inspected at the same time.
19. The Department also raised the issue of cost in relation to creating a central register. It stated that council-based registers would be cost neutral, whereas a centrally based register would incur additional administration costs.
20. However, after further consideration the Department proposed an amendment to clause 1 to allow for a single body – the “registration authority” to maintain the register. The amendment also requires certain information relating to the register to be made available to the public.
21. The Committee discussed with officials the possibility that the register would contain details of fixed penalty notices, convictions and restricted sales orders made against retailers listed on the register. The Department took the view that putting this sort of information on a public register could potentially be challenged under human rights law. It also made the point that the more complex the register became the more it would cost to administer. Furthermore, if information was provided on fixed penalty notices, convictions and restricted sales orders it would be imperative that it was kept constantly up to date to avoid any errors which could potentially result in legal action against the registration authority.
22. After considering the matter further and taking its own legal advice, the Committee was content with the Department's rationale and its amendment to clause 1.

Applying to join the register – clause 2

Barring people from registering as a tobacco retailer

23. The Committee discussed whether given the responsibility involved in selling tobacco, whether certain people should be prevented from registering as a tobacco retailer. It asked the Department to explore the possibility that someone who has a serious conviction for selling illicit tobacco should be prevented from registering as a tobacco retailer.
24. The Department's initial response was that this suggestion raised a number of issues which needed to be investigated further. Firstly, there would be a need to define what a serious conviction is in the context of illicit sales. Secondly, there was an issue about the duration which somebody would be banned for from registering as a tobacco retailer if they have a previous conviction for selling illicit tobacco. Thirdly, there was an issue in relation to offender rehabilitation.
25. However, after further consideration the Department 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. The Committee was content with this amendment.
26. However, the Committee also raised the issue of whether a retailer who was on the register and was later convicted of an illicit tobacco offence, resulting in a custodial offence (whether suspended or not), would be automatically removed from the register. The Department agreed that this was a sensible suggestion and subsequently proposed an amendment to clause 4 to this effect. The Committee was content with the Department's amendments to both clause 2 and clause 4.

Registration fees – clause 2

27. The Department advised the Committee that there were no plans at this stage to charge businesses a fee for registering as a tobacco retailer. However, this clause allows for regulations to be made to allow the councils to charge a registration fee at a future date. The councils supported the inclusion of this potential power in the Bill, whereas the retailers' representatives did not.
28. The Committee was advised by the Department that in the Republic of Ireland there is a €50 charge for registering. However, in Scotland there is no registration fee, and the Scottish legislation does not contain a power to allow for the charging of a registration fee.
29. The Department made the point that any regulation made under this clause would be by the affirmative resolution procedure, which would allow the Assembly the opportunity to vote on the issue.
30. The Department also advised that if council-based registers were introduced, as is intended in the Bill, it would not envision the power being used, as the costs would be minimal to the councils. However, if there was to be a central registration system there might be a case for having a registration fee.
31. After considering the issue further, the Committee came to the view that it was content with the Department's rationale on this issue.

Notifying changes to the register – clause 3

32. Some stakeholders suggested that the period for notifying a change of name or address or for notifying that a tobacco business is no longer being carried out at that premises should be changed from 3 months to 28 days.
33. The Department agreed that this was a sensible idea, and would help ensure that the registers were kept up to date. The Department proposed an amendment to clause 3 accordingly. The Committee was content with this amendment.

Removal from the register - clause 4

34. Stakeholders queried why people who are subject to a restricted sales order do not have to be removed from the register, whereas when a restricted premises order is made under clause 4 (2) those premises must be removed from the register.
35. The Committee therefore requested clarification on whether a person who is subject to a restricted sales order and is also registered as an owner can be permitted to keep their premises on the tobacco register.
36. The Department advised that the purpose of a restricted sales order in the case of it being made against an owner of a shop, was to punish that person, and not the staff in the shop who had complied with the law. If the premises had to be removed from the register then the employees would effectively lose their jobs. This was not the intention of the legislation. The Committee agreed that it was content with the Department's rationale on this issue.

Duty to share information – clause 6

37. This clause as drafted simply states that councils must provide to other councils and the Department, if requested, the information contained in their own tobacco register.
38. Many stakeholders were concerned that this clause was not strong enough to ensure that all the relevant information is shared by all the relevant agencies in order to ensure that

this legislation can be properly enforced. They were in favour of the creation of one central information point which brings together the information on the 26 council registers and also holds details of people convicted of or given fixed-penalty notices for tobacco offences and people convicted of illicit tobacco offences. It would also detail who was subject to a restricted premises or restricted sales order.

39. After consideration, the Department agreed to amend clause 16 to create a duty on councils to share with other councils, the registration authority, and the Department, details of fixed penalty notices, convictions, and restricted premises and restricted sales orders. The Committee was content with this proposed amendment.
40. The Committee also raised the issue as to how information on illicit tobacco offences would be shared with and between councils. It suggested that the Bill should require HMRC to share details of illicit tobacco convictions with the councils. The Department advised that it was working with the Department of Justice to develop a protocol between HMRC and local councils in Northern Ireland so that details of convictions would be shared. The councils would subsequently share this information with the registration authority. The Committee was content with these arrangements.

Restricted premises orders – clause 7

Number of relevant offences and time period

41. As drafted the Bill states that three offences committed in three years will result in a restricted premises order. However, given the frequency of test purchasing exercises, the Committee suggested that three offences in five years would be more realistic in terms of securing a restricted premises order and would also act as a better deterrent. The councils, via NILGA, advised that they were content with this suggestion.
42. The Department responded by stating that it was in favour of the Committee's suggestion and proposed an amendment to clause 7 accordingly. The Committee was content with the amendment.

Minimum and maximum period of an order

43. The Bill does not specify a minimum period for a restricted premises order. Some stakeholders were concerned that this would result in the courts issuing very short orders – for a number of days or weeks – which would have little impact on those convicted.
44. The Committee learned that in the Republic of Ireland there is no minimum period specified, and that the courts there have issued some very short orders. Furthermore, the Department advised that while there is no minimum period in the Scottish legislation, officials there are considering introducing one due to the short length of orders being made.
45. The Bill specified that the maximum period for an order is one year. Some stakeholders suggested that this should be increased to three years.
46. The Committee learned that in the Republic of Ireland the maximum period is 90 days, in Scotland it is two years, and in England and Wales it is one year.
47. The Department proposed an amendment to clause 7 to state that the duration of a restricted premises order must be for at least 28 days and may not exceed three years. The Committee was content with this amendment.

Requirement to display a notice

48. Some stakeholders suggested that a premises should have to display a notice stating they were subject to a restricted premises order, as is the case in Scotland. The Committee was

supportive of this view as it believed it would act as a good deterrent and would make the public aware that a premises had broken the law.

49. The Department agreed that such a notice would act as a deterrent and proposed an amendment to clause 9, with associated offences and penalties created in amendments to clause 10. The amendment to clause 9 requires retailers to display a notice stating that a restricted premises order has been made and the period for which it has effect. The Committee was content with the amendment.

Including an illicit tobacco offence as a relevant offence

50. The Committee was of the view that an illicit tobacco offence should count towards the three offences which result in a restricted premises order or a restricted sales order under clause 7 (14). The Committee raised this issue during pre-introductory scrutiny of the Bill, and during the second stage debate, the Minister gave an undertaking that he would consider the matter further.
51. At the Committee meeting on 15 May 2013 officials agreed to look at an amendment to include reference to offences committed under the Tobacco Products Duty Act 1979 and the Customs and Excise Management Act 1979.
52. In considering this issue, the Committee sought information on what sort of behaviour someone would have to be engaged in for HMRC to seek a prosecution for illicit tobacco. The Committee learned that in Northern Ireland, HMRC use the Customs and Excise Management Act 1979 to seek prosecutions for illicit tobacco. In a letter from the Minister dated 26 July 2013, he advised that there were five convictions under this Act in 2012. One was for smuggling over eight million cigarettes, two were for smuggling 200,000 cigarettes and two were for smuggling 330,000 cigarettes. The Committee was satisfied that illicit tobacco offences related to a serious level of criminal activity.
53. The Department agreed with the Committee's thinking and proposed an amendment to clause 7 to extend the definition of tobacco offence to include certain offences under the Customs and Excise Management Act 1979 and under the Tobacco Products Duty Act 1979. The Committee was content with the amendment.

Requirement to remove tobacco products

54. Some stakeholders suggested that a premises subject to a restricted premises order should be required to remove tobacco products from the premises to prevent any inadvertent breach of the order, and to make it easier for councils to check that a premises was complying with the order.
55. When put with this suggestion, the Department advised that it would be more reasonable to require that the tobacco products should be removed from the retail area, rather than the premises entirely. The Department reasoned that there are security issues with requiring the retailer to have to remove tobacco from the premises entirely. If a retailer was forced to store the tobacco at a private dwelling, this could make them the target of a break-in.
56. The Department proposed an amendment to clause 9 to require retailers to remove all tobacco products from the retail area of the shop, with associated offences and penalties created in amendments to clause 10. The Committee was content with the amendment.

Restricted sales orders – clause 8

Number of relevant offences and time period

57. As drafted the Bill states that three offences committed in three years will result in a restricted sales order. However, given the frequency of test purchasing exercises, the Committee suggested that three offences in five years would be more realistic in terms of

securing a restricted sales order and would also act as a better deterrent. The councils, via NILGA, advised that they were content with this suggestion.

58. The Department responded by stating that it was in favour of the Committee's suggestion and proposed an amendment to clause 8 accordingly. The Committee was content with the amendment.

Minimum and maximum period of an order

59. The Bill does not specify a minimum period for a restricted sales order. Some stakeholders were concerned that this would result in the courts issuing very short orders – for a number of days or weeks – which would have little impact on those convicted.
60. The Committee learned that in the Republic of Ireland there is no minimum period specified, and that the courts there have issued some very short orders. Furthermore, the Department advised that while there is no minimum period in the Scottish legislation, officials there are considering introducing one due to the short length of orders being made.
61. The Bill specified that the maximum period for an order is one year. Some stakeholders suggested that this should be increased to three years.
62. The Committee learned that in the Republic of Ireland the maximum period is 90 days, in Scotland it is two years, and in England and Wales it is one year.
63. The Department proposed an amendment to clause 8 to state that the duration of a restricted sales order must be for at least 28 days and may not exceed three years. The Committee was content with this amendment.

Effect of a restricted sales order on a multiple retailer

64. A number of stakeholders raised questions about the circumstances in which councils would seek restricted sales orders. The Chief Environmental Health Officers Group advised the Committee that it was their understanding that the purpose of having restricted sales orders was to deal with a person who owns a number of premises. The councils believe that they would be able to seek a restricted sales order, as well as a restricted premises order against a retailer who had committed three offences at the same premises. In their view this would prevent the owner of the premises being able to sell tobacco at any of the shops they own.
65. The Committee asked the Department for clarification on this issue. The Department advised that a restricted sales order could be made against an owner of a shop or against an employee. However, it regarded the primary purpose of restricted sales orders as a way of dealing with an employee who had persistently committed offences and ignored the training received from the owner in relation to selling to under 18s. The Department wishes to have flexibility in the Bill so that if an employee flagrantly ignores the training and guidance of the owner or manager of a shop, councils will have the ability to apply for a restricted sales order against an employee, given the circumstances of the case.
66. The Department further advised that a restricted premises order and a restricted sales order could be taken out against the owner of a shop if the council was concerned that if only the restricted premises order was made, that person would simply close that shop and open up a new premises and continue to sell tobacco.
67. In the case where a restricted sales order was made against someone who owned a number of shops, the owner is prevented from personally selling tobacco in any of their shops – however, their employees can and therefore their other shops can continue to sell tobacco.
68. The Department was of the view that to amend the Bill so that someone who was subject to a restricted sales order cannot continue to sell tobacco out of any shops they own would be a harsh measure, in that it is potentially putting the livelihood of staff who work in those

businesses at risk. This was not the original intention of the Bill. The Committee was content with the Department's position on this issue.

Requirement to display a notice

69. Some stakeholders suggested to the Committee that a premises should be required to display a notice if any of the employees was subject to a restricted sales order. The idea behind this is to act as a deterrent to retailers because of the public embarrassment associated with having to display such a sign.
70. The Department advised that such a provision in the Bill may be open to challenge, based on article 8 of the European Convention on Human Rights, which is the right to respect for private life. Even when an individual is not named, in a small shop with only a few employees, there is the potential, effectively, of branding that employee because it would probably be quite obvious to whom in the shop it referred. After further consideration of the legal implications, the Committee was content with the Department's position on this issue.

List of people subject to a restricted sales order

71. The retailers suggested that there should be a readily accessible list of people subject to a restricted sales order – so that they could do pre-employment checks to avoid employing that person in a tobacco business.
72. The Department advised that to provide such a list would involve significant administration work for the registration authority, which would result in additional running costs. The Department suggested that the more pragmatic approach would be for employers to ask job applicants to declare whether they were subject to a restricted sales order during the job application process. The Committee was content with the Department's position on this issue.

Fixed penalty notices for sales of tobacco from vending machines – clause 13

73. The councils and other stakeholders suggested that the Bill should be amended to allow for a fixed penalty notice to be issued for an offence under article 4A of the Children and Young Persons (Protection from Tobacco)(NI) Order 1991. This legislation allows the Department to make regulations in relation to sales of tobacco from vending machines, and regulations were made on this issue in 2012.
74. The Department was of the view that this was a reasonable suggestion. It proposed an amendment to clause 13 to allow for a fixed penalty notice to be issued for tobacco sales from vending machines. In addition, the amendment allows for fixed penalty notices to be applied for other tobacco offences under the 1991 Order such as selling un-packaged cigarettes. The Committee was content with this amendment.

Level of fine for obstructing an officer – clause 16

75. Under clause 16 the fine for obstructing an authorised officer is one not exceeding level 3 (£1,000). The councils argued that a level 5 fine would be more appropriate (£5,000).
76. When questioned on this issue, the Department responded that a level 3 is the standard fine for this type of offence, such as for the Smoking (Northern Ireland) Order 2006. If the Bill was amended to a level 5, someone convicted of obstructing an officer under this Bill would get a level 5 fine, whereas someone else convicted of obstructing an officer under the Smoking (Northern Ireland) Order 2006 would get a level 3 fine. The Department argued that this would raise human rights issues.

77. However, the Committee proposed that if this was the case, then thought should be given to amending other pieces of legislation, to bring them into line with the level of fine that was decided upon for obstructing an officer in this Bill.
78. After consideration, the Department proposed an amendment to clause 16 to make the fine for obstructing an authorised officer one not exceeding level 5. The Committee was content with this amendment.

Level of fine for selling to under 18s – clause 18

79. A number of stakeholders raised the issue of the level of penalty currently available to the courts in relation to a breach of Article 3 of the Health and Personal Social Services (NI) Order 1978, which is selling tobacco to under 18s. It is currently a level 4 fine, which is a sum not exceeding £2,500. The Department intends to introduce a fixed penalty for this offence of £200, discounted to £150 if paid early. The councils and charities suggested this level of fine is too low to act as a deterrent against selling tobacco to under 18s.
80. The Department's view was that the fixed penalty notice is primarily a pathway to conviction, as well as being a deterrent in its own right. It argued that fines for fixed penalty notices tend to be fairly low, and that the more important issue is probably the level of fine on conviction.
81. After consideration, the Department proposed an amendment to change the fine to one not exceeding level 5. The Committee was content with this amendment.

Proxy purchasing – clause 18

82. The retailers and manufacturers, as well as the cancer charities, proposed that the Bill should be amended to create an offence for an adult to purchase tobacco on behalf of someone under 18. This offence has been introduced in Scotland and is known as proxy purchasing.
83. The Department initially made the point that the enforcement of a provision on proxy purchasing by tobacco control officers would be very difficult. The officers would need to observe children giving money to an adult and the adult going into a shop. They would need to stop that adult and seek his or her identity.
84. After consideration, the Department proposed an amendment to clause 18 to create for an offence in relation to proxy purchasing, with a maximum penalty of a level 5 fine. The Committee was content with this amendment.

Summary of Evidence

85. In considering the Bill, the Committee took account of the written and oral evidence received from the range of stakeholders who responded to its call for evidence. Below is a summary of that evidence.

Clause 1: Register of tobacco retailers

86. While there was support for the creation of a register of tobacco retailers, questions were raised about the type of register (or registers) which are required.
87. While the majority of stakeholders were content for the councils to gather the information for their own registers, there was a feeling that there needs to be one central register or one central database which could bring together the information on the 26 council registers. The view was also expressed that a central register should hold details of people convicted of or given fixed-penalty notices for tobacco offences, and people convicted of illicit tobacco offences. It would also list who was subject to a restricted premises or restricted sales order.
88. The councils believed that without a central information point, it would be more difficult to ensure that relevant information was shared between councils in terms of enforcing the legislation. The Chief Environmental Health Officers Group suggested that a central register could be hosted by one of the councils:

“It is our view that it is much better for the register to be held by the council. Then, if there was a need for a council to share it with others through a central register, it could be made available. We would have no difficulty with that, or with one council holding the register for all. However, keeping the register up to date is important, and I think that would be easier for a council to do”.

Clause 2: Application for registration

89. Concerns were expressed in relation to clause 2 (7) which provides for the making of Regulations for the charging of a registration fee. While the Department’s position was that there was no intention at this stage to charge a fee, the tobacco retailers and manufacturers were concerned that this position could change at a later date. For example, the NI Retail Consortium stated:

“So we just want to give peace of mind to retailers who have enough on their mind, such as the 18% increase in electricity bills that Power NI announced last week. Removing the provision for a registration fee would give them that bit of certainty that this is not another payment that will be landed on them”.

90. However, the councils took the opposite view, and argued that the clause should remain in the Bill. The Chief Environmental Health Officers Group stated:

“I do not see it being an expensive process, even if charging were introduced. I do not think I could speak on behalf of all councils on whether they would seek to recover that, but I think it is prudent to put the requirement in the Bill and consider the issue at a later date through secondary legislation.”

91. There were a number of technical queries raised in relation to some of the phrasing used in clause 2. For example, in clause 2 (1) stakeholders suggested that the word “may” should be changed to “shall” or “must”. Similarly, again in clause 2 (1) stakeholders questioned why the wording was “proposes to carry on a tobacco business” rather than “carries on or proposes to carry on”. The Department provided a technical explanation on these points.

Clause 3: Duty to notify certain changes

92. In relation to this clause, the councils and others argued that a 28 day period for notification of changes to the register would be more appropriate than the proposed three month period. The Chief Environmental Health Officers Group stated:

“It really is about keeping the register accurate and up to date. Given what the changes actually are, three months seems like a very long period to be allowed to notify of them. We felt that we could allow a bit of a time lag. However, if it is felt important to have a register and for it to be up to date and accurate, we feel that 28 days would be more appropriate.”

Clause 4: Changes to and removal from the Register

93. The main issue in relation to this clause was why it provided for the removal of a premises from the register which is subject to a restricted premises order, but not the removal of a person from the register who is subject to a restricted sales order.

Clause 5: Inspection of the Register

94. There were very few comments received in relation to this clause. The Chief Environmental Health Officers Group made the point that if a person has provided a private address for the register this should not be made publicly available.

Clause 6: Access by Department and councils to the Register

95. Many stakeholders were concerned that this clause would not ensure that all the relevant information is shared by all the relevant agencies in order that the legislation can be properly enforced.
96. The councils and charities argued that there needed to be one central information point which brings together the information on the 26 separate registers and also hold details of people convicted of or given fixed-penalty notices for tobacco offences and people convicted of illicit tobacco offences. It would also detail who was subject to a restricted premises or restricted sales order. For example, the Chief Environmental Health Officers Group stated:

“We have no particular issue with clause 6 on the requirement to share information. However — and clause 6 may not be the appropriate place for this — an additional requirement placed on enforcement agencies to share information on fixed penalty notices or convictions would perhaps make the system work more appropriately. If the Committee makes any recommendations on illicit tobacco and whether offences in relation to that are relevant offences, it would be quite important for a council to know that in determining whether three offences have been committed within the three-year period. One of the things that could be looked at is whether there should be a proactive duty on those agencies, councils and HMRC to share information on the relevant offences so that all agencies are aware whenever that third offence has happened and, therefore, when an application for a restricted premises order or restricted sales order can be made. A requirement of that nature would make the process work much more effectively”.

97. Cancer Focus made a similar point:

“If we commit to enforcement now, we need to quickly share that information across the 26 councils and with other agencies, so that other relevant convictions, such as selling illegal or smuggled tobacco, can be shared as well. That will show us whether a business or group of businesses are a problem and where those limited numbers of inspections can be targeted. Communication among the agencies is vital. It should not be that difficult to set up a system in which those organisations can communicate convictions very quickly. It will be vital. If we do not have that system, a lot of the other things will not succeed”.

Clause 7: Restricted premises orders

98. There were many comments in relation to this clause which sets down the circumstances in which restricted premises orders can be made, and the nature of those orders.
99. The key issue raised was the number of offences and the time period in which these offences were committed, which would trigger the application for a restricted premises order by the councils. As drafted, clause 7 (8) specifies a threshold of three offences in three years. However, a range of stakeholders including the Royal College of Physicians and NI Chest, Heart and Stroke suggested that three offences in three years is too high a threshold to deter offenders.
100. In its oral evidence, the Chief Environmental Health Officers Group explained that the test purchasing regime employed by most councils meant that some businesses were only visited once every five years:

“If it was a business operating solely in one council, I think that they would be visited once every five years. That said, if the council had intelligence, or if the premises had a history, they would be on the next test-purchase rota. In general terms, although you can say that premises will be visited only once every five years, that does not take account of the targeting process that goes on behind the scenes. Neither does it take account of the fact that many retailers trade across council boundaries.

The longer the period, the wider the window, then, yes, the ability to apply for that order would mean that a greater number of premises would be likely to fall foul of that provision and, therefore, we could apply for an order against more premises”.

101. When the Committee put the proposal that the threshold should be raised from three offences in three years, to three offences in five years, the cancer charities who gave oral evidence to the Committee stated they were in favour of this suggestion. NI Chest, Heart and Stroke stated:

“It seems counter-intuitive to leave a longer time, but the logic is sound in that an offence that is committed will hang over them for longer and there will be more chance of their being caught. We would support that.”

102. Similarly, the Tobacco Manufacturer’s Association supported the proposal:

“We are totally in support of measures to stop under-18s from accessing tobacco. We would like to see stricter enforcement of the law and greater penalties. We would certainly welcome the opportunity to make sure that the law is enforced. Well, we certainly do not support retailers breaking the law, so we would be in favour of measures to make sure that retailers abide by the law”.

103. A further issue in relation to restricted premises orders was their potential duration. Clause 7 (6) specifies that the orders may not exceed one year. The councils and the cancer charities felt this was too short a period. The Chief Environmental Health Officers Group stated:

“Our experience of the court process is that a court would rarely ever apply the maximum on the first time of hearing an application such as this. It looks at the scale and applies a penalty on that scale; so we are saying that the court should be given greater latitude. You have to cross the bar of three offences before you can make an application, but if there are many more offences than that and someone is not taking their responsibility seriously, we are saying that the court should be given latitude to decide where that sits on the scale of things and make a decision on it. It is worth considering whether the scale of between one week and 52 weeks is sufficient for someone when there is evidence to suggest that there is a persistent problem with that retailer, and whether a greater scale is needed.

We think that the court should be given greater scope regarding the scale, of between zero and three years. That would send out a very strong message about how seriously the issue

of selling tobacco to under-18s is as regards the long-term health consequences if people become addicted to the product and find it difficult to give up”.

104. However, on the other side of the argument, the Tobacco Retailers Alliance stated in their submission that a restricted premises order lasting one year would have a devastating effect on a shop and could lead to its closure.

105. Similar concerns were expressed regarding the minimum period for which a restricted premises order could be made. As drafted, the Bill does not specify a minimum time period. Some stakeholders suggested that a minimum of three months should be applied. NI Chest, Heart and Stroke stated in their oral evidence:

“I go back to the point that getting to the stage at which somebody is subject to a banning order is, sadly, as we have established, going to be quite an unusual occurrence. Somebody would have repeatedly broken the law and would have been caught three times. The sanction needs to be substantial. A ban of a matter of weeks or a month is not going to send that signal”.

106. A number of stakeholders believed that a premises should have to display a notice stating they were subject to a restricted premises order, as is the case in Scotland. The view was that having to display a notice would act as a good deterrent, given the negative publicity a retailer would incur if subject to a restricted premises order. NI Chest, Heart and Stroke made the following point:

“The display notice is, in some ways, almost a bigger deterrent than the ban. We hope that retailers will not want to have a sign in their shops saying that they have been banned for a breach of the law because it will not go down well with their customers. We are trying to bring to bear the power of public opinion as much as that of the law”.

107. Similarly, Cancer Focus stated:

“It will increase awareness among their customers, particularly the children. It will definitely increase awareness among other retailers, at least in that geographical area and perhaps further afield”.

108. The Chief Environmental Health Officers Group believes that a notice would provide clarity for the public:

“It makes it very clear that those premises cannot sell tobacco. It also makes it easier for the premises, in that people coming in will not be asking for tobacco. Those premises will have been restricted from selling tobacco for the period of the notice, and we certainly believe that it would be appropriate to display that”.

109. Another significant issue in relation to clause 7 was the definition of a tobacco offence. This issue is dealt with in clause 7 (14), where the “tobacco offences” which count towards both restricted premises orders and restricted sales orders are set down. A range of stakeholders, including the tobacco manufacturers and retailers, argued that an illicit tobacco offence committed under the Tobacco Products Duty Act 1979 and the Customs and Excise Management Act 1979 should be considered a “tobacco offence” for the purposes of the Bill. This would mean in effect that an illicit tobacco offence would count as one of the three offences leading to a restricted premises order or a restricted sales order.

110. In terms of the enforcement of restricted premises orders, the councils and the cancer charities took the view that affected retailers should be required to remove tobacco from the premises for the period over which the restricted order applies preventing any inadvertent breach of the order. This measure would also make it easier for councils to check the retailer was complying with the order. The Chief Environmental Health Officers Group stated:

“Again, we would welcome an inclusion in the Bill of a requirement for those premises subject to a restricted premises order to remove tobacco from the premises for the period of

that order. That would prevent any inadvertent breach of that order and certainly would aid the enforcement from our point of view, because if there was an order issued, all we would need to check is that the premises does not have tobacco. Otherwise, to prove a breach of the order, we would have to see a sale of tobacco taking place and be able to produce the evidence of that”.

Clause 8: Restricted sales orders

111. The comments received in relation to this clause were the same as those under clause 7 in relation to the threshold for a restricted sales order to be made, the minimum and maximum period of an order, the proposal that an offence for illicit tobacco should be considered a tobacco offence, and the requirement to display a notice. In relation to the issue of a notice, NI Chest, Heart and Stroke believed this should be enforced, even when it was an employee who was subject to the restricted sales order:

“It is very easy to blame the staff and say that it was some student who was in. At the end of the day, it is the retailer’s job to make sure that the staff are trained and understand their responsibilities. He or she will suffer the consequences if the staff let him or her down”.

112. The retailers also suggested that there should be a readily accessible list of people subject to a restricted sales order – so that they could do pre-employment checks to avoid employing that person. The NI Retail Consortium argued:

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

113. Questions were also asked regarding the relationship between restricted sales orders and restricted premises orders. The councils sought clarification on whether they would have the ability to apply for both a restricted premises order and a restricted sales order against the same person.

Clause 9: Appeal against the making of an order under section 7 or 8

114. The Committee did not receive any comments in relation to this clause.

Clause 10: Offences

115. A number of offences are created in clause 10. Japan Tobacco International suggested that the offences under clause 10 (1), (2), and (3) should be deleted from the Bill.
116. On the other hand, other stakeholders believed that the penalties in relation to some of the offences under clause 10 were too low. In relation to clause 10 (7) which specifies a fine not exceeding level 5 (£5,000), NI Chest, Heart and Stroke supported this being raised to a fine not exceeding £20,000 as applies in Scotland.

Clause 11: Enforcement by councils

117. Some general comments were made in relation to clause 11. Limavady Borough Council stated that it would be useful if test purchase exercises were recognised in legislation as a valid enforcement power, as they believe there is an inconsistency in enforcement across Northern Ireland. Cancer Research UK made the point that more training and resources are

required for environmental health officers and that a monitoring and evaluation system should also be established to identify the impact of the Bill in reducing underage sales.

Clause 12: Powers of entry

118. The Northern Ireland Independent Retail Trade Association suggested that the words “other than premises used only as a private dwelling house” should be deleted from clause 12 (1) (a), as they believe that people run retail businesses from their homes. However, in oral evidence, the Department explained that if someone is using a private dwelling to sell tobacco, it is questionable whether that is still a private dwelling or has become a retail premises. In theory, if a tobacco control officer was aware of someone selling tobacco from their house, they could go in and carry out a test purchase. If that person was not registered as a tobacco retailer they would be committing an offence under the legislation. However, in terms of accessing a private dwelling where there is a suspicion that illicit tobacco is being sold, the Department advised that that is a matter for HMRC and the police, not council environmental health officers.

Clause 13: Fixed penalties for certain offences

119. The majority of comments received supported this clause, however Japan Tobacco International recommend its deletion.

Clause 14: Use of fixed penalty receipts

120. The Northern Ireland Independent Retail Trade Association proposed that this clause is amended to allow councils to issue fixed penalty receipts in relation to offences committed under section 8H(4) of the Tobacco Products Duty Act 1979.
121. Japan Tobacco International recommended the deletion of clause 14.

Clause 15: Withdrawal of fixed penalty notices

122. The councils and the cancer charities asked for clarification on the time period in which representations could be made under clause 15 (4). They were concerned that somebody would pay a fixed penalty notice and, down the line, when facing a banning order, would say that they should not have paid and intended to appeal. In its oral evidence, the Department advised that, if someone accepts and pays a fixed penalty notice, they accept that they have committed that offence and, therefore, discharge any right of appeal.
123. Japan Tobacco International recommended the deletion of clause 15.

Clause 16: Obstruction, etc. of authorised officers

124. The councils suggested that the level of penalty for obstructing an authorised officer should be changed from a level 3 (£1,000) to a level 5 (£5,000).

Clause 17: Offences by bodies corporate

125. The Committee did not receive any comments in relation to this clause.

Clause 18: Amendment of the Order of 1978

126. A range of stakeholders suggested that the penalty currently available to the courts in relation to a breach of Article 3 of the Health and Personal Social Services (NI) Order 1978, which is selling tobacco to under 18s, is too low.

127. It is currently a level 4 fine (£2,500). The councils and charities argued that this level of fine is too low to act as a deterrent against selling tobacco to children. For example, NI Chest, Heart, Stroke stated:

“One of the things that we asked for then was that the maximum penalty should be raised from £2,500, which was set by Lord Melchett in 1978. It was not done in 1991 or 1992, and we need to do it now because the fixed penalties tend to be a percentage of that maximum. Therefore, if you are setting the maximum at £2,500, you are going to get a fixed penalty of a couple of hundred pounds. We recommend that it goes up to around £20,000 so that we get realistic fixed penalties for people who are selling a product that is killing half of its users. It is a lethal, addictive product”.

Clause 19: Statutory charges

128. The Committee did not receive any comments in relation to this clause.

Clause 20: Vehicles, vessels, etc.

129. The Committee did not receive any comments in relation to this clause.

Clause 21: Service of notices in electronic form

130. The Committee did not receive any comments in relation to this clause.

Clause 22: Interpretation

131. The Committee did not receive any comments in relation to this clause.

Clause 23: Transitional provision

132. The Committee did not receive any comments in relation to this clause.

Clause 24: Regulations and orders

133. The Committee did not receive any comments in relation to this clause.

Clause 25: Commencement

134. The Committee did not receive any comments in relation to this clause.

Clause 26: Short Title

135. The Committee did not receive any comments in relation to this clause.

Additional Comments

136. The Committee received several comments which were not directly related to any of the clauses of the Bill.
137. The issue of the need for more awareness and educational programmes was raised by Cancer Research UK, Imperial Tobacco, the Tobacco Manufacturers Association and Japan Tobacco International, so that retailers will be aware of the requirements of the legislation. The retailers and manufacturers also highlighted the importance of the “No ID No Sale” and Citizencard Schemes.
138. The National Federation of Retail Newsagents and Japan Tobacco International expressed disappointment that the Bill did not deal with the issue of illicit tobacco sales, which they believe is a major problem in Northern Ireland.
139. The councils and others suggested that the Bill should be amended to allow for a fixed penalty notice to be issued for an offence under article 4A of the Children and Young Persons (Protection from Tobacco)(NI) Order 1991. This legislation allows the Department to make regulations in relation to sales of tobacco from vending machines, and regulations were made on this issue in 2012.
140. Many stakeholders, including the retailers and the manufacturers, proposed that the Bill should create an offence for an adult to purchase tobacco on behalf of someone under 18 (proxy purchasing). This offence has been introduced in Scotland.

Clause by Clause Consideration of the Bill

141. The Committee undertook its clause by clause scrutiny of the Bill on 25 September 2013 – see Minutes of Evidence in Appendix 2.

Clause 1: Register of tobacco retailers

142. The Committee indicated it was content with the clause as drafted subject to the proposed amendments agreed with the Department providing for a single body – the “registration authority” to maintain the register.

Clause 2: Application for registration

143. The Committee indicated it was content with the clause as drafted subject to the proposed amendments agreed with the Department providing 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.

Clause 3: Duty to notify certain changes

144. The Committee indicated it was content with the clause as drafted subject to the proposed amendments agreed with the Department changing the notification period from three months to 28 days.

Clause 4: Changes to and removal from the Register

145. The Committee indicated it was content with the clause as drafted subject to the proposed amendments agreed with the Department allowing for a retailer who was on the register, and was subsequently convicted of an illicit tobacco offence, resulting in a custodial sentence (whether suspended or not), to be removed from the register.

Clause 5: Inspection of the Register

146. The Committee indicated it was content to oppose clause 5 as drafted, as a consequence of the Departmental amendment to clause 1.

Clause 6: Access by Department and councils to the Register

147. The Committee indicated it was content to oppose clause 6 as drafted, as a consequence of the Departmental amendment to clause 16.

Clause 7: Restricted premises orders

148. The Committee indicated it was content with the clause as drafted subject to the proposed amendments agreed with the Department providing for three offences in five years to result in a restricted premises order, the minimum period of a restricted premises order to be 28 days and the maximum period to be three years, and for illicit tobacco offences to be included as relevant tobacco offences for restricted premises and restricted sales orders.

Clause 8: Restricted sale orders

149. The Committee indicated it was content with the clause as drafted subject to the proposed amendments agreed with the Department providing for three offences in five years to result in a restricted sales order and the minimum period of a restricted sales order to be 28 days and the maximum period three years.

Clause 9: Appeal against the making of an order under section 7 or 8

150. The Committee indicated it was content with the clause as drafted subject to the proposed amendments agreed with the Department providing a requirement for premises subject to a restricted premises order to display a sign and remove tobacco from the retail area.

Clause 10: Offences

151. The Committee indicated it was content with the clause as drafted subject to the proposed amendments agreed with the Department creating offences for failing to display a notice if subject to a restricted premises order and failing to remove tobacco products from the retail area if subject to a restricted premises order.

Clause 11: Enforcement by councils

152. The Committee indicated it was content to oppose clause 11 as drafted, as a consequence of the Departmental amendments to clauses 12 – 16.

Clause 12: Powers of entry

153. The Committee indicated it was content with the clause as drafted subject to the proposed amendments agreed with the Department to consolidate in one place in the Bill all the enforcement provisions on powers of entry, fixed penalty notices and obstruction of officers.

Clause 13: Fixed penalties for certain offences

154. The Committee indicated it was content with the clause as drafted subject to the proposed amendments agreed with the Department to allow for fixed penalty notices to be issued for sales from vending machines, selling unpackaged cigarettes, and failure to display a warning notice.

Clause 14: Use of fixed penalty receipts

155. The Committee indicated it was content with the clause as drafted.

Clause 15: Withdrawal of fixed penalty notices

156. The Committee indicated it was content with the clause as drafted.

Clause 16: Obstruction, etc. of authorised officers

157. The Committee indicated it was content with the clause as drafted subject to the proposed amendments agreed with the Department to increase the fine for obstructing an officer from level 3 to level 5 and to require every council to make available to every other council, the registration authority, and the Department information on fixed penalty notices, convictions, restricted premises and restricted sales orders.

Clause 17: Offences by bodies corporate

158. The Committee indicated it was content with the clause as drafted.

Clause 18: Amendment of the Order of 1978

159. The Committee indicated it was content with the clause as drafted subject to the proposed amendments agreed with the Department to increase the fine for selling to under 18s from level 4 to level 5 and to create an offence of proxy purchasing.

Clause 19: Statutory charges

160. The Committee indicated it was content with the clause as drafted.

Clause 20: Vehicles, vessels, etc.

161. The Committee indicated it was content with the clause as drafted.

Clause 21: Service of notices in electronic form

162. The Committee indicated it was content with the clause as drafted.

Clause 22: Interpretation

163. The Committee indicated it was content with the clause as drafted subject to the proposed technical amendment agreed with the Department.

Clause 23: Transitional provision

164. The Committee indicated it was content with the clause as drafted subject to the proposed technical amendment agreed with the Department.

Clause 24: Regulations and orders

165. The Committee indicated it was content with the clause as drafted.

Clause 25: Commencement

166. The Committee indicated it was content with the clause as drafted.

Clause 26: Short title

167. The Committee indicated it was content with the clause as drafted.

Long Title

168. The Committee indicated it was content with the Long Title of the Bill subject to the proposed Departmental amendment to reflect the increased scope of the Bill.



Northern Ireland
Assembly

Appendix 1

Minutes of Proceedings

Wednesday 20th March 2013

Senate Chamber, Parliament Buildings

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

Apologies: None

In Attendance: Dr Kathryn Bell (Clerk)
Mr Mark McQuade (Assistant Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

9.39am The meeting commenced at in public session.

14. Evidence session on the Tobacco Retailers Bill

The Committee took evidence from:

Dr Elizabeth Mitchell Deputy Chief Medical Officer, DHSSPS
Mr Gerard Collins Health Improvement Policy Branch, DHSSPS
Ms Jenny McAlarney Health Improvement Policy Branch, DHSSPS

A question and answer session ensued. The Chairperson thanked the witness for attending.

[EXTRACT]

Wednesday 24th April 2013

Room 144, Parliament Buildings

Present: Ms Sue Ramsey MLA (Chairperson)
Mr Roy Beggs MLA
Ms Paula Bradley MLA
Mr Mickey Brady MLA
Ms Pam Brown MLA
Mr Sam Gardiner MLA
Mr Kieran McCarthy MLA
Mr Conall McDevitt MLA
Mr Jim Wells MLA (Deputy Chairperson)

Apologies: Mr Gordon Dunne MLA
Ms Maeve McLaughlin MLA

In Attendance: Dr Kathryn Bell (Clerk)
Mr Mark McQuade (Assistant Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)
Mr Ray McCaffrey (Assembly Research & Library Service)

1.05pm The meeting commenced in public session.

1. The Tobacco Retailers Bill

The Committee agreed a motion to extend the committee stage of the Bill to 18 October 2013.

The Committee noted the timetable for completing committee stage of the Bill.

The Committee agreed to request written submissions from interested organisations.

The Committee agreed to place signposting advertisements directing interested parties to the Committee call for evidence on the Assembly website.

2. Assembly Research & Library Service briefing on the Tobacco Retailers Bill.

The Committee was briefed on the Tobacco Retailers Bill.

[EXTRACT]

Wednesday 15th May 2013

Senate Chamber, Parliament Buildings

Present: Ms Sue Ramsey MLA (Chairperson)
Mr Roy Beggs MLA
Ms Paula Bradley MLA
Mr Mickey Brady MLA
Ms Pam Brown MLA
Mr Sam Gardiner MLA
Mr Kieran McCarthy MLA
Mr Conall McDevitt MLA
Ms Maeve McLaughlin MLA
Mr Jim Wells MLA (Deputy Chairperson)

Apologies: Mr Gordon Dunne MLA

In Attendance: Dr Kathryn Bell (Clerk)
Mr Mark McQuade (Assistant Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

2.04pm The meeting commenced at in public session.

4. The Tobacco Retailers Bill – Evidence session with Departmental Officials

The Committee took evidence from:

Mr Nigel McMahon Chief Environmental Health Officer, DHSSPS

Mr Gerard Collins Health Improvement Policy Branch, DHSSPS

Mrs Jenny McAlarney Health Improvement Policy Branch, DHSSPS

The Committee was briefed on the clauses of the Tobacco Retailers Bill. A question and answer session ensued.

Ms Paula Bradley made a declaration of interest that she was a local councillor.

3.22pm Mr Sam Gardiner left the meeting.

3.25pm Ms Paula Bradley left the meeting.

The Chairperson thanked the witnesses for attending.

3.34pm Ms Paula Bradley rejoined the meeting.

The Committee agreed to invite the Northern Ireland Local Government Association (NILGA) & Environmental Health Officers to give evidence on the Bill at its next meeting.

The Committee agreed to invite the NI Independent Retail Association and the NI Retail Consortium to give evidence on the Bill at its meeting on 29 May 2013.

[EXTRACT]

Wednesday 22nd May 2013

Senate Chamber, Parliament Buildings

Present: Ms Sue Ramsey MLA (Chairperson)
Mr Roy Beggs MLA
Ms Paula Bradley MLA
Mr Mickey Brady MLA
Mr Gordon Dunne MLA
Mr Sam Gardiner MLA
Mr Kieran McCarthy MLA
Ms Maeve McLaughlin MLA
Mr Jim Wells MLA (Deputy Chairperson)

Apologies: Ms Pam Brown MLA
Mr Conall McDevitt MLA

In Attendance: Dr Kathryn Bell (Clerk)
Mr Mark McQuade (Assistant Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

2.07pm The meeting commenced at in public session.

4. Tobacco Retailers Bill. Evidence session with NILGA & CEHOG

The Committee agreed to take oral evidence from Cancer Focus, Cancer Research UK, ASH, NI Chest Heart and Stroke, JTI, and officials from Scotland and ROI who are involved in tobacco registration schemes in those jurisdictions.

The Committee took evidence from:

Ms Jenny Palmer	Waste and Environment working Group, NILGA
Ms Karen Smyth	Head of Policy, NILGA
Mr Sean Martin	Chief Environmental Health Officers Group
Ms Patricia Allen	Chief Environmental Health Officers Group

A question and answer session ensued.

2.24pm Mr Kieran McCarthy joined the meeting.

2.30pm Mr Jim Wells joined the meeting.

Mr Roy Beggs made a Declaration of Interest that his father is a local councillor.

Mr Gordon Dunne made a Declaration of Interest that he is a local councillor.

Mr Kieran McCarthy made a Declaration of Interest that he is a local councillor.

2.54pm Ms Paula Bradley joined the meeting.

The witnesses agreed to provide the Committee with additional information. The Chairperson thanked the witnesses for attending.

[EXTRACT]

Wednesday 29th May 2013

Senate Chamber, Parliament Buildings

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

Apologies: None

In Attendance: Dr Kathryn Bell (Clerk)
Mr Mark McQuade (Assistant Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

2.05pm The meeting commenced at in public session.

4. Tobacco Retailers Bill. Evidence session with with Northern Ireland Independent Retailer Trade Association and Northern Ireland Retail Consortium

The Committee took evidence from:

Mr Glyn Roberts Chief Executive, Northern Ireland Independent Retail Trade Association

Mr Aodhán Connolly Director, Northern Ireland Retail Consortium

A question and answer session ensued. The witnesses agreed to provide further information.

2.17pm Mr Jim Wells joined the meeting.

2.27pm Mr Jim Wells left the meeting.

Mr Roy Beggs made a Declaration of Interest that his father is a local councillor.

Mr Gordon Dunne made a Declaration of Interest that he is a local councillor.

Mr Kieran McCarthy made a Declaration of Interest that he is a local councillor.

Ms Pam Brown made a Declaration of Interest that she is a local councillor.

Ms Paula Bradley made a Declaration of Interest that she is a local councillor.

3.02pm Ms Paula Bradley left the meeting.

The Chairperson thanked the witnesses for attending.

[EXTRACT]

Wednesday 5th June 2013

Room 29, Parliament Buildings

Present: Ms Sue Ramsey MLA (Chairperson)
Mr Roy Beggs MLA
Ms Paula Bradley MLA
Mr Mickey Brady MLA
Ms Pam Brown MLA
Mr Gordon Dunne MLA
Mr Sam Gardiner MLA
Mr Kieran McCarthy MLA
Mr Conall McDevitt MLA
Mr Jim Wells MLA (Deputy Chairperson)

Apologies: Ms Maeve McLaughlin MLA

In Attendance: Dr Kathryn Bell (Clerk)
Mr Mark McQuade (Assistant Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

2.02pm The meeting commenced at in public session.

4. Tobacco Retailers Bill. Evidence session with the Tobacco Manufacturers Association

The Committee noted correspondence from Cancer Research UK and agreed a response.

Mr Roy Beggs made a Declaration of Interest that his father is a local councillor.

Ms Pam Brown made a Declaration of Interest that she is a local councillor.

The Committee took evidence from:

Ms Jaine Chisholm Caunt Secretary General, Tobacco Manufacturers Association

A question and answer session ensued.

2.19pm Mr Kieran McCarthy joined the meeting.

The Chairperson thanked the witness for attending.

[EXTRACT]

Wednesday 12th June 2013

Minor Hall, Magee Campus

Present: Ms Sue Ramsey MLA (Chairperson)
 Mr Roy Beggs MLA
 Ms Paula Bradley MLA
 Mr Mickey Brady MLA
 Ms Pam Brown MLA
 Mr Sam Gardiner MLA
 Mr Conall McDevitt MLA
 Ms Maeve McLaughlin MLA

Apologies: Mr Gordon Dunne MLA
 Mr Kieran McCarthy MLA
 Mr Jim Wells MLA (Deputy Chairperson)

In Attendance: Dr Kathryn Bell (Clerk)
 Mr Mark McQuade (Assistant Clerk)
 Ms Leanne Johnston (Clerical Supervisor)
 Mr Craig Mealey (Clerical Officer)

2.02pm The meeting commenced at in public session.

4. Tobacco Retailers Bill. Evidence session with with Cancer Focus NI & NI Chest, Heart & Stroke

Mr Roy Beggs made a Declaration of Interest that his father is a local councillor.

Ms Pam Brown made a Declaration of Interest that she is a local councillor.

Ms Paula Bradley made a Declaration of Interest that she is a local councillor.

Mr Mickey Brady made a Declaration of Interest that he is Chairperson of the All Party Group on Heart Disease and Stroke.

Ms Paula Bradley made a Declaration of Interest that she is deputy Chairperson of the All Party Group on Heart Disease and Stroke.

The Committee took evidence from:

Ms Fidelma Carter Director of Public Health, NI Chest, Heart & Stroke

Mr Neil Johnston Public Affairs Adviser, NI Chest, Heart & Stroke

Mr Gerry McElwee Head of Cancer Prevention, Cancer Focus Northern Ireland

A question and answer session ensued. The Chairperson thanked the witness for attending.

[EXTRACT]

Wednesday 19th June 2013

Senate Chamber, Parliament Buildings

Present: Ms Sue Ramsey MLA (Chairperson)
Mr Roy Beggs MLA
Ms Paula Bradley MLA
Mr Mickey Brady MLA
Mr Gordon Dunne MLA
Mr Sam Gardiner MLA
Mr Kieran McCarthy MLA
Mr Conall McDevitt MLA
Ms Maeve McLaughlin MLA
Mr Jim Wells MLA (Deputy Chairperson)

Apologies: Ms Pam Brown MLA

In Attendance: Dr Kathryn Bell (Clerk)
Mr Mark McQuade (Assistant Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)
Ms Roisin Kelly (Clerk)

2.06pm The meeting commenced in closed session.

2. Tobacco Retailers Bill.

The Committee discussed the evidence taken to date on the Tobacco Retailers Bill.

[EXTRACT]

Wednesday 26th June 2013

Education Centre, Conway Mill

Present: Ms Sue Ramsey MLA (Chairperson)
 Mr Roy Beggs MLA
 Ms Paula Bradley MLA
 Mr Mickey Brady MLA
 Ms Pam Brown MLA
 Mr Gordon Dunne MLA
 Mr Sam Gardiner MLA
 Mr Kieran McCarthy MLA
 Mr Conall McDevitt MLA
 Ms Maeve McLaughlin MLA

Apologies: Mr Jim Wells MLA (Deputy Chairperson)

In Attendance: Dr Kathryn Bell (Clerk)
 Mr Mark McQuade (Assistant Clerk)
 Ms Leanne Johnston (Clerical Supervisor)
 Mr Craig Mealey (Clerical Officer)

2.02pm The meeting commenced in public session.

4. Tobacco Retailers Bill – Evidence session with Departmental officials

Mr Roy Beggs made a Declaration of Interest that his father is a local councillor.

Ms Pam Brown made a Declaration of Interest that she is a local councillor.

Ms Paula Bradley made a Declaration of Interest that she is a local councillor.

Mr Gordon Dunne made a Declaration of Interest that he is a local councillor.

Mr Kieran McCarthy made a Declaration of Interest that he is a local councillor.

The Committee noted that the Examiner of Statutory Rules was content with the powers contained in the Bill in relation to secondary legislation.

The Committee noted correspondence from the Department regarding the offences and penalties contained in the Bill.

The Committee noted correspondence from NILGA regarding the Bill.

The Committee noted correspondence from the Department of Justice regarding the Customs and Excise Management Act 1979 and the Tobacco Products Duty Act 1979 and agreed to forward this to the Department.

The Committee took evidence from:

Mr Gerard Collins Health Improvement Policy Branch, DHSSPS

Mrs Jenny McAlarney Health Improvement Policy Branch, DHSSPS

Mr Nigel McMahan Chief Environmental Health Officer, Public Health Advice Directorate,
 DHSSPS

A question and answer session ensued. The Chairperson thanked the witness for attending.

[EXTRACT]

Wednesday 3rd July 2013

Senate Chamber, Parliament Buildings

Present: Ms Sue Ramsey MLA (Chairperson)
Mr Roy Beggs MLA
Ms Paula Bradley MLA
Mr Mickey Brady MLA
Ms Pam Brown MLA
Mr Gordon Dunne MLA
Mr Sam Gardiner MLA
Mr Kieran McCarthy MLA
Mr Conall McDevitt MLA
Ms Maeve McLaughlin MLA

Apologies: Mr Jim Wells MLA (Deputy Chairperson)

In Attendance: Dr Kathryn Bell (Clerk)
Mr Mark McQuade (Assistant Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

2.32pm The meeting commenced in public session.

4. Tobacco Retailers Bill

The Committee noted a letter from the Tobacco Manufacturers Association.

[EXTRACT]

Wednesday 11th September 2013

Niamh Louise Foundation Office, Dungannon

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

Apologies: Ms Sue Ramsey MLA (Chairperson)
Ms Paula Bradley MLA

In Attendance: Dr Kathryn Aiken (Clerk)
Mr Mark McQuade (Assistant Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

2.00pm The meeting commenced in public session with the Deputy Chairperson in the Chair.

4. Tobacco Retailers Bill

The Committee took evidence from:

Mr Gerard Collins	Health Improvement Policy Branch, DHSSPS
Mrs Jenny McAlarney	Health Improvement Policy Branch, DHSSPS
Mr Nigel McMahan	Chief Environmental Health Officer, Public Health Advice Directorate, DHSSPS

Mr Roy Beggs made a declaration of interest that his father is a local councillor.

Ms Pam Brown made a declaration of interest that she was a local councillor.

Mr Gordon Dunne made a declaration of interest that he is a local councillor.

Mr Kieran McCarthy made a declaration of interest that he is a local councillor.

A question and answer session ensued. The Deputy Chairperson thanked the witnesses for attending.

[EXTRACT]

Wednesday 18th September 2013

Senate Chamber, Parliament Buildings

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

Apologies: None

In Attendance: Dr Kathryn Aiken (Clerk)
Mr Mark McQuade (Assistant Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

2.03pm The meeting commenced in closed session.

1. Tobacco Retailers Bill

The Committee were briefed on legal advice regarding the Bill.

2.35pm the meeting moved to Public Session.

2.35pm Mr Kieran McCarthy left the meeting.

2. Tobacco Retailers Bill

The Committee took evidence from:

Dr Elizabeth Mitchell	Deputy Chief Medical Officer, DHSSPS
Mrs Jenny McAlarney	Health Improvement Policy Branch, DHSSPS
Mr Nigel McMahon	Chief Environmental Health Officer, Public Health Advice Directorate, DHSSPS

A question and answer session ensued. The Committee discussed the clauses of the Bill. The Chairperson thanked the witnesses for attending.

[EXTRACT]

Wednesday 25th September 2013

Room 29, Parliament Buildings

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

Apologies: None

In Attendance: Dr Kathryn Aiken (Clerk)
Mr Mark McQuade (Assistant Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)
Ms Roisin Kelly (Bill Clerk)

2.06pm The meeting commenced in open session.

7. Tobacco Retailers Bill.

The Committee noted correspondence from the Minister regarding the Bill.

Clause 1 (Register of tobacco retailers)

Question: Is the Committee content with Clause 1 subject to the proposed Departmental amendment, put and agreed to.

Clause 2 (Application for registration)

Question: Is the Committee content with Clause 2 subject to the proposed Departmental amendment, put and agreed to.

3.48pm Mr Kieran McCarthy rejoined the meeting.

Clause 3 (Duty to notify certain changes)

Question: Is the Committee content with Clause 3 subject to the proposed Departmental amendment, put and agreed to.

Clause 4 (Changes to and removal from the Register)

Question: Is the Committee content with Clause 4 subject to the proposed Departmental amendment, put and agreed to.

Clause 5 (Inspection of the Register)

Question: Is the Committee content to oppose Clause 5 as drafted, as a consequence of the Departmental amendment to clause 1, put and agreed to.

Clause 6 (Access by Department and councils to the Register)

Question: Is the Committee content to oppose Clause 6 as drafted, as a consequence of the Departmental amendment to clause 16, put and agreed to.

Clause 7 (Restricted premises orders)

Question: Is the Committee content with Clause 7 subject to the proposed Departmental amendment, put and agreed to.

Clause 8 (Restricted sale orders)

Question: Is the Committee content with Clause 8 subject to the proposed Departmental amendment, put and agreed to.

Clause 9 (Appeal against the making of an order under section 7 or 8)

Question: Is the Committee content with Clause 9 subject to the proposed Departmental amendment, put and agreed to.

Clause 10 (Offences)

Question: Is the Committee content with Clause 10 subject to the proposed Departmental amendment, put and agreed to.

Clause 11 (Enforcement by councils)

Question: Is the Committee content to oppose Clause 11 as drafted, as a consequence of the departmental amendments to clauses 12 - 16, put and agreed to.

Clause 12 (Powers of entry)

Question: Is the Committee content with Clause 12 subject to the proposed Departmental amendment, put and agreed to.

Clause 13 (Fixed penalties for certain offences)

Question: Is the Committee content with Clause 13 subject to the proposed Departmental amendment, put and agreed to.

Clause 14 (Use of fixed penalty receipts)

Question: Is the Committee content with Clause 14 as drafted, put and agreed to.

Clause 15 (Withdrawal of fixed penalty notices)

Question: Is the Committee content with Clause 15 as drafted, put and agreed to.

Clause 16 (Obstruction, etc. of authorised officers)

Question: Is the Committee content with Clause 16 subject to the proposed Departmental amendment, put and agreed to.

Clause 17 (Offences by bodies corporate)

Question: Is the Committee content with Clause 17 as drafted, put and agreed to.

Clause 18 (Amendment of the Order of 1978)

Question: Is the Committee content with Clause 18 subject to the proposed Departmental amendment, put and agreed to.

Clause 19 (Statutory charges)

Question: Is the Committee content with Clause 19 as drafted, put and agreed to.

Clause 20 (Vehicles, vessels, etc.)

Question: Is the Committee content with Clause 20 as drafted, put and agreed to.

Clause 21 (Service of notices in electronic form)

Question: Is the Committee content with Clause 21 as drafted, put and agreed to.

Clause 22 (Interpretation)

Question: Is the Committee content with Clause 22 subject to the proposed Departmental amendment, put and agreed to.

Clause 23 (Transitional provision)

Question: Is the Committee content with Clause 23 subject to the proposed Departmental amendment, put and agreed to.

Clause 24 (Regulations and orders)

Question: Is the Committee content with Clause 24 as drafted, put and agreed to.

Clause 25 (Commencement)

Question: Is the Committee content with Clause 25 as drafted, put and agreed to.

Clause 26 (Short title)

Question: Is the Committee content with Clause 26 as drafted, put and agreed to.

Long Title

Question: Is the Committee content with the Long Title of the Bill subject to the proposed Departmental amendment, put and agreed to.

[EXTRACT]

Wednesday 2nd October 2013

Room 29, Parliament Buildings

Present: Ms Maeve McLaughlin MLA (Chairperson)
Mr Roy Beggs MLA
Mr Mickey Brady MLA
Ms Pam Brown MLA
Mr Gordon Dunne MLA
Mr Sam Gardiner MLA
Mr Kieran McCarthy MLA
Mr David McIlveen MLA
Mr Fearghal McKinney MLA
Mr Jim Wells MLA (Deputy Chairperson)

Apologies: None

In Attendance: Dr Kathryn Aiken (Clerk)
Mr Mark McQuade (Assistant Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)
Dr Janice Thompson (Research Officer)

12.12pm The meeting commenced in open session.

4. The Tobacco Retailers Bill.

The Committee noted a draft report on the committee stage of the Tobacco Retailers Bill.

[EXTRACT]

Wednesday 9th October 2013

Senate Chamber, Parliament Buildings

Present: Ms Maeve McLaughlin MLA (Chairperson)
Mr Roy Beggs MLA
Mr Mickey Brady MLA
Ms Pam Brown MLA
Mr Gordon Dunne MLA
Mr Sam Gardiner MLA
Mr Kieran McCarthy MLA
Mr Fearghal McKinney MLA
Mr Jim Wells MLA (Deputy Chairperson)

Apologies: Mr David McIlveen MLA

In Attendance: Dr Kathryn Aiken (Clerk)
Mr Mark McQuade (Assistant Clerk)
Ms Leanne Johnston (Clerical Supervisor)
Mr Craig Mealey (Clerical Officer)

2.05pm The meeting commenced in open session.

4. The Tobacco Retailers Bill.

The Committee considered the draft report on the Committee Stage of the Tobacco Retailers Bill paragraph by paragraph.

The Committee agreed the Executive Summary:

Paragraph 1-8, read and agreed.

The Committee agreed the main body of the report:

Paragraph 1-10, read and agreed.

Paragraph 11-15, read and agreed.

Paragraph 16, read and agreed.

Paragraph 17-22, read and agreed.

Paragraph 23-26, read and agreed.

Paragraph 27-31, read and agreed.

2.08pm Mr Kieran McCarthy joined the meeting.

Paragraph 32-33, read and agreed.

Paragraph 34-36, read and agreed.

Paragraph 37-40, read and agreed.

Paragraph 41-56, read and agreed.

Paragraph 57-72, read and agreed.

Paragraph 73-74, read and agreed.

Paragraph 75-78, read and agreed.

Paragraph 79-81, read and agreed.

Paragraph 82-84, read and agreed.

Paragraph 85-140, read and agreed.

Paragraph 141-168, read and agreed.

The Committee agreed that the Committee Membership & Powers, Table of Contents and Appendix 1 to 5 be included in the report.

The Committee agreed that an extract of today's Minutes of Proceedings should be included in Appendix 1 of the report and were content that the Chairperson agrees the minutes relating to this.

The Committee ordered the Report on the Tobacco Retailers Bill NIA 19/11-15 to be printed.

[EXTRACT]



Northern Ireland
Assembly

Appendix 2

Minutes of Evidence

20 March 2013

Members present for all or part of the proceedings:

Ms Sue Ramsey (Chairperson)
 Mr Jim Wells (Deputy Chairperson)
 Mr Roy Beggs
 Ms Paula Bradley
 Mr Gordon Dunne
 Mr Kieran McCarthy
 Mr Conall McDevitt

Witnesses:

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

- The Chairperson:** I apologise for keeping you waiting. It is sometimes the nature of the beast. You could be here early and we are not ready, or we keep you late. Apologies for that. Liz, I assume that you will take the lead.
- Dr Elizabeth Mitchell (Department of Health, Social Services and Public Safety):** I will take the lead, and Gerard and Jenny will support me. Good afternoon, and thank you for inviting us to speak to you again on the Tobacco Retailers Bill, which we hope to introduce to the Assembly in April. Today, I want to focus on the main provisions of the Bill and set out in real terms what the legislation will mean to those who will be affected by it.
- The Department of Health, Social Services and Public Safety (DHSSPS) is committed to tackling the high levels of premature death and preventable ill health that are caused by tobacco. One of the key objectives of the tobacco control strategy that was published in 2012 is to reduce the number of smokers in Northern Ireland and, in particular, to stop children from taking up smoking. The Tobacco Retailers Bill will help us to achieve that objective by making it more difficult for young people to start smoking.
- The majority of smokers take up the habit before they reach adulthood. In fact, 82% of adult smokers in Northern Ireland took up the habit in their teens. Therefore, preventing children and young people from accessing tobacco is crucial. We know from the latest survey results that around 8% of 11- to 16-year-olds in Northern Ireland are current smokers. Although that figure has reduced consistently from 14.5% in 2000, it still remains too high. We also know that a significant percentage of under-18s are able to purchase tobacco from shops in spite of legislation, which makes that activity illegal for retailers. As the law stands, a retailer in Northern Ireland who sells tobacco products to a person who is under 18 years of age is guilty of an offence and is liable to a fine not exceeding £2,500. That legislation is enforced by environmental health officers in district councils, the majority of whom use test-purchasing exercises as a means to ensure that retailers comply with the law. Between 2008 and 2011, a total of 1,393 tobacco retailers were visited as part of a test-purchasing exercise. In approximately one in five of those visits, tobacco was sold to an underage child. Clearly, most retailers operate within the law and apply a no ID, no sale policy. However, the evidence shows that a significant number of retailers will continue to sell tobacco to underage children unless stricter sanctions are introduced. In bringing forward the Tobacco Retailers Bill, our policy aim is to ensure that the minimum-age-of-sale policy is applied more rigorously by retailers. The introduction of tougher measures for non-compliance is the means by which that will be achieved.
- Members of the Committee for Health, Social Services and Public Safety recently received an advance copy of the Tobacco Retailers Bill and the accompanying explanatory and financial memorandum. Rather than going into

- great detail on individual clauses and the Bill at this stage, I want to draw the Committee's attention to its key provisions. These can be summarised as follows. The Bill requires district councils to keep a register of all tobacco retailers in their area. A duty is placed on retailers to notify councils of all premises from which they sell tobacco products and also to notify certain changes to the register. The definition of "premises" covers any place, vehicle, vessel, stall or movable structure. Tobacco offences on the retail register have been created. They include failing to register and failing to notify the council of changes in connection with the register. Maximum fines that are proposed for those offences range from £500 to £5,000. A further provision enables a court to ban the sale of tobacco either on a named premises or by a named person for up to 12 months. A ban will apply only if three tobacco offences are committed within a three-year period. An additional tobacco offence of breaching a banning order has been created, which carries a maximum fine of £20,000. Finally, the Bill allows for fixed penalty notices to apply for a number of offences, including that of selling tobacco to underage children.
6. The registration element of the Bill will assist district councils in their enforcement of tobacco control legislation by providing a list of all businesses that are involved in the retail of tobacco products. In order to minimise the burden on retailers, there will be no charge for registering. Registrations will be kept on a local district council area basis. Although the Bill introduces new offences and penalties, they will apply only to those retailers who operate outside of the law — that is, those retailers who regularly sell tobacco to under-18s and/or those who seek to avoid registering with a local council.
7. Enhanced retailer sanctions have already been introduced in other jurisdictions. The Tobacco Retailers Bill includes components of various pieces of legislation that have been in operation throughout the UK and Ireland since 2009 and would bring Northern Ireland closer into line with the other UK countries.
8. During our previous discussions on the Bill, members raised concerns about illicit tobacco sales by retailers. The illicit tobacco trade is a concern for the Department in that it impedes efforts to reduce smoking prevalence through tax increases on tobacco. However, Minister Poots has been quite clear that the main purpose of the Tobacco Retailers Bill is the prevention of underage sales of tobacco products, whether or not they are duty-paid. That was also the basis for the public consultation. The Department's view is that sanctions against retailers for selling illicit tobacco is a matter for HM Revenue and Customs (HMRC) to deal with through its existing legislation. Our primary concern is preventing young people from accessing tobacco whether it is legal or illicit.
9. As you are aware, the Bill and its accompanying explanatory and financial memorandum are with the Executive for comment. It is hoped that the Bill will be cleared for introduction to the Assembly at the next Executive meeting on 28 March. We then aim to introduce the Bill to the Assembly in April.
10. Thank you for providing the opportunity again to discuss the provisions of the Tobacco Retailers Bill. We are happy to hear your views and to answer any questions.
11. **The Chairperson:** Members have indicated that they want to ask questions. I just want to be conscious of the time that I am giving.
12. **Mr McDevitt:** Obviously, I welcome the Bill. I just want to place on record — I will try not to rehearse it during the plenary debates on the Bill in the House — that I am still disappointed that we are dodging HMRC issues. I understand that it is a health Bill and that you are coming to it from a health perspective, but I still think that we are missing an opportunity here. I suppose the question

- that I can intelligently ask is this: is there is a way, perhaps through building some instruments into the Bill, to allow this to dovetail with a future improved or more integrated approach with HMRC? Can we build into the architecture of the Bill? I do not see that in the Bill, but perhaps it is there and you simply need to point it out to me. Is it possible, perhaps through an affirmative order so that it would have to come back to the House, of having fewer legislative consent motions coming back in to strengthen these provisions, in the event that HMRC or other authorities think that it would be useful to strengthen the legislative framework here?
13. **Dr Mitchell:** We can certainly explore that and come back to you. It is certainly our intention, through our work providing guidance to environmental health officers in enforcing the legislation, to highlight the issue of illicit tobacco to them and to try to get them to develop protocols with HMRC, such as those being developed in England between district councils and HMRC. We certainly want to try to strengthen that and ensure that there is good working together. We will explore whether there is any need to amend the Bill to ensure that that can be effected.
14. **Mr McDevitt:** I guess that it is still the case that we are not aware of a single prosecution under the 1979 Act?
15. **Dr Mitchell:** I understand that you have written to the Department of Justice (DOJ).
16. **Mr McDevitt:** I think that we have.
17. **Dr Mitchell:** Have you received a response yet?
18. **Mr McDevitt:** I am not aware of that. It passed me by, but I am pretty certain —
19. **Mr Gerard Collins (Department of Health, Social Services and Public Safety):** We are fairly certain that there has not been a prosecution under the Tobacco Products Duty Act 1979.
20. **Dr Mitchell:** Certainly, from our discussions with them, it appears that
- their main focus is on trying to intercept large containers, and they are fairly up front about that. I think that it is about us trying to make sure that local people on the ground, through district council enforcement, highlight areas in which there are issues. We will work closely with them to try to make sure that that loophole is more effectively closed.
21. **Mr Dunne:** Thanks for your presentation. The responsibility lies with a retailer to register with a council. Have you had any feedback about how effective you feel that will be? Is there a risk that people may avoid doing that?
22. **Dr Mitchell:** There are fines if people avoid registering.
23. **Mr Dunne:** Will that be enforced by councils?
24. **Dr Mitchell:** Yes.
25. **Mr Dunne:** What about the demand on council resources? Councils complain bitterly about the lack of funding for such additional duties. It is loaded onto the ratepayer every time.
26. **Dr Mitchell:** We have given funding to councils, through the Public Health Agency (PHA), for previous work on tobacco control. We understand from discussions with environmental health personnel that there is good compliance now and that they feel that they can divert some of those resources into enforcing the Bill. We have ongoing discussions with them about the resource commitment that is required, and we will continue to do so.
27. **Mr Collins:** The whole point of negative licensing and a register is to cut down on the amount of paperwork and bureaucracy involved in maintaining a register and actually registering. The register is kept at district council level, and it can be kept electronically, so there is not a huge amount of effort on the part of the retailers to register or on the part of councils to maintain the register.
28. Given that the legislation on smoking in public places is fairly well embedded

- and that there are very high levels of compliance, the resources that the Department has already allocated to district councils through the PHA for additional tobacco control officers can be skewed towards checking the registers and the Tobacco Retailers Bill for underage sales.
29. **Mr Dunne:** The Bill refers to “additional powers of enforcement”. Is that really what a lot of this is about — the additional powers that the Bill gives to councils?
30. **Dr Mitchell:** The power to create a register is new. It also has new penalties —
31. **Mr Dunne:** Increased penalties?
32. **Dr Mitchell:** No; fixed penalty notices.
33. **Mr Dunne:** Which will be carried out by council enforcement officers?
34. **Dr Mitchell:** In the main, yes.
35. **Mr Dunne:** Have the police any role?
36. **Dr Mitchell:** Police can confiscate tobacco or cigarettes from an underage smoker. However, the policy is not intended to criminalise the activity by young people, so that would be the end of the police action.
37. **Mr Dunne:** What about premises and so on?
38. **Dr Mitchell:** Enforcement will primarily be through district councils and their tobacco control officers.
39. **Mr Dunne:** Would police act through the councils then?
40. **Dr Mitchell:** Yes.
41. **Mr Dunne:** They would bring it to the council’s attention —
42. **Dr Mitchell:** If they were aware of issues, yes.
43. **Mr McCarthy:** Wise minds think alike. I am a councillor, and I know that councillors are always wary about extra work and the additional resources needed to implement such work. You have answered my question, which is: will there be any further resources for additional tobacco officers? I fully support what we are doing. In fact, I would go further; had you the power to ban tobacco altogether, I would give my 100% support to doing so. That is a bit loud, but I feel so strongly because I smoked in my young days. Thank God that I discarded them when I did. It is only when you get older that you think that, had you smoked on, you would be struggling to get up every morning. So I am grateful for that. I must say that my council — Ards Borough Council — is actively anti-smoking. You mentioned smoking at work. In one case, a guy was caught smoking in his taxi but repeatedly denied it. The council had to go back to him and the case had to go to court, which was to his disadvantage because he had to pay up and look pleasant. So will there be resources for councils?
44. **Dr Mitchell:** As I said in answer to Mr Dunne, councils have advised us, through our work with environmental health officers, that they have sufficient resources. Should that not be the case, they would make representations to us.
45. **Mr McCarthy:** I am surprised.
46. **Dr Mitchell:** I can speak only for the ones that —
47. **Mr McCarthy:** I will check that out.
48. **Dr Mitchell:** However, if it comes to light that that is not sufficient, we can certainly examine it. For the moment, the information that we have been given is that they should be able to use the current resource.
49. **Mr Collins:** We also need to bear in mind that councils already have duties under the existing age-of-sale legislation to check that retailers are not selling to people who are underage, which is why they carry out test purchasing. By and large, the additional workload comprises maintaining a register, and, as I said, we have tried to make that as streamlined as possible.

50. **Dr Mitchell:** We have tried to make this as unbureaucratic as we can so that it involves as little extra work as possible for everyone. We recognise the need for that.
51. **Mr McCarthy:** I absolutely support you in that.
52. **Dr Mitchell:** I will pick up on what you said about being a smoker in your younger days: we are also conscious that the health risks are much greater to those who start when they are younger, say in their teens, than for those who start in their mid-20s. So trying to stop underage smoking is particularly important.
53. **Mr Beggs:** The first of my two questions concerns the definition of a tobacco offence. A restricted premises order and a restricted sale order would be applied when a fixed penalty notice is given or there is a conviction for a tobacco offence. Will you clarify what a “tobacco offence” is? Does that include selling illegal cigarettes? What exactly is it?
54. **Ms Jenny McAlarney (Department of Health, Social Services and Public Safety):** The tobacco offences are listed in the Bill and include selling tobacco to an underage person of any —
55. **Mr Beggs:** I looked through the Bill to try to find the definition. Where is it?
56. **Ms McAlarney:** I think that it is under clause 10.
57. **Mr Collins:** It is important to remember that the offence is selling tobacco. That tobacco can be legal, duty-paid or illicit. The Bill does not differentiate the nature of the tobacco and whether tax has been paid on it or it is counterfeit. The offence is selling tobacco.
58. **Mr Beggs:** Have you clarified that selling illegal tobacco to an adult will not be offence under this Bill?
59. **Mr Collins:** Not under this legislation.
60. **Mr Beggs:** I am slightly disappointed to hear that. I would have thought that all relevant offences would have been included.
61. I used to be a councillor and dealt with entertainment licences. When there were noise issues, it could be very expensive when you ended up in court. It can cost perhaps £10,000 to £15,000 if an individual opposes the charge and goes to court. Do you envisage councils having to foot those sorts of bills if people use the mechanisms in the Bill? The Bill refers to court. Could councils be landed with high court costs if they take action and are subsequently opposed for whatever reason?
62. **Dr Mitchell:** One of the provisions in the Bill is that money that is recouped from fixed penalty notices will go to councils for their work in tobacco control and the implementation of the Bill. Some of that resource will go to the councils.
63. **Ms McAlarney:** We see the Bill as reducing court costs. At present, if an enforcement officer catches a retailer selling tobacco to an underage child, he or she would generally take the retailer to court. This Bill will allow councils to introduce fixed penalty notices, which will probably be given in the first instance. Retailers would pay those, which would save councils having to prosecute. We see this as saving court costs rather than increasing them.
64. **Mr Beggs:** The clause that deals with restricted sale orders suggests that councils would have to be proactive and go to court to get such an order. What do you expect the typical cost for that to be?
65. **Dr Mitchell:** I am not sure —
66. **Mr Beggs:** What level of court would that be?
67. **Ms McAlarney:** It is the summary.
68. **Mr Beggs:** I have not recognised —
69. **Ms McAlarney:** The Bill refers to “A court of summary jurisdiction”. We do not envisage the cost being overly high. The regulatory impact assessment (RIA) anticipated only about three cases being brought to court a year. A retailer would have to be caught selling tobacco to an

- underage person three times within a three-year period, so people would not be brought to court to get a banning order very often.
70. **Mr Beggs:** I am disappointed that all related tobacco offences are not included. Thank you.
71. **Ms P Bradley:** I have no questions. As a smoker, I welcome the Bill. We need to do everything in our power to stop our young people taking up this vile, disgusting, horrible habit. I only wish that those powers had been in place not quite 30 years ago, when I was a teenager and was buying cigarettes in shops. There was never a problem with that then.
72. I know that there are a lot of responsible retailers, and I have been in premises where they are responsible. However, other retailers are completely flouting the law. I am the vice-chair of the all-party group on heart disease and stroke, and we have been working on this issue. I would make the Bill 100 times tighter than it is. As a smoker and someone who is addicted to and within the grip of nicotine, I would not want any child to become my age and be the way that I am. The all-party group has received figures of the thousands — not hundreds — of children who are becoming addicted to tobacco products every year in Northern Ireland. We cannot go far enough with this legislation. It is very welcome.
73. **Dr Mitchell:** Thank you. I would emphasise that this is just one element of our tobacco control strategy, policy and legislation.
74. **Mr Collins:** We estimate that, every year, about 2,000 children between the ages of 11 and 16 become regular smokers. That is what we are trying to prevent.
75. **Ms P Bradley:** As a smoker, that would make me weep. It is so sad that that number of children are taking up this vile habit. We need to do everything in our power.
76. **Dr Mitchell:** I thought that the all-party group on —
77. **Ms P Bradley:** Stroke and heart disease.
78. **Dr Mitchell:** Yes, exactly. I thought that the meeting on standardised packaging was excellent. Thank you very much for organising that. I have my sample of what the standardised packaging would look like here.
79. **The Chairperson:** I have a packet in my drawer. What about the time frame, Liz? You said that you hope to bring the Bill to the Assembly for April and to the Executive on 28 March. Does that mean that the Executive have a paper on it already?
80. **Dr Mitchell:** Yes; the paper went to Executive colleagues.
81. **The Chairperson:** Between now and 28 March, are there any proposed changes based on the comments that you picked up here or will that be the same paper?
82. **Dr Mitchell:** It is with them at the moment. We have received some comments from Executive colleagues, and we are still waiting for some to come in. We will take those comments on board.
83. **The Chairperson:** If any proposed changes — I am not talking only about this Bill but in general — come out of the Executive, will we know about them before the proposed introduction to the Assembly in April?
84. **Dr Mitchell:** I would think so, Sue.
85. **The Chairperson:** Did you say that there were 1,193 test purchases last year?
86. **Ms McAlarney:** No; it was between 2008 and 2011.
87. **Dr Mitchell:** It was over a number of years.
88. **The Chairperson:** How do you get the kids for that?
89. **Dr Mitchell:** Twenty-five out of 26 district councils use test purchasing, and they have very strict guidelines on how they do it. The one council that does not has concerns about using children.

90. **The Chairperson:** What council is that?
91. **Dr Mitchell:** Dungannon and South Tyrone.
92. **The Chairperson:** I am not even saying that it is an issue; I am just wondering how the young people are recruited for that.
93. **Ms McAlarney:** Quite often, they tend to be the children of environmental health officers. They are not openly recruited and paid for it, but there are very strict guidelines when using a child. They do it on a volunteer basis.
94. **The Chairperson:** Fair play to them for that. That is interesting. In general, if any legislation goes through the Executive, it is important that we hear about it and are kept in the loop. Thanks very much and apologies, once again, for keeping you waiting.
95. **Dr Mitchell:** Thank you.

15 May 2013

Members present for all or part of the proceedings:

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

Witnesses:

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

96. **The Chairperson:** I take the opportunity to welcome Jenny, Gerard and Nigel. Gerard, I take it that you will take the lead, and I invite you to brief the members on the clauses of the Bill. I want you to take the Committee through a number of clauses and then pause and allow us to ask questions on them. We will then move on to the next set. Is that OK with you?
97. **Mr Gerard Collins (Department of Health, Social Services and Public Safety):** That is fine, Chair. Thank you for inviting us to go through the Bill's clauses in some detail. I am Gerard Collins from the investing for health unit in the Department. Normally, Dr Mitchell leads on this type of presentation, but Dr Mitchell is not available today. However, we have Nigel McMahon, the chief environmental health officer in the Department, who has long experience of the application of legislation by district councils. We also have Jenny McAlarney from investing for health branch, who has been the most closely involved in the drafting of the legislation.
98. We had intended to go through each clause, taking the sections in turn, and if it is fine with the Committee, we will

stop at the end of each section and invite questions. That is maybe the best way to do it. I had not intended to go through the previous briefing on the purpose and scope of the Bill. As it has recently gone through its Second Stage, we are quite pleased with the Bill's progress to date, and we look forward to engaging with the Committee through the Committee Stage, which I understand has now been extended until mid-October. There was quite a bit of support for the Bill during the Second Stage debate, particularly from members of the Health Committee. Some concerns were raised by Assembly Members, and we addressed those in the briefing paper that we provided in advance of this session. The Minister also comprehensively addressed some of the concerns in his summing-up speech. So, I will not cover the same ground today in the opening remarks.

99. I will make an exception, however, for the issue of illicit tobacco. Committee members have expressed their views on that issue on a number of occasions. It was raised during the Second Stage debate, and it became clear that those views were shared by other Assembly Members. You will of course remember that we had sought legal advice from departmental advisers as to whether it would be possible to include a provision in the Bill that would allow the courts to include a conviction for selling illicit tobacco as one of the three strikes that would lead to a banning order. Initial advice from solicitors pointed to that being an excepted matter and, therefore, outside the remit of the Assembly. However, following the Second Stage debate, we decided to seek further clarification on the issue. The advice that we have received points towards the view that such an amendment would only be giving effect to the fact that someone has a conviction and would not be interfering with the nature of the tax offence or its enforcement,

- which are matters that are outside the competence of the Assembly. In light of that, and subject to further legal advice, the Department will give consideration to a ministerial amendment to the Bill. The amendment would amend the relevant clauses to include offences under the Tobacco Products Duty Act 1979 and/or the Customs and Excise Management Act 1979. We intend to keep Committee members fully informed of developments in that regard as we look at amending the Bill.
100. **The Chairperson:** That is quite useful, because it is an issue that came up a few times at the Committee. It is useful that, at this early stage, you are going to act. Well done on that.
101. **Mr Collins:** It was further news to us. Once we found that it was likely to be possible, of course we would go forward and see how we could amend the Bill accordingly.
102. Today's main item of business is the clause-by-clause breakdown of the Bill. As I said, we will go through each of the clause headings and pause at the end to take any comments or questions that members have.
103. The first heading is, "Register of tobacco retailers". That section contains six clauses and deals with the requirement for all tobacco retailers to register with their local council. The main aim behind introducing a registration system is to assist enforcement officers in their duties by providing them with a list of all tobacco retailers in their area. Jenny will talk us through the individual clauses in the Bill, beginning with this section on registration.
104. **Ms Jenny McAlarney (Department of Health, Social Services and Public Safety):** Good afternoon, Chair and Committee members.
105. The first clause is entitled, "Register of tobacco retailers". That clause states that each district council in Northern Ireland must keep a register of all the tobacco businesses its area. The definition of a "tobacco business" can be found in the interpretation section of the Bill, which is in clause 22.
106. The second clause is entitled, "Application for registration". That clause deals with applications for registration and states that a person may apply to be registered or to add further premises to an existing entry in a register. It also states that, when making an application, the applicant must provide his or her name and address and the addresses of all the premises from which he or she proposes to sell tobacco products. That is the information that will be retained by the council on the register. The council may also include other information that it considers to be appropriate. The council is obliged to grant an application unless all the requested information has not been provided or the applicant is subject to a banning order at that time. The council must inform the applicant of its decision within 28 days of the application being made.
107. Clause 2 also contains three regulation-making powers. The first allows the Department to determine the form and manner of the application to ensure that there is consistency in the information provided and to tie in the application form with the format of the register. The second provides a power for the Department to request further information from the retailer if it is decided in future that that would be beneficial. The third allows for the making of regulations to permit the charging of fees for making an application. There are no plans to make regulations for the charging of fees. We anticipate that it will be free to register.
108. Clause 3 is entitled, "Duty to notify certain changes". That clause simply requires a registered person to notify the council if there are any changes that should be made to the register. Those changes relate to the person's name or address or if the person is no longer carrying on in the tobacco business. Clause 3 requires changes to be notified within three months of the date of the change.

109. Clause 4 is entitled, “Changes to and removal from the Register”. This clause permits a council to make corrections to the register as it considers appropriate; for example, following notification of a change under clause 3. The clause also requires that councils must remove from the register premises that are subject to a restricted premises order. That is, if the premises has been banned by the court from selling tobacco. A court may remove a person from the register if it is not satisfied that the person is carrying on a tobacco business. However, it is required to reinstate that person’s entry in the register if the relevant person notifies the council within a set period that he or she is still carrying on a tobacco business. A council is required to notify a registered person of any changes to his or her entry as soon as is reasonably practicable.
110. Clause 5 is entitled “Inspection of the Register”. This clause allows the register to be inspected by the public, either at the council offices or any other place that the council deems appropriate. A regulation-making power has been included in this clause if, in the future, the council wishes to charge for copies of the register to be taken.
111. Clause 6 is “Access by Department and councils to the Register”. This clause requires each council to make information in the register available to the Department and to other councils. This information is to be used only by the Department or other councils to enable or assist them to perform their functions under the Bill.
112. That completes the clauses under the heading “Register of tobacco retailers”. I am happy to take any questions or comments on this section.
113. **The Chairperson:** OK. I ask members to indicate whether they wish to comment on this section.
114. Clause 6(1) states that each council must make available information contained in the register to other councils or the Department. Does that mean that there will not be a regional list?
115. **Ms McAlarney:** No. We do not anticipate that there would be a regional list. It is more the case that if a council wanted to look at a registration from another council, the other council would have to make that information available.
116. **The Chairperson:** OK. I just thought about that on the back of some other things that have happened, where decisions were made in one area and there was not a regional approach.
117. What happens if someone is banned in one council area but owns premises in another council area? What impact would that have?
118. **Mr Collins:** Clause 6(1) states:
“Every council must make available to every other council and the Department such information contained in the Register as the other council or, as the case may be, the Department may require.”
119. That allows councils to ask for information about the registers of other councils. If someone new is applying, councils would be able to ask for that information to see whether that person has been served with any sort of offence in the other council area in which they were operating.
120. **The Chairperson:** Yes, but what happens if that individual commits an offence in one council area but has premises in another council area? Does that mean that, in one council area, that person —
121. **Mr Collins:** The Bill, as drafted, relates to the council area, because the council has to bring the complaint to the court.
122. **Ms McAlarney:** I do not think that if someone had committed an offence in a premises in one council area, it would relate to their premises in another council area. If the person was to be banned from selling tobacco, it would be in relation to the premises on which the offence had been committed. For example, if a person owned two shops, the shop in which the offence had been committed or the sales had been made

- would be the subject of a banning order. It would not apply to both shops.
123. **Mr Nigel McMahon (Department of Health, Social Services and Public Safety):** I will just add to that, Chairperson —
124. **The Chairperson:** I just want you to expand on that point. It is the individual who is banned rather than the premises?
125. **Ms McAlarney:** There are two different things. There is a restricted sale order and a restricted premises order. The restricted premises order applies to the premises where three offences have been committed on those premises. A restricted sale order would more likely apply in a case where, say, a manager could prove that he or she had done everything possible to prevent a shop assistant from selling to underage persons — that the shop assistant had been trained and had been given all the information — but that assistant had committed a number of offences. It would not be fair on the manager in that case for his premises to be banned, and, therefore, the shop assistant would be banned from selling tobacco. Even if that person moved on to a different premises, he or she would not be allowed to sell from those premises either.
126. **The Chairperson:** Even if it is a different council area?
127. **Ms McAlarney:** Yes.
128. **The Chairperson:** I apologise, Nigel; I cut across you there.
129. **Mr McMahon:** I was going to say that if we are talking about a restricted sale order that applies to an individual, my interpretation is that if a council became aware from other councils that an individual had committed offences in other council areas — at least two other offences, allowing for the three strikes — that council could consider going to court to seek a banning order against that individual, even if all three offences had not occurred in their council area.
130. **The Chairperson:** Does that not entail the said council being proactive?
131. **Mr McMahon:** It does.
132. **The Chairperson:** Because there is no regional list?
133. **Mr McMahon:** That is correct, yes. We have had early discussions about that. There is a regional tobacco control group. We have had early, tentative discussions about how that might work in providing an administrative process for keeping each other informed.
134. **The Chairperson:** What is the reason for not having a regional list?
135. **Ms McAlarney:** We decided against a centralised system because we wanted to have the least bureaucracy possible on the registration side of things for district councils and for retailers and to keep the expense of it down. Scotland has a regional, centralised system and so does the South of Ireland. Scotland said that the centralised system cost £50,000 to establish, and the centralised system is held by the Department and not the councils. When we spoke to the councils, they indicated their preference for a council-by-council registration system, such as that which operates for food licensing.
136. **The Chairperson:** Is this based on the 26 district councils?
137. **Ms McAlarney:** It is at the minute, but, obviously, they will be moving to 11 councils. As with their other functions, such as food registration, they will have to make changes.
138. **The Chairperson:** Let me bring in Mickey.
139. **Mr Brady:** My question is on clause 7, which deals with the three strikes.
140. **The Chairperson:** Mickey, we are dealing with clauses 1 to 6 at the minute.
141. **Mr Brady:** Exactly. My question is on clause 7.
142. **The Chairperson:** Sorry. I will bring you in in the next round.

143. **Mr McDevitt:** I have questions on a couple of areas. First, the regulations that are mentioned in clause 6 will all be subject to negative resolution, will they not?
144. **Ms McAlarney:** In clauses 1 to 6?
145. **Mr McDevitt:** My apologies, Jenny. In clause 2. A whole bunch of regulations are mentioned in clause 2.
146. **Ms McAlarney:** The regulations in relation to the charging of fees will be draft affirmative, because, obviously, there is a cost associated with it. The other two will be negative.
147. **Mr McDevitt:** OK, so fees would be draft affirmative.
148. **Ms McAlarney:** Yes.
149. **Mr McDevitt:** On the Chair's point about the merits of having a regional list versus the more decentralised approach, it strikes me that what is missing when you go for the decentralised approach is a duty on councils to share the information with everyone else. If we stay with it as we currently have it in clause 6, we are saying that they are entitled to the information, and that is obviously right and proper, but that they have to go looking for it. Surely, to ensure that the law of unintended consequences does not kick in, we need to put something in there that either requires councils, when they are considering an application, to actively seek information or that places a duty on councils to share. We need to think about what the most efficient, effective and safest way of doing that is. It strikes me that, if we leave it the way that it is, you have the possibility that people will get through the net, if you like, because a council or some authority did not ask. That would be unfortunate. What are your preliminary thoughts on that?
150. **Mr McMahan:** That is a fair point, and, in the early discussions, the council group mentioned that. I guess that it is down to a question of whether they indicate that they are confident that their existing system of information sharing will suffice or whether, in fact, there is merit in considering the addition of something that makes that sharing a mandatory requirement.
151. **Mr McDevitt:** From the legislature's perspective, Nigel, given the very substantial amount of change that will take place in local government in the next three or four years, it seems to me that we should be thinking about what the duty will be or what the requirement will be, depending on what way you want to frame it. If it is a duty on all councils to share information with all other councils, you might have the bureaucratic nightmare that you are trying to avoid. You are effectively creating a regional list then, so why not just have a regional list? Or, you can place a requirement on councils to seek information from all other councils or a requirement for an applicant to disclose the council areas that he or she may have worked or been operational in and, therefore, place a requirement on the council to seek information from those. In my opinion, you will have to put something in statute that prevents people from slipping through that loophole.
152. **Mr Collins:** Once we get over the initial registration for existing retailers, we will probably find it more manageable. Obviously, there will not be the same volume of new applications coming into the system, so that will probably be more doable after we get through the initial period of registration of existing tobacco retailers.
153. **Mr McDevitt:** It is premises-centred and not individual-centred, so there is a real risk that unscrupulous individuals will play the system.
154. **Mr Beggs:** I am concerned about this issue of councils making the information available to other councils or the Department, for instance if somebody were banned. I agree that it is useful that you keep everything as bureaucratically light as possible. However, have you not considered other mechanisms to prevent somebody convicted of selling three times in a three-year period, which does not

- happen by accident, from walking across the street and taking the trade with them, perhaps including young people, to another establishment? Is an easier mechanism to prevent that happening not simply to ban them from selling tobacco in Northern Ireland rather than in any specific council area?
155. **Ms McAlarney:** If you thought that there was a possibility of that happening, you could apply for a restricted sale order and a restricted premises order on the same person. So the premises could be banned from selling, plus that person could be banned from selling, if you felt that there was a risk that that person would just abandon the premises and move to another premises.
156. **Mr Beggs:** But that would apply in a council area, if I picked you up right.
157. **Ms McAlarney:** It would apply throughout; one council would take the case, but it would apply throughout Northern Ireland.
158. **Mr Beggs:** OK. Thank you.
159. **Mr Gardiner:** I note that although council environmental health officers will be expected to enforce the Bill, there is no actual requirement for councils to use such officers. Why is that omitted?
160. **Mr McMahon:** In framing the legislation, it would be normal to make that a duty of the district council. It is in effect then a decision for the council corporately as to how it applies the legislation. We fully expect that it will be environmental health offices; they already do all the tobacco control work. In England and the rest of mainland Great Britain, for example, such work is done by trading standards officers, whereas tobacco control is largely a function for environmental health in councils in Northern Ireland. I do not suspect that it will be anything other than environmental health, but that is essentially a council decision.
161. **Mr Gardiner:** Might councils appoint a dedicated enforcement officer, separate from environmental health officers?
162. **Mr McMahon:** That could certainly happen; indeed, it does in relation to other council functions.
163. **Mr Gardiner:** If that were the case, has the additional cost been factored in? Is it a cost-neutral measure?
164. **Mr McMahon:** The Bill's focus is largely around providing additional enforcement tools to officers who are already engaged in this work. Councils and environmental health departments have been involved in preventing underage sales for a long time. So there is no reason to expect that a council would choose, at this point, to go down a different route of enforcing in a different way using different staff or, indeed, would need to have additional staff.
165. **Mr Collins:** We mentioned previously that the Department funds the councils to provide tobacco control. A lot of past efforts have been directed towards enforcing the smoke-free public places legislation. There are very high rates of compliance with that legislation. As that embeds into mainstream practice, the need for enforcement in that area reduces and the resources can be directed to the new tobacco control measures.
166. **Mr Gardiner:** Is there a possibility that councils may not delegate this enforcement to anybody if the duty to make the environmental health officer responsible is omitted?
167. **Mr McMahon:** Gerard referred to the funding from the Department that goes through the Public Health Agency (PHA) to commission the tobacco control work that happens now. I know that some councils employ what they call tobacco control officers to do that work. Some are from environmental health backgrounds and some have other professional enforcement backgrounds but have come into this work. So, even at present, there are individuals working in tobacco control in councils who are not environmental-health trained.
168. **Mr Gardiner:** I think that there are some points there that you need to look at a wee bit more closely.

169. **Ms P Bradley:** I should probably declare an interest as a local councillor. It probably follows on from what Sam said, but you said earlier that councils had wanted to do this themselves rather than have one register. Is that correct? Is that what you said?
170. **Ms McAlarney:** The consultation responses indicated that, yes, they would prefer to keep a register by council rather than —
171. **Ms P Bradley:** A consultation was done and that is what the councils came back and said. I find that quite unusual. As a local councillor, I know that as more powers get handed down to local councils, they are wondering how they are going to cope and deal with that. We had the registration of landlords quite recently through the Department for Social Development (DSD), and because of the problems to do with local councils and information sharing, the Social Development Committee felt that the way forward was that one register should be put in place.
172. In respect of the £50,000, I make no apologies for saying that that is nothing if it prevents our children taking up smoking early and stops people from buying illegal tobacco. That is a drop in the ocean compared with the ramifications that smoking has in later life. So, I think that that needs to be addressed. From what everybody has said, if there was one central register, a lot of our concerns would be alleviated.
173. **The Chairperson:** The £50,000 was based on the 26-council model. Do you have a figure based on the 11-council model?
174. **Ms McAlarney:** No; that was just based on information from Scotland.
175. **The Chairperson:** Will you give us an idea of that later if you can?
176. **Ms McAlarney:** Yes.
177. **Mr Wells:** I am in the wrong business. I will set it up for you for half that amount. Frankly, what we are talking about here is one internet page where all the 26 or 11 councils simply post their list. If you were to pay me £25,000 to do that, I would do it.
178. **Ms McAlarney:** Their system included somebody centralised in the Department in Scotland, so the figure included the costs of an admin person who maintained the system and dealt with the registrations.
179. **Mr Wells:** We are not requiring everyone to register centrally. We are just requiring that the average man on the street can acquire a list of all the tobacco sellers in Northern Ireland on one site. That means that the 11 councils, in addition to compiling a list, push a button and put it on to a central site that anyone can look at. The PHA could run it. That would cost about £50, not £50,000. Where is the other £49,950 coming from? It is as simple as that. It would mean that everybody in Northern Ireland would not have to work out which boundary they are in. We are moving into a new 11-council area, and people may not know which council they are in. They can push a button and find out whether Willie John has a licence to sell tobacco. I am missing something here, am I not? It cannot be that simple. What am I missing?
180. **Mr McMahon:** I do not think that you are — *[Inaudible.]* The feedback from councils was that they hold a whole range of registers for different things in their area, and that helps them to schedule and programme their enforcement visits.
181. **The Chairperson:** Nobody is disputing that, but the reality is that we have a Minister, we have a regional Department, we have a regional board, and we have individual trusts. I do not want to go over this again, but we have come out of the care home stuff where individual trusts were making decisions and now they are looking at regional approaches. So, if we are doing regional approaches on one thing, why can we not do it across all of it?
182. **Mr Collins:** In respect of updating the register, an applicant would apply to the local council, so the council would have

- to make that change to the register. It is the technical details of how that change should then be filtered through to one central regional register.
183. **Mr Wells:** Push two buttons on your computer then rather than one.
184. **Mr Collins:** I am not sure of the technology behind it, but it is something that we should look into. If it is technologically feasible, at minimum cost, it would be worth pursuing.
185. **The Chairperson:** I know that councils fall under a different Department, but, in our Department, we have the Business Services Organisation where we have all sorts of lists, technology, IT and everything. I am sure that somebody there could come up with a solution. What I am suggesting is based on what members are saying. Do you really want this battle with the Committee on a council list versus a regional list? You should be looking at it.
186. **Mr Collins:** We can go away and look at the feasibility and technology behind it to do it cheaply. If it can be achieved cheaply, and it is what the Committee wishes, it is something that we would have to pursue.
187. **Mr Wells:** I was out of the room, unfortunately, so you may have dealt with this, and, if you have, you can ignore me. There was quite a bit of debate in the Assembly about the definition of a tobacco provider. I am sure that you were in the Chamber when Mr Allister raised the issue about social clubs, sports clubs and hotels. Are you content that they all fall into the definition in clause 1?
188. **Mr Collins:** The response that the Minister gave to that was that clause 22 on interpretation defines “tobacco business” as:
“a business involving the sale of tobacco or cigarette papers by retail.”
189. The solicitors felt that that was a sufficient definition. Clause 22 defines “premises” as including:
“any place and any vehicle, vessel, stall or moveable structure”.
190. That is quite a wide definition of premises, which is intended to cover market stalls and vans. We think that it is well enough covered in the interpretation.
191. **Mr Wells:** So, something such as a chip van or an ice-cream van —
192. **Mr Collins:** That is a moveable structure.
193. **Mr Wells:** Even though, technically, what they are doing is probably illegal, they would still have to register.
194. **Mr Collins:** Yes, they would have to register. As we said before, they are unlikely to register if they are selling illicit tobacco, but if they are not registered, they can be convicted and fined under this legislation, which is another deterrent.
195. **Mr Wells:** What about the situation at some hotels, I understand, where they keep a supply under the counter for when a resident is absolutely desperate for a cigarette at two in the morning? They do not display and advertise them; they are hidden in brown paper bags, and you can go and buy a packet of cigarettes. Would that still be captured under —
196. **Ms P Bradley:** What kind of hotels do you stay in? *[Laughter.]*
197. **Mr Wells:** They sell toothpaste and other things as well, but cigarettes are supplied on that basis.
198. **Mr Gardiner:** I bet that you are more interested in the cigarettes than in the toothpaste.
199. **Mr Wells:** No, I am not. I would not touch them.
200. **Ms McAlarney:** If they are selling them, it is covered.
201. **Mr Collins:** If they are charging for them, it is retail, and they are covered. They are a premises, and if they sell to a guest —

202. **Ms McAlarney:** They should be registered.
203. **Mr Wells:** What about the individual who sells cigarettes around pubs and social outlets?
204. **Mr Collins:** Again, that is a moveable structure; we discussed this. Some time ago, a number of people were going around with trays of cigarettes to sell to clients in pubs. Again, we think that that would be captured as a moveable structure.
205. **Mr Wells:** What if there is no structure because he has them in a briefcase?
206. **Mr McDevitt:** That is a structure.
207. **Mr Wells:** Is he still covered? A lot of people buy their cigarettes in the back of a pub.
208. **Ms McAlarney:** Sellers should be registered. They can be done for not being registered.
209. **Mr Wells:** Whether those cigarettes are illicit is a different issue. That is often where they are bought cheaply.
210. **Mr Collins:** It is a different issue, but we think that they are covered. When we talk about moveable structures, we mean that someone is going to have to have some form of container that they hawk round pubs with them if they are selling cigarettes.
211. **The Chairperson:** Shall we move on to the next set of clauses? We are dealing with clause 7 to clause 9.
212. **Ms McAlarney:** The next heading is the “Persistent commission of tobacco offences”. There are only three clauses under this heading. However, they deal with a very important aspect of the Bill, as they provide for councils to apply to the courts to ban retailers from selling tobacco. It is intended that this sanction will deter retailers from selling to under-18s, thereby making it harder for that age group to access tobacco products. Clauses 7 to 9 are very similar to those that appear in legislation enacted in England and Wales.
213. Clause 7 deals with restricted premises orders. It provides for a court to make a restricted premises order banning the sale of tobacco or cigarette papers on a premises if three or more relevant offences have been committed on that premises within a three-year period. The order has effect for a maximum period of one year. It applies when the offender has been in receipt of three fixed penalty notices, three convictions — that is, he has been prosecuted in court — or a mixture of both in relation to relevant tobacco offences. The ban also applies to any machines that may be held on the premises for the sale of cigarettes.
214. Clause 7 requires the council to notify each person who would be affected by the application for a restricted premises order and provides them with the opportunity to make representations to the court as to why the order should not be made. It also sets out the circumstances under which a court may change or discharge the restricted premises order. While a restricted premises order is in place, it is a statutory charge. That means that it is tied to the premises. Therefore, if the premises is sold while under a restricted premises order, the new owner will not be allowed to sell tobacco until the period of the order expires.
215. For the purposes of the Bill, a tobacco offence is defined as:
“an offence committed under Article 3 of the Health and Personal Social Services (Northern Ireland) Order 1978”.
216. That relates to selling tobacco to a person under the age of 18. It is also defined as:
“an offence committed under Article 4 of the Health and Personal Social Services (Northern Ireland) Order 1978”.
217. That relates to the sale of tobacco from a vending machine to a person under the age of 18. It is also defined as:
“an offence committed under Article 4A of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991”.

218. That relates to the sale of tobacco from a vending machine to anyone regardless of their age. A tobacco offence is also defined as an offence committed under clause 10 of the Bill in respect of any premises. I will go through the offences under clause 10 when we get to that stage.
219. We are aware that Committee members will be keen to see a conviction for selling illicit tobacco included as a relevant tobacco offence for the purposes of the Bill. Gerard mentioned in his opening presentation that we are looking into a ministerial amendment on that issue. If that is possible, we imagine that it will be included in this clause.
220. Clause 8 is on restricted sale orders and is very similar to clause 7. However, it differs in that it provides for a court to make a restricted sale order banning a particular individual from selling tobacco or having any management functions in relation to the sale of tobacco if the individual has committed three or more relevant offences within a three-year period. Sales may still be made from that premises as long as the person who is subject to a restricted sale order has no involvement with the sale of tobacco. The order has effect for a maximum period of one year. As with clause 7, the council can make an application for a restricted sale order if the offender has received three fixed penalty notices, three convictions or a mixture of both in relation to relevant tobacco offences.
221. Clause 9 is entitled, "Appeal against the making of an order under section 7 or 8". It provides for appeals to be made against a restricted sale order or a restricted premises order. An appeal can be made within 21 days of the order being made, and the order will not have effect until the 21-day period has expired or, if an appeal has been made, until the appeal has been determined or withdrawn.
222. That concludes that section. Does anybody have any questions?
223. **The Chairperson:** If there were two people in a shop and one was banned, does that mean that the other one can continue to sell but the one who is banned can continue to work in the shop but not sell tobacco?
224. **Ms McAlarney:** Yes. That person cannot have anything to do with the sale of tobacco.
225. **Mr Brady:** Jim had already saved £49,950 by the time we had gone through six clauses. Imagine what he will save when he is Minister.
226. The original proposal was that it would be three offences within two years, and the rationale for extending that to three years seems to be to give the councils time to organise their governance of that. Is that the rationale or is there any logic, or illogic, for changing it from two years to three years? Is it purely an administrative issue? I have not been a councillor. I am surrounded by ex-councillors and some current councillors who may be much more knowledgeable about the issues, but it seems that there has been a period in which councils have been given advance notice, in a sense. If there are to be 11 councils through RPA, there will be a whole new administrative system anyhow. I certainly welcome the proposals on illicit tobacco, because that is a big issue in my constituency, but I am wondering about the three offences in two years. Presumably, if you commit two offences in three years and go into a fourth year and commit another one, you are back into that cycle again. Or do you have to commit another two offences in the three years?
227. **Mr McMahon:** There is quite a lot of resource and logistics involved in councils organising test purchases, which is, realistically, the only way that they can test whether owners are taking on board the advice about the measures to put in place not to sell to underage people. The feedback from councils during the consultation was that it was unlikely that they would do more than one major exercise on that in a business year. So, to gather evidence for three

- offences within two years might mean that, in practical terms, no banning orders were ever sought simply because of the amount of time and resource involved in putting that together. They suggested that moving to three years would mean that it was more likely for a persistent offender to be caught within that period.
228. **Mr Brady:** If councils are geared up for that, are the logistics of organising it that complicated or complex? Presumably, they have a pattern for doing that, and there has been a lot of publicity, adverse or otherwise, because 15- and 16-year-olds have been sent into shops by the PSNI and other organisations to purchase cigarettes illegally, and the retailer has, presumably, been prosecuted. Are the logistics that complicated in that sense?
229. **Mr McMahon:** It is a fairly significant task, in the sense of recruiting the children to work with the officers and, in some cases, the training of the officers and the children involved. All the premises in the area in which the council is going to conduct the exercise are usually contacted about three months in advance by writing, and sometimes in person as well, to remind them of their responsibilities and to advise them that, at some stage within that time period, the council will be coming around and doing test purchase exercises. That is to make sure that the activity is entirely overt and transparent, so that the premises cannot use the excuse that they have been entrapped or duped into it by some sort of sting-type covert operation by the council. They are reminded in advance of what their responsibilities are and advised that, at some point, that sort of exercise will happen. That in itself builds in, usually, a two- or three-month timescale before it happens.
230. **Mr Brady:** There are tobacco control officers — you mentioned them in relation to the enforcement of the smoking ban. If they are trained and that is part of their job, does that not make it more realistic for them to do a cyclical thing?
231. **Mr McMahon:** It is, and they do. Generally speaking, it probably is the same officers who are involved in any given exercise. It depends, from council to council, on how easily or not they can recruit the children to help with it. Sometimes, it might be one child and two officers. Ideally, it would be two children, so that they have a bit of support, and three officers who are trained in different roles for the exercise, both for the child's welfare and gathering the evidence.
232. **Mr Brady:** Obviously that is a big issue, because the Minister is committed under the tobacco strategy to bringing the percentage of children who smoke down to about 3%. With the amalgamation of councils under RPA, will there not be more resources available for the officers who carry out those checks? We are going from 26 to 11.
233. **Mr McMahon:** Yes, there is a possibility that, with the reduction in the number of councils, more of the officers who specialise in that would be able to work together on such exercises.
234. **Mr Beggs:** I am quite concerned about what you said when you indicated that most councils carry out the exercise only once a year. Essentially, in order to get a conviction here, someone will have to have failed the only test that is there, three years in a row. They would have to have a 100% failure rate. I think that even some failure rate should warrant some degree of punishment. Did you consider three failures in four years or five years, so that there is a higher threshold? It would be virtually impossible for someone to be convicted, I would have thought. They would need to be deliberately selling to every child that is tested. Is that not a very high threshold if there is only an annual test?
235. **Mr McMahon:** I did mention an annual test; I do not think that I quite meant to say that. It is fair to say that the range of activity varies from council area to council area. Some do more than others, but, given the timescale involved in organising it, some councils may not engage in more than one such

- exercise per year. It varies, and some do more and are more proactive on it than others. In relation to the three years, as we said, the original proposal was for three offences within two years, which was in line with the rest of the UK. However, again, the feedback from councils was that they would like that to be extended to three years, and we responded to that.
236. **Mr Collins:** I think that the threshold is worth looking at. If it was three failures in four or five years, that would lower the threshold. For the sake of argument, if there were five inspections in five years and you failed three fifths of those, it is certainly a much lower threshold than failing 100% of the inspections.
237. **Mr Beggs:** If I picked it up right, you have indicated that the councils wanted it to be three in three years rather than three in two years. Did any council suggest three in four years or three in five years? That would actually raise the standards further.
238. **Ms McAlarney:** I do not think that that was suggested in the consultation. I think that, because England, Scotland and Wales had all gone for the two years, they looked at that and thought that it was too tight a time frame, so they mentioned three. As Gerard said, it is worth looking at extending that.
239. **Mr Beggs:** It all depends on how frequently you do the test purchases. That is the big factor.
240. **Ms McAlarney:** I think, though, that in a case where somebody had failed twice, the council would be, while not proactively trying to catch them, looking at that shop or premises with a view to carrying out further test purchasing exercises. Would you not agree?
241. **Mr Beggs:** I have a further question, on a different line but in the same area. You indicated that you are looking at bringing illicit tobacco sales offences into consideration. Will you be looking at the degree of illicit tobacco sales offences and how they can be compared? If someone has been caught with £1 million worth of cigarettes, surely that should be on a different scale from one young person having bought a packet of cigarettes? Will you ensure that the degree of the offence of illicit tobacco sales can be taken into consideration?
242. **Mr Collins:** We had not really thought about that. To be honest, someone who is caught with £1 million worth of cigarettes is probably unlikely to be a retailer.
243. **Mr Beggs:** At this time, he could be. He just has to pass his name and address to the local council. Is that not right?
244. **Mr Collins:** If Revenue and Customs intercept such a large consignment of illicit tobacco, it is likely to be part of organised criminal activity, as opposed to a local retailer having that in their store —
245. **Mr Beggs:** The point I am making, or trying to make, is that an individual who may be convicted of such offences could simply pass their name and address and become a local tobacco retailer. Is there anything in this legislation that would stop them doing that?
246. **Mr Collins:** Not in this legislation, as it stands.
247. **Mr Beggs:** Yes, there is nothing that would stop someone who has committed a very significant offence involving tobacco automatically becoming a retailer.
248. **Mr Collins:** No, but I would imagine that, if they are convicted of an offence under avoidance of tax or smuggling, they will receive a conviction under the relevant legislation that, for smuggling on that scale —
249. **Mr Beggs:** I would hope that they would be convicted, but I also would not wish them to become a tobacco retailer in the future. Do you not think it reasonable that the scale of any illicit tobacco offence should be taken into consideration in determining whether a person is suitable to become a tobacco retailer?

250. **Mr Collins:** We will have to go away and think about that. We had not given that any thought whatsoever, because it is not an issue that has arisen yet with this legislation.
251. **Mr Beggs:** OK. Thank you.
252. **Mr Wells:** So the entire legislation is based on the fact that, clearly, councils could not be bothered. Some 9% of the children in Northern Ireland under 16 are smokers; that is three times above the Government's stated target. Some 82% of those who take up smoking do so in their teenage years, and 2,300 of those people die agonising deaths, often at the end of a very short life, as a result of smoking. The entire basis of this policy is that councils could not be bothered to check every two years. In other words, they want a policy of "three strikes and you're out" after three years; in Scotland, England and Wales, it is "three strikes and you're out" after two. The basis of this is that the councils have written back to say that they do not want to be bothered to do it. Is that not right? Is that not why we are where we are today?
253. **Mr Collins:** Well, I would not say that the councils could not be bothered —
254. **Mr Wells:** That is what they have said to you. They do not want the bother of having to do it more often.
255. **Mr Collins:** They are saying that, given their resources and their ability to conduct large-scale test purchasing exercises, they would find difficulty in undertaking three such exercises within a two-year period.
256. **Mr Wells:** Or they do not want to, which is more likely. They do not want to. And now we have learned that they actually give the tobacco retailer three months' notice. Do Revenue and Customs do that when they are raiding a diesel laundering plant, for example?
257. **Mr Collins:** I would imagine not.
258. **Mr Wells:** No. We have a situation where a retailer is warned three months in advance that the council is coming. That is a big deterrent, I have to say. Clearly, they can clean up their act in that three months. So, the chances of them being caught are quite remote to start with, and now we are making it more difficult to catch them in this part of the United Kingdom than anywhere else. Where is the logic in that?
259. **Ms McAlarney:** The purpose of writing out to the retailer in advance is that we do not want them to sell to underage people. Therefore, you are giving them a chance to turn their behaviour around and not sell to underage people. If you did not write out, retailers would probably carry on doing that. If you write out, they are more likely to stop.
260. **Mr Wells:** Yes; they will stop for three months, and guess what they will do once those three months are up?
261. **Ms McAlarney:** As well as that, councils are concerned about accusations of entrapment.
262. **Mr McMahan:** Yes, there is another legislative consideration. If a council engages in anything that is considered to be remotely covert, it brings in the regulation of investigatory —
263. **Mr McDevitt:** Regulation of Investigatory Powers Act 2000 (RIPA).
264. **Mr McMahan:** — RIPA, and councils are into an entirely different ball game. Permission is required to carry out that work. They need authorisations to enable them to do that. By sending out warnings in advance, without giving a specific date on which the check might happen, councils are turning it into what is effectively an overt operation, and the requirements of the RIPA legislation do not kick in.
265. **Mr Wells:** We are told that they are written to and told that test purchasing will occur within three months. Obviously they will play ball for three months and then go back to their old ways. Why would they not? The chances of them getting another visit under what you are suggesting — based on the enthusiasm from the councils — is remote.

266. **The Chairperson:** Six years.
267. **Mr Wells:** Yes. Are we taking this seriously? Do we regard tobacco as a huge, wasted loss of life that kills half all its users and traps young people from an early age into being hooked on the product, or do we just regard the visits as an add-on to a council that it can do if it feels like it? How seriously are we taking the whole issue? It does not seem to be taken very seriously. The original proposal was three times in two years. The only reason that you are giving me for that change in policy is that the councils do not want to do it. That is the only reason. There is no other practical point. Councils in England, Scotland and Wales can do it quite easily, but our councils —
268. **Ms McAlarney:** Perhaps it is more of a practical issue. The legislation has been in place in England since 2009. There have been only three convictions since that time. That might lead you to think that they have not been able to get people within the two-year period.
269. **Mr Wells:** Or perhaps we need to make certain that our legislation is stronger than that in the rest of the UK because we regard this much more seriously. You need to introduce a suite of measures to try to bring down the number of young people who are getting hooked on the product. The Committee will need to look at anything that we can do to strengthen it and make the law better here than in the rest of the UK, rather than weaker. This is certainly weaker; there is no question about that.
270. There is reference made to vending machines. Has that been superseded by the fact that the vending machine legislation has gone through, and those are now technically illegal?
271. **Mr Collins:** There are certain types of machines that are used in shops in other jurisdictions because of the display ban. Some larger shops use machines that are covered so you cannot see the product. The shopkeeper operates that if somebody asks for 20 of whatever. It is not sales from vending machines that we —
272. **Ms McAlarney:** They are called retail vending machines.
273. **Mr Collins:** It is a different type. It is behind the counter in a shop.
274. **Mr Wells:** My understanding is that there is no set of circumstances in which you can use a vending machine anywhere in Northern Ireland.
275. **Mr Collins:** You cannot have a vending machine accessed by the public.
276. **Ms McAlarney:** We also wanted to include an offence in case there are people in a pub in God knows where which still has a vending machine, even though it should not have. If people are caught, we want that to count as an offence towards a banning order.
277. **Mr Wells:** Can they register the vending machine with their local council even though it is illegal?
278. **Ms McAlarney:** No. If they were registered for selling tobacco behind the bar or something, and then somebody found that they had a vending machine as well, they could —
279. **Mr Wells:** My understanding is that that legislation has been very successful. There have not been any examples of vending machines being used.
280. **Ms McAlarney:** It has.
281. **Mr Wells:** That shows you that, where there is a will, there is a way of clamping down on this.
282. **The Chairperson:** Can a vending machine not be behind the bar?
283. **Ms McAlarney:** Yes.
284. **The Chairperson:** Customers cannot get to it.
285. **Ms McAlarney:** Yes. You are right. It can be behind a bar.
286. **The Chairperson:** You need to be careful.

287. **Mr Wells:** But the customer cannot access the machine.
288. **Ms McAlarney:** Yes, that is right.
289. **The Chairperson:** It is quite useful at Committee Stage for you to have an idea of where the Committee is going with this. You need to take that on board as well. We do not want a battle when we are finalising the Bill. If there is any update on what you propose to do when we are scrutinising the legislation, you need to inform us at every opportunity.
290. **Mr McDevitt:** This is perhaps an opportunity to reflect on a couple of levels on the earlier debate around test purchasing. It is natural justice to warn people that test purchasing is going to happen, because it is not illegal to sell tobacco if you have a licence to sell it. Therefore, it is a different category from fuel laundering, for example. It is illegal to sell tobacco only in an illegal manner. While we are doing this, it may be worth our while to think about the way in which councils serve that notice and the period for which it is valid. Saying, by way of correspondence, that somebody may be subject to a test purchase in the next three months might give rise to some of the behaviour that Jim is concerned about, which includes the person complying for three months and then getting back to business. I would be happier if we set ourselves a tough statutory limit and then worked on the councils to figure out a test-purchasing regime that delivered within that tight statutory limit, rather than surrendering to resource implications or something, or perhaps a culture, or perhaps just the window of notice. I doubt that that is a statutory thing. I suspect that it is just policy or convention that you give them a window of time.
291. I was curious to ask you about clauses 7 and 8, and the period for which an order may last. On both occasions, you say that the period may not exceed one year. Basically, the maximum time that either someone or a premises will be out of business is one calendar year. Is that just because that is the way that it has been done elsewhere, or is there another reason for that?
292. **Ms McAlarney:** It was more based on the rest of the UK to keep a standardised approach. In the South of Ireland, the maximum period is only 90 days. From speaking to the Office of Tobacco Control, I know that it has serious problems with magistrates giving anything nearly as long as 90 days. There have been banning orders for one day or one week. Three weeks is the longest that the office has managed to get a magistrate to give so far.
293. **Mr McDevitt:** In the Republic?
294. **Ms McAlarney:** Yes. So we thought that one year was probably reasonable.
295. **Mr McDevitt:** On the individual restricted sale orders or the orders that apply to the human being, I guess that one year might be pretty punitive for your career, if your career is in retail. Considering that, when you look at the premises, the whole point is that it sticks with the premises even if someone tries to flip it or sell it on to avoid the order. A year is not a long time. In the lifetime of a business, it is something that you could weather very easily.
296. **Mr Collins:** I am not sure. From the feedback that we got when we consulted on the display ban regulations, a lot of the retailers were very emphatic that they were largely dependent on the tobacco trade footfall that came through their door. They do not make a lot of money on their tobacco sales; rather, it is what the customers who purchase tobacco also buy. Given the feedback from the retailers on that consultation, I would have said that a ban for a year would be quite significant for any retailer who relies a lot on cigarette purchases.
297. **Mr McDevitt:** It is interesting that you should bring that up. How long has the display ban legislation been in force?
298. **Ms McAlarney:** Since the end of October for large shops.

299. **Mr McDevitt:** Have we evidence of any large shops going out of business?
300. **Mr Collins:** No.
301. **Mr McDevitt:** From memory, I think that all the large retailers have published increased sales in the last quarter.
302. **Ms McAlarney:** Tobacco sales are not as much of a consideration for supermarkets or larger shops anyway.
303. **Mr McDevitt:** I am talking about general turnover. I am not aware that it has had any impact on turnover. The retailers will say that, will they not?
304. **Mr Collins:** Of course, yes, but it seemed to be a very significant issue for them. Removing even the display of tobacco, let alone the right to sell tobacco, was seen as being quite a punitive measure.
305. **Mr McDevitt:** When would we expect to see some robust data as to what impact, if any, this has had on the independent retail sector, never mind the multiples?
306. **Mr Collins:** Sorry, the impact of the display ban?
307. **Mr McDevitt:** Yes.
308. **Mr Collins:** We would be talking about two to three years. It would be three years down the line, I think, before we got reasonable data.
309. **Mr McDevitt:** In the context of the legislation, could we, for now, think of making the provision subject to review? If it has been demonstrated that it has no impact, as I believe it probably will, then there is no reason to stick with the one-year penalty on a premises. It would be done by simply making provision by way of regulation for that to be reviewed from time to time. I accept that a one-year penalty against an individual is severe. However, against a business, it just does not feel equitable. It seems to me that you should be harder on the business than you would be on the individual. Paula may disagree.
310. **Ms P Bradley:** May I just come in there? I make a declaration of interest as a smoker.
311. That is why you go into certain shops. You are perfectly right; it is not the cigarettes, as shops make so little on the cigarettes. It is everything else that you buy when you walk in. A year is a long time.
312. **Ms McAlarney:** Even if we extend it to two years, I think that there would be very few magistrates who would issue a penalty of anywhere near that. From what we are seeing in other places, and in England as well —
313. **The Chairperson:** But you do not know.
314. **Ms McAlarney:** You do not know, but experience shows that, so far, in England, the longest ban out of the three has been a month.
315. **The Chairperson:** Yes, but we also have devolved government here, and we are in control of justice. There is stuff happening, so you do not know.
316. **Mr McDevitt:** This is the stage at which to think about all these things. Is there a case for us making clause 7(6) read “for a period not less than and not in excess of”? When we are down at Magistrates’ Court level, we are talking about pretty junior members of the judiciary. If there is an issue with junior members of the judiciary issuing pithy orders, we as legislators could form a view that we want a minimum period to apply.
317. **The Chairperson:** You need to pick your battles, and sometimes you need to consider whether you want to get involved on some of this stuff. That is to the Department, not to Committee members.
318. **Mr McDevitt:** Anyway, that is just my view.
319. **Mr Collins:** It is a good point. After three years, when we evaluate the impact of the policy, will it be considered good policy if there has not been much of an impact? I do not know whether there will have been that many one-year bans in

- that period anyway, but it is good policy to evaluate and leave yourself future-proofed by leaving it open to review.
320. **Mr McDevitt:** To finish, Gerard, let us say that, after three years, it turns that all the people who used to go in to buy tobacco still do so. If that is the case, the change in display regulations will not have had the impact on convenience stores that it is expected to have. Shops will still be turning over, and there will not have been a whole load of independent small retailers that have gone out of business. Then, the argument on which this is based holds less water than it does today, when we simply do not know.
321. **Mr Collins:** Our aim is not to put small retailers out of business.
322. **Mr McDevitt:** Absolutely not. No one's is.
323. **Mr Collins:** Our aim is to reduce the prevalence of smoking.
324. **Mr McDevitt:** I am challenging what I think is a myth that, if you restrict the sale of tobacco, you will put people out of business. I do not believe that you will. I think that they will remain in business, legitimately, selling tobacco.
325. **Ms McAlarney:** We will not know about smaller shops for a while, because the display ban does not come in for small shops until April 2015. Obviously, you will need to wait for a period after that to see the impact. With a display ban, people can still buy cigarettes, so it is different from banning cigarettes and not having them for sale at all.
326. **Mr McDevitt:** Of course, but you will get banned only if you screw up three times in a period. You are not getting banned for the craic but because you have broken the law on numerous occasions.
327. **The Chairperson:** In Scotland, do shops display that they have been banned?
328. **Ms McAlarney:** The display ban was introduced in Scotland in April this year.
329. **The Chairperson:** Are premises that have been served with a restricted premises order required to display that they have been?
330. **Ms McAlarney:** We do not have anything to that effect in this legislation. We talked about that, but we decided against including something that said that they had to put up a notice displaying a banning order. In the Scottish legislation, there is a requirement to display it.
331. **The Chairperson:** Why did you come with that?
332. **Mr Wells:** Because the councils did not want it.
333. **Ms McAlarney:** No. We could easily fit that in. It was felt more that, if you were in a shop that did not have any tobacco, the reason would be obvious without there being the need for a sign saying that the shop was banned from selling it.
334. **The Chairperson:** Take the example of a couple who own a shop. It is normally the man who does things wrong, so if he were banned —
335. **Mr Beggs:** Sexist remark.
336. **The Chairperson:** Of course it is, but it is true. If he were banned and the wife were not, would there be a sign to say that he had been punished?
337. **Ms McAlarney:** No, I do not think that they have that in Scotland either.
338. **The Chairperson:** If Scotland has a sign saying that the premises has been fined, or whatever, what made you not think of doing what Scotland is doing and perhaps taking it a bit further? If the shop is still allowed to sell, but one person is not and the other person is, there is no real punishment as such.
339. **Mr Collins:** Again, the only punishment is if one of the tobacco control officers goes into that shop and observes the person who is banned making a sale.
340. **The Chairperson:** I appreciate that, Gerard. However, if I, for example, owned a shop with my partner, and my partner had been banned from selling tobacco,

- there would be no punishment because two of us own the shop. You are not allowed to sell tobacco for a year, but if you are only doing —
341. **Ms McAlarney:** I do not think that it would happen in that case.
342. **Mr Collins:** I know what you mean.
343. **Ms McAlarney:** It would be more in the case of a young member of staff who had already been trained in the shop but perhaps continues to sell or who had already received a fixed penalty notice in a different shop before working in that shop. In that case, you cannot really punish the manager or owner of the shop if it can be proved that due diligence was applied in training that person, by saying, “Look, you know that this is the law,” and, therefore, everything possible was done to stop that person selling.
344. **The Chairperson:** But what if two people own it?
345. **Ms McAlarney:** If they own it, that is different. There is a clause on bodies corporate that states that if you are a partner in a business and if it can be proven that you consented or complied —
346. **The Chairperson:** Sorry, what if the husband owns it and the wife just works there?
347. **Ms McAlarney:** Do you mean if the wife committed the offence as opposed to the husband who owns it?
348. **The Chairperson:** Yes.
349. **Ms McAlarney:** In that case, unless you can actively prove that the person who owns the shop has done everything possible to try to prevent the sale, that person would be banned.
350. **Mr Collins:** I know of no legislation under which a person who is convicted of whatever offence has to display a sign saying, “I cannot do x, y or z”. I am sure that there would be issues there around personal rights and whatnot.
351. **The Chairperson:** Is it not the case that premises served with a restricted premises order in Scotland are required to display a sign?
352. **Mr Collins:** On the premises, yes. We did not go for that because we thought that going to hand out notices and making sure that they are up would add another piece of bureaucracy.
353. **Mr Wells:** A deterrent — we could not have that.
354. **Mr Collins:** Not entirely. We thought that it would be obvious. If somebody sees no cigarettes for sale in a shop and, on asking for cigarettes, is told, “Sorry, we are not allowed to sell cigarettes”, that message comes across.
355. **Mr Wells:** Would it not send shockwaves around other retailers if such a sign had to go up? Can you imagine the ignominy and the embarrassment of having that? That would send out a very clear signal that society just will not tolerate this happening. It is a sign on a shop window, remember.
356. **Mr McDevitt:** Chair, may I make a point on that? If it turns out that the courts are lenient — even if an order of up to a year is allowed under statute, let us say that the courts never give orders beyond two or three weeks, or, occasionally, a couple of months — there is an argument for notification, because you want that brief period of exclusion from sale and the market to have the desired impact on the store and its customers base. If it is for a whole year, I think that Gerard’s argument holds up, because people will get the message that the shop is basically out of business for the sale of tobacco. However, if, as you expect, the courts make more reasonable orders from a legal perspective, I think that there is a case for signage.
357. **The Chairperson:** Putting to one side respectable, proactive, responsible shopkeepers — there are a lot of them out there — if there are not restricted premises orders, like the ones used in Scotland, only those who are looking to buy tobacco will know that they cannot

- get it because there has been an order made.
358. **Mr Collins:** That is right.
359. **The Chairperson:** But if other people in the shop who are not buying tobacco see the sign, they may say, “I am not shopping here because that person was not responsible”, and that is their added punishment.
360. **Ms McAlarney:** It would be easy enough to put something in.
361. **The Chairperson:** I like your style, Jenny — “easy enough” to do it. Then why are we not doing it?
362. **Mr Collins:** It was not a big issue. We were trying to reduce any sort of administration.
363. **The Chairperson:** We will leave it at that. It is easy enough to do.
364. **Mr Collins:** May I make one final point on inspections within two years and three offences in two years? The legislation could certainly provide for three inspections within two years, but if councils were not able to do three inspections in that period, it would be counterproductive, and you would get fewer banning orders.
365. **Mr Wells:** Then require them to do regular inspections.
366. **Ms McAlarney:** Every six months.
367. **Mr Collins:** You would have to accompany that with a requirement on councils to inspect three times in two years. That is one option. The other option is three convictions in five years, which is a lower threshold.
368. **The Chairperson:** Then perhaps councils would become relevant to communities, because they would be being proactive.
369. **Mr Beggs:** We need to be careful that we do not put a lot of bureaucracy in place. The vast majority of retailers will be straight and will do it right. They do not need to be inspected every three or six months as long as those who need to be concentrated on are inspected regularly. Therefore, we need to be careful that we do not regulate for people walking in and carrying out unnecessary duties. It is burdensome on the retailer and on councils. However, we want to ensure that there is an appropriate level of scrutiny where it is needed.
370. **The Chairperson:** OK. Jenny, do you want to take us through the next clause? We are only on clause 10.
371. **Ms McAlarney:** There is only clause 10 under the heading of “Offences”. The clause covers all the new tobacco offences that will be created as a result of the Bill. As I mentioned earlier, offences under the clause can count as one of three relevant tobacco offences that could lead to a restricted sale or premises order. Offences relate to both the register and breaching a restricted premises or sale order. The different levels of penalties for offences are set out.
372. These are the offences that are created under clause 10. The first is carrying on a tobacco business without being registered. Then, there is carrying on a tobacco business at a premises other than that which is noted in the person’s entry in the register. A person who is found guilty of either of those offences is liable to a fine of up to £5,000. Failure to notify of changes to the register is an offence with an associated penalty on conviction of up to £1,000. The selling of tobacco in contravention of a restricted sale or premises order is an offence that is liable on summary conviction to a fine not exceeding £20,000.
373. **The Chairperson:** OK. Are there any questions on that?
374. **Mr McDevitt:** This is an observation, rather than a question, particularly about the fine. We know what the maximum fine will be. However, the Bill leaves it entirely open to the judiciary to dispose of people, if they wish, with a nominal fine. The question is whether we think that that sends out a strong enough signal.

375. **The Chairperson:** OK. We will leave that there. We will talk about it.
376. **Mr Wells:** Can I get an explanation of subsection (2), which states:
“A person is not required under subsection (1) to answer any question or to produce any item mentioned in subsection (1)(c)(i) which the person would be entitled to refuse to answer or produce in or for the purpose of proceedings in a court in Northern Ireland.”
377. What is that doing to help council officers to pursue a prosecution?
378. **The Chairperson:** Is that clause 12, Jim? We are still on clause 10.
379. **Mr Wells:** We are still on clause 10? Well, you have had warning of what is coming. *[Laughter.]*
380. **The Chairperson:** OK. We will move on to clause 11.
381. **Ms McAlarney:** The heading of “Enforcement powers, etc.” covers seven clauses and relates to the enforcement of the provisions in the Bill, including powers of entry for authorised officers. The enforcement powers are relatively standard and are similar to those that you would see in comparable legislation, such as the Smoking (Northern Ireland) Order 2006 or the Sunbeds Act (Northern Ireland) 2011. The clauses under that heading also outline fixed penalty notices for certain offences and deal with the obstruction of enforcement officers and offences by corporate bodies.
382. Clause 11 deals with enforcement by councils. The clause simply places a duty on a council to enforce the provisions of the Bill in its own district.
383. Clause 12 deals with powers of entry. It provides for authorised officers, which are defined in clause 22, to have powers of entry for the purpose of enforcing the provisions in the Bill. The powers do not extend to private houses. Through the clause, officers are entitled to remove documents and records. They can require other people to provide them with information and assistance as they believe necessary. They can also apply for a warrant to gain admittance to a property.
384. Clause 13 deals with fixed penalties for certain offences. The clause provides for the issuance of fixed penalty notices to a person if an authorised officer believes that the person has committed any of the following three offences: carrying on a tobacco business without being registered; carrying on a tobacco business at a premises other than that which is noted in the person’s entry in the register; or failing to notify of changes to the register. When the fixed penalty notice has been paid, any liability to conviction for that offence is discharged. The clause sets out the information that a fixed penalty notice is required to contain, including information on the amount that is payable, the deadline for payment and a discount of 25% for early payment. Two regulation-making powers are contained in the clause. The first allows the Department to make regulations detailing the form of a fixed penalty notice. The second allows the Department to specify the amount of the fixed penalty notice. It is currently anticipated that the levels will vary from £50 to £200, according to the offence in question.
385. Clause 14 deals with the use of fixed penalty receipts. It requires that the council may use payments that are received from fixed penalty notices only for the purposes of its functions under the Bill; that is, for action on underage tobacco sales. It also places a duty on councils to provide the Department with information on the use of payments if required. Two regulation-making powers are contained in the clause. The first allows the Department to specify the functions for which payments that are received from fixed penalty notices should be used. The second power allows the Department to make provision for what the councils do with payments, either before they are used for functions under the Bill or, if they are not used for such functions, within a specified time. It also makes provisions for accounting arrangements for the council’s fixed penalty receipts. All the

- clauses relating to fixed penalty notices are fairly standard and can be found in similar pieces of legislation, such as the Smoking (Northern Ireland) Order 2006.
386. Clause 15 deals with withdrawal of fixed penalty notices. The clause provides for a council to withdraw a fixed penalty notice if it decides that it ought not to have been given.
387. Clause 16 deals with obstruction, and so on, of authorised officers. Again, that is a fairly standard clause, which provides that anyone who intentionally instructs an authorised officer from carrying out his functions under the Bill commits an offence. It also states that failure to comply with the requirements or giving false information is an offence. A person found guilty of either offence can be fined up to £1,000.
388. Clause 17 deals with offences by bodies corporate. It provides that if an offence under the Bill is committed either with the consent of or due to the neglect of a partner of a body corporate, that partner, as well as the partnership, is guilty of the offence.
389. **Mr Wells:** I will go back again subsection (2), which seems to provide an escape route to those who are selling tobacco products. What does the subsection mean? It basically states that he or she is not required to answer any question or produce any item.
390. **The Chairperson:** What clause is that?
391. **Mr Wells:** Clause 12(2).
392. **Mr Collins:** I think that that is fairly standard in all legislation relating to powers of entry. A right not to reveal evidence is probably in keeping with other legislation.
393. **Ms McAlarney:** Human rights.
394. **Mr Collins:** That is why it states:
“for the purpose of proceedings in a court in Northern Ireland.”
395. However, if a person refused to answer those questions or produce the relevant books, that would then go against them when it came to the council’s decision on whether to apply a fixed penalty notice.
396. **Mr Wells:** What if he either refuses to say who sold the cigarettes or cannot remember who sold them? What would the council officer do in those circumstances?
397. **Mr Collins:** It is done through test purchasing. That is the normal way. Therefore, the council officer would identify the person who made the sale to the underage person.
398. **Mr Wells:** But what if the person who owns the shop refused to identify that person? It looks as though he does not have to under the legislation.
399. **Mr Collins:** No, but the tobacco control officer will have identified that person.
400. **Mr Wells:** But how will the officer know who the person is?
401. **Mr Collins:** The officer will be there observing the test purchase.
402. **Mr Wells:** Yes, but if the member of staff in charge of the shop says, “I am not telling you who that is”, what would happen?
403. **Mr McDevitt:** That is covered in 1 clause 2(1).
404. **Mr Wells:** He is under no obligation under clause 12(2) to say anything.
405. **Mr McDevitt:** No, that is not what it says, Jim. It says that he is under no obligation to say something that he would not have to say in a court of law. In other words, if it were my shop and they asked me for all my ledgers on the sale of tobacco and all that sort of stuff, and then they asked for a copy of my bank account statement, I could say that my personal bank account statement was immaterial to this and that they could not have a copy. I can refuse to produce that, but I cannot refuse to produce something that I would be reasonably expected to produce in a court of law.

406. **The Chairperson:** What we will do is get that checked by our legal people. That is not to say that I do not trust you, Mr McDevitt, but —
407. **Mr McDevitt:** I am glad to hear that. The First Minister did not trust us all yesterday, remember?
408. **The Chairperson:** We will get that checked with our legal people. Are there any other comments on those clauses?
409. **Ms McAlarney:** The next heading is “Supplementary” and covers three clauses. The clauses provide for an amendment to be made to the Health and Personal Social Services (Northern Ireland) Order 1978, an amendment to the Land Registration Act (Northern Ireland) 1970 and a regulation-making power for the application of the legislation for vehicles, vessels, and so on.
410. Clause 18 deals with the amendment to the 1978 order, which includes provisions that make it an offence to sell tobacco products to persons under the age of 18. We were amending the 1978 order to provide for the issuing of fixed penalty notices for underage sales offences, so it was felt that it was an appropriate time to bring the enforcement powers up to date with those in similar pieces of legislation, such as the Smoking (Northern Ireland) Order 2006. The provisions in clause 18 on powers of entry, fixed penalty notices, obstruction of officers and offences by bodies corporate are almost identical to those contained in clauses 12 to 17, so I will not repeat the detail.
411. Clause 19 deals with statutory charges. The clause amends the 1970 Act to allow a restricted premises order, while it has effect, to be recorded as a statutory charge. That is to ensure that a person who is subject to such an order does not try to transfer ownership of the business to, for example, a relative for the duration of the order.
412. Clause 20 deals with vehicles, vessels, and so on. It provides for a power allowing for regulations to be made to modify the final Act on how it applies to vehicles, vessels, and so on. At present, the Department believes that the provisions meet the main policy objective of preventing underage sales. However, that power will enable the Department to respond to any unforeseen circumstances that may necessitate change in its application to vehicles, vessels, stalls or movable structures. A similar provision was included in the Scottish legislation.
413. **The Chairperson:** Any questions, comments or input? No. OK.
414. **Ms McAlarney:** The last heading is “General” and consists of six clauses making provision in respect of the delivery of notices in electronic form, the interpretation of the Bill and information on subordinate legislation. It also sets out the title and commencement dates.
415. Clause 21 relates to the serving of electronic notices and provides that relevant notices may be delivered electronically by councils rather than by hand or post; that can be done only with the agreement of the recipients. The relevant notices for the purposes of the Bill are in relation to the register and are mainly to do with the provision of information or notification of changes to information. Two regulation-making powers are included in the clause: the first provides the Department with a discretionary power to amend the circumstances under which an electronic notice may be served; the second allows the Department to amend the day and time by which an electronic notice is deemed to have been delivered.
416. Clause 22 (Interpretation) defines a number of terms used in the Bill.
417. Clause 23 (Transitional provision) ensures that specified clauses do not apply where any of the offences mentioned in them were committed before the clauses were commenced.
418. Clause 24 (Regulations and orders) sets out the procedures for making regulations under the Bill. Most of the regulation-making powers in the Bill are subject to negative resolution procedure. However, any powers concerned with charging or fees, or of such significant

- concern as to require debate in the Assembly, will be subject to draft affirmative resolution procedure.
419. Clause 25 (Commencement) provides that all the clauses, with the exception of clauses 22, 24 and 26 will come into operation on the day or days appointed by the Department.
420. Clause 26 (Short title) specifies the title of the Bill.
421. **Mr Beggs:** Clause 24 (2) defines how regulations altering, for instance, fees, must have a draft regulation placed and approved by the Assembly. That allows the future-proofing of the legislation to a degree. Going back to the issue of appropriate sentences and whether sufficient deterrents are handed out, would it not be better to future-proof against that also, by having something in the primary legislation that defines a review? If we find that the judiciary awards one-week bans when there is a maximum of one year, that would provide a mechanism for giving greater direction to the judiciary without having to go back to primary legislation, so that stiffer sentences and a stronger message could be sent out.
422. **Ms McAlarney:** We will look into that.
423. **Mr Collins:** We can put in something along the lines of: this provision will be subject to review after 12 months.
424. **Mr McDevitt:** And the fine levels. They are the two aspects.
425. **The Chairperson:** That covers that part of the legislation. Thank you very much. A number of issues have come up, and I would appreciate it, if you are looking at making changes, you took on board the Committee's comments. Let us know at the earliest opportunity.
426. **Mr Collins:** Thank you, Chair. We will have to speak again with the legal advisers, to district councils and to our colleagues in other jurisdictions on the issues that have been raised.
427. **The Chairperson:** The reason I ask you to keep us up to date is that, based on the conversation, you do not want us to be trying to do stuff when you could be coming back and saying "Listen, we are taking on board the comments, and we will make suggested changes." It is so that we are working together on this.
428. **Mr Collins:** Certainly. We will provide a formal briefing for the Committee as soon as we know.
429. **The Chairperson:** Thank you.

22 May 2013

Members present for all or part of the proceedings:

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

Witnesses:

Ms Patricia Allen	<i>Chief Environmental Health Officers Group</i>
Mr Sean Martin	<i>Chief Environmental Health Officers Group</i>
Ms Jenny Palmer	<i>Northern Ireland Local Government Association</i>
Mrs Karen Smyth	<i>Northern Ireland Local Government Association</i>

430. **The Chairperson:** Thanks very much for coming to the Committee. Jenny, are you heading this up? I will let you introduce your team and hand it over for a presentation. Afterwards, we will open it up for questions and comments from members. Thank you very much for coming in front of us today.

431. **Ms Jenny Palmer (Northern Ireland Local Government Association):** Thank you, Chairman. I will make the introductions. Sean Martin and Patricia Allen are the technical officers who are present. Karen Smyth is representing the Northern Ireland Local Government Association (NILGA). I am the vice-chair of the environment committee in NILGA. I thank you and the Committee for allowing us to give evidence from local government on the issue, which we take very seriously.

432. Councils have a keen interest in protecting and enhancing the health and well-being of their citizens. We have worked in an integrated way at local level for many years to develop leisure, play and sporting facilities to encourage the public to lead healthy lifestyles, while actively promoting

health messages to encourage healthy eating and smoking cessation. We hope that our partnership relationship with the Department, developed through Investing for Health, can be further enhanced through the implementation of the recently published Fit and Well strategy, making best use of the new community planning powers that will come to councils under the reform of local government legislation. Our officers have been actively involved in tobacco control work for some years, including participation in developing the tobacco control strategy; enforcement of smoke-free legislation, of course; and reduction of illegal sales of cigarettes to children. NILGA welcomes the strengthening of legislation to assist councils in that area of work. We are here, hopefully, in an advisory capacity to offer you the assistance that you require in bringing about the Bill. As such, if you do not mind, Chairperson, I will hand over to our two technical experts to deal with the clauses.

433. **The Chairperson:** To confuse us even more?

434. **Ms Palmer:** Yes. *[Laughter.]* Thank you, Chair.

435. **Ms Patricia Allen (Chief Environmental Health Officers Group):** Chair and members, on behalf of the Chief Environmental Health Officers Group (CEHOG), my colleague and I welcome the additional powers that are introduced by the Tobacco Retailers Bill. Thank you for providing us with the opportunity to give evidence. Strong legislation that is backed up by tough sanctions sends clear messages, to tobacco retailers and regulators, that underage sales of tobacco are unacceptable.

436. We estimate that there are 2,500 premises in Northern Ireland that sell tobacco. Data that was collected between 2008 and 2012 shows that

- councils test purchased at, on average, 18% of tobacco businesses each year. That is only one aspect of the enforcement approach that we take. Annually, councils also visit, on average, 52% of tobacco businesses and correspond with at least 69% of those businesses in connection with their tobacco responsibilities. Over time, that level of activity has delivered a reduction in underage sales. However, we know that the further improvement that we want is not guaranteed. In that regard, we are encouraged that the Tobacco Retailers Bill will enable us to improve the efficiency of our enforcement processes; target our tobacco control resources more effectively; and, ultimately, allow us to work with retailers to restrict the sales of tobacco to persons under 18 years of age.
437. I will now ask my colleague to take you through the Bill's clauses.
438. **Mr Sean Martin (Chief Environmental Health Officers Group):** If you are happy enough, Chair, I will start working my way through the clauses that we have commented on.
439. I will start by commenting on clause 1, which deals with the register of tobacco retailers. Broadly speaking, CEHOG's view is that councils are the bodies that, in the main, are responsible for tobacco control functions and for dealing with underage sales of tobacco. As such, we believe that it is appropriate that they hold the register. We have registers for other things, such as food control. We register food businesses, cosmetic services, pollution prevention and control permits, and dog licences. The actual process of putting a register in place and registering businesses would not be difficult for councils. They would be able to do that in a cost-effective way.
440. If the Committee were of the view that it would be advantageous to have a central point of information, there could be a duty placed on councils to share that with a central body, rather than, perhaps, setting up a central body as being responsible for the register. Another possibility, even without a requirement,
- is if one council was prepared to accept the information from others and host it on their behalf. If there were a feeling that there was a need to centralise the information and that that would be useful, there are a number of different ways in which it could be done, but councils are probably the right bodies to hold the initial registration. It is a fairly common function for them, and something that they would be able to do fairly easily.
441. Clause 2 deals with the application for registration. We have a comment about the wording. It states that a person "may apply to the council". Given that it is, obviously, an offence not to register, we thought that the wording should be slightly stronger and say "shall" or "must". That is the terminology that is generally used for a legal requirement to register. Clause 2(1) currently reads:
- "at which the person proposes to carry on a tobacco business".*
442. We thought that, for clarity's sake, it should perhaps say: "at which the person carries on or proposes to carry on a tobacco business". That is just for the sake of clarifying that it applies to those businesses that are already operating when it comes into force.
443. With regard to clause 2(2)(a), it looks as though the registration process requires people to register themselves and then to register businesses that they operate; that is, to provide the names and addresses of those businesses. Yet, there also seems to be a requirement for the person to notify an address. Our question is whether that is, indeed, a business address or a personal address. Given the fact that the register is available, if it were a personal address, should that not be removed from the register before that information is made public? We have a question mark over what the intention is there. Our experience is that, certainly for food businesses, it is business addresses that are registered, and there is very little personal or private address information on the register. It is something that we will certainly

- seek clarification on, as well as on the implications of it. Again, the requirement to register is that of a person. What that means for companies, and so on, is that, in law, “a person” has a legal definition, and a company is a person. I think that is how it is intended to apply, but we will just seek some clarity on that and how it applies to companies.
444. We have a comment to make on whether the Committee felt it would be beneficial, through the registration process, to seek a person registering to provide details of their supply relationship and who supplies their tobacco products, and whether that would be of any benefit to another agency in the illicit sale of tobacco. We have not fully worked through the detail, but the Committee might want to consider whether that would be of any benefit.
445. Clause 3, on the duty to notify changes, is fairly straightforward. The only comment we will make on that is that three months seems an awfully long period of time to have to notify the changes listed in 3(1). If we want an accurate and up-to-date register, it seems rather a long period. Perhaps a 28-day period would, therefore, be more appropriate for the changes that are listed to be notified to the council. There are requirements on councils to maintain the register, and it says that they should do things forthwith and in a speedy fashion, yet we have a clause there that allows someone to have three months to notify changes in their business details.
446. In relation to clause 4, on changes to and removal from the register, there is a requirement on the council to remove premises from the register that are subject to a restricted premises order, yet there does not appear to be a similar provision anywhere in the Bill in relation to a person who has been subjected to a restricted sales order. Given that the registration process appears to register a person and then the businesses from which they trade, it would seem appropriate that there is a similar provision that puts a duty on councils to remove any person issued with a restricted sales order from the register, and for the council that obtains that to notify the other councils that are maintaining registers so that that information is removed from the register. That would be quite important to make the whole restricted sales order and restricted premises order process work effectively, so that the registers are up to date and reflect any orders that the court has made.
447. On clause 5, I just reiterate the comments that I made earlier — that if someone did register a private address, there would be a need to ensure that that information was removed from the register before it would be made available to the public. As I said, we would normally do things like that for most of the registers that we maintain, but, again, there is a question around what the registration requirement is for the person. What are they expected to register?
448. We have no particular issue with clause 6 on the requirement to share information. However — and clause 6 may not be the appropriate place for this — an additional requirement placed on enforcement agencies to share information on fixed penalty notices or convictions would perhaps make the system work more appropriately. If the Committee makes any recommendations on illicit tobacco and whether offences in relation to that are relevant offences, it would be quite important for a council to know that in determining whether three offences have been committed within the three-year period. One of the things that could be looked at is whether there should be a proactive duty on those agencies, councils and HMRC to share information on the relevant offences so that all agencies are aware whenever that third offence has happened and, therefore, when an application for a restricted premises order or restricted sales order can be made. A requirement of that nature would make the process work much more effectively.

449. I will deal with clauses 7 and 8 together. Those are at the heart of the Bill in the additional powers that are being granted to councils to make the application to the court. I reiterate the comments that I made earlier: on the issue of a restricted premises order, there seems to be a requirement that the premises is removed from the register, yet there does not seem to be a requirement for the person to be removed from the register where a restricted sales order has been issued by the court. Again, to make the whole process of applying for the order work effectively, there is the need for that sharing of information between agencies to ensure that the council is aware of all the relevant offences. As we read it, the three offences do not have to happen in any particular council area, so, again, there is a need for that information to be shared. If my council takes a prosecution and it is successful, we would share that information with the other enforcement agencies. That will make the process much more robust.
450. On the length of time, it may be appropriate in some cases that the maximum period is more than 12 months. Obviously, that is at the discretion of the court. The Bill, as it stands, says that the maximum period for either a restricted premises order or a restricted sales order is 12 months. Should that be a longer period, based on the evidence that councils submit to the courts? We thought that perhaps a longer period, perhaps up to a maximum of three years, would be appropriate.
451. One other thing that we thought might be considered is whether premises subject to a restricted premises order should be required to display a notice on the premises, saying that they are subject to a restricted premises order for the sale of tobacco from the date of x and to the date that that expires. Again, that makes it very clear what has happened.
452. Again, we would welcome an inclusion in the Bill of a requirement for those premises subject to a restricted premises order to remove tobacco from the premises for the period of that order. That would prevent any inadvertent breach of that order and certainly would aid the enforcement from our point of view, because if there was an order issued, all we would need to check is that the premises does not have tobacco. Otherwise, to prove a breach of the order, we would have to see a sale of tobacco taking place and be able to produce the evidence of that. So, it would be useful if a clause was inserted that requires the removal of the tobacco from the premises during the period in which the restricted premises order applies.
453. Again, with regard to the offences under clause 10, if there are new offences inserted by virtue of some of the comments, like the requirement to remove tobacco from the premises, there just needs to be corresponding offences inserted in clause 10 and subsequent fixed penalty powers in clause 13. In the main, the offences as listed are appropriate.
454. The powers of entry are somewhat similar to those in most pieces of legislation that we have to deal with. Clause 12 sets those out. We have a question around the effect of clause 12(2), which is something that the Committee discussed last week. We are unclear as to exactly what it means, but our concern is that it is not a restriction of the powers that are given in clause 12(1) and does not hamper us in what we have to do. It is not something that we have seen in similar legislation, so we query what the clause actually means and what the effect on the powers in clause 12(1) will be.
455. Clause 15 deals with the withdrawal of fixed penalty notices. It is appropriate for any person given a fixed penalty notice to be able to make representation in relation to that and for the council to consider that. However, the clause should be much clearer in that that representation should be made within the 28 days, which is the period for the payment of the notice. It should not be permitted for persons to make representation when the notice has

- expired. If someone wishes to make a representation, that should happen within the 28-day period. The council will then obviously set that period aside with regard to the notice and deal with any representations. If it decides to withdraw the notice, that is fine, and if it upholds it, it would give the person a subsequent period to make payment of the notice if they wish to do so. Greater clarity is needed in the clause that restricts the time period so that we do not get a situation further down the line where someone who has paid a fixed penalty or is in the mouth of a court for the offence then decides to make representation. That would make the enforcement process much more difficult from our point of view.
456. Clause 16 deals with the obstruction of authorised officers. We have no particular issues with the detail of the clause, just the penalty. We believe that the obstruction of an officer is a very serious offence and that perhaps a level 5 penalty would be more appropriate. Preventing officers from doing their job needs to be viewed seriously.
457. On clause 18, we felt that perhaps the insertion of a fixed penalty provision for the offence under clause 4(a) of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 might be beneficial given that this is a relevant tobacco offence for the purposes of the restricted sales order; that is the offence of supplying from a vending machine. The inclusion of a fixed penalty offence for that might be beneficial.
458. Not directly related to any of the clauses, and something for the Committee to consider, is whether it believes that the current penalty for underage sales — a level 4 penalty is the maximum fine that is available for selling tobacco to a person under the age of 18, which is £2,500 — is an appropriate penalty for that offence. That was obviously set back in the Health and Personal Social Services (Northern Ireland) Order 1978. CEHOG's view is that that seems particularly low in comparison to some of the other offences that we are aware of, and we wonder whether the Bill could be amended to include a clause that amends the penalty contained within the 1978 order, again to set the marker down that this is an offence that is quite serious. The supply of tobacco to persons under the age of 18 is a serious issue. We have still got a problem with smoking prevalence generally in Northern Ireland and we need to do more to prevent the uptake of smoking by young people.
459. **The Chairperson:** Sorry, I was just checking something that you mentioned there. I was trying to read the notes on it. OK, that is quite interesting. It is probably useful for me to declare everybody with the exception of Mickey, unless I am wrong, as either former councillors or current councillors, so that is the declaration of interest out of the way. Does that cover it?
460. **The Committee Clerk:** No, members will need to declare if they are currently members of councils.
461. **The Chairperson:** I think it is useful that, when we were all councillors, NILGA was involved in it as well. We need to mention that for the record.
462. **Mr Beggs:** I declare that my dad is a current councillor.
463. **Mr Dunne:** I am a councillor on North Down Borough Council.
464. **The Chairperson:** You do not need to mention the council.
465. **Mr Dunne:** I am proud to be a double-jobber.
466. **The Chairperson:** OK, it is just for the record.
467. **Mr McCarthy:** I am a member of Ards Council.
468. **The Chairperson:** OK. That presentation was quite useful. I take it you read closely the stuff from last week and were able to come back on some of the issues that the departmental officials gave us. That is useful to us in our role to try to get this legislation

- right. I just want to tease out some of the stuff. Patricia and Jenny gave statistics in the initial presentation. We have received some submissions, and Ballymena Borough Council said that there are currently 90 premises selling tobacco in that area, and each year, in and around 20% are visited as part of a test purchase exercise. However, the environmental health officers estimate that there are in and around — and I know you gave these figures — 2,500 premises selling tobacco, and then councils in general visit between 15% and 20%, and I think the figure of 19% came up there. In its submission, Chest, Heart and Stroke told us that the current level of test purchasing and the three-month notification that the retailers receive will be extremely rare in that any retailer will be banned in that scenario with the three-year stuff.
469. I will go into some of the questions. In your submission, you advised that the council visits between 15% and 20%. Does that mean that, within the three years, only 45% to 60% of premises are subject to a least one test-purchasing exercise?
470. **Mr Martin:** Yes, that would be the position for those retailers who operate in one council area only. However, there are many retailers who operate across boundaries and who would, therefore, be subject in other council areas to a visit in some of their other premises. If it was a business operating solely in one council, I think that they would be visited once every five years. That said, if the council had intelligence, or if the premises had a history, they would be on the next test-purchase rota. In general terms, although you can say that premises will be visited only once every five years, that does not take account of the targeting process that goes on behind the scenes. Neither does it take account of the fact that many retailers trade across council boundaries.
471. **The Chairperson:** I appreciate that. What we are trying to do is get the legislation right. Therefore, the scenario as it sits is that there is a possibility that there could be only one test-purchase exercise. You may be in two council boundaries, but how often does lightning strike twice — although, in this weather — so that the same shop is targeted in a different council area? Based on the legislation before us, what is the likelihood of premises being convicted of committing an offence three times in three years?
472. **Mr Martin:** In relation to a multi-site retailer, there is a fair chance that if they do not have appropriate systems and procedures to prevent sales, they would fall foul of it, given the current level of activity. For a business with a small number of outlets, whether in one council area or across several, at current levels of activity, it probably would not be the case that it would have committed three offences within three years. I think that it is fair to say that.
473. **The Chairperson:** Would NILGA support the change in legislation from three years to five years?
474. **Mrs Karen Smyth (Northern Ireland Local Government Association):** I think that we would take a specific request like that back to the executive committee. I do not see any reason why we should not support an increase in that, but I would need to refer to the elected members in NILGA.
475. **Ms Palmer:** It also allows time for the due process involved in getting a conviction in the first place — testing the market, doing all the preparation work, getting it to the courts and getting the conviction. A great deal of time is caught up in due process anyway, which would probably be more beneficial to councils.
476. **The Chairperson:** I appreciate that you need to take that back, and we have a couple of weeks, so you can come back to us on that. If more funding was made available by the Department to carry out tests — this is a question that you need to bring back to the NILGA executive as well — would you look at a lower threshold of three offences in two or three years? If you could talk to your members about that, it would be useful.

477. **Ms Palmer:** Certainly, Chair. Funding is always an issue at local government. It is a small pot of money, and our ratepayers are usually the people who have to top it up, so it would be very helpful if we knew that the Department was going to give us the right budget to put in place the mechanisms so that we can deliver on the Bill.
478. **The Chairperson:** Sean, you mentioned that it depends on local knowledge or intelligence. If premises are convicted of one offence, is it procedure for them to be tested more frequently?
479. **Mr Martin:** I will give you my personal experience as one who is involved in the management of the function. We would spend a lot of time with that business after the conviction to explain what we expect it to put in place to ensure that it does not happen again. The next time we undertook a test-purchase exercise, we would usually programme in a visit to those premises, along with any others that are indicated to us, through intelligence from parents or other sources of information that we have, to be selling. There is a certain amount of targeting. If there was a persistent offender, there would be the possibility of three offences within the three years. In general terms, if you look at the activity level, you would say that it is not possible, but, with the processes that go on behind that, such as targeting and listening to intelligence and focusing resources, it would be possible.
480. **The Chairperson:** Is it a year later that there is a possibility that they will get another visit? Or could it happen sooner?
481. **Mr Martin:** If there was specific intelligence on particular premises, certain activities are planned but can be brought forward. Most councils operate at least one exercise each year; some do more. If you look at the pattern, it tends to be at least one exercise every year. Therefore, if they were part of that exercise, there would be three offences within the three years, as the Bill stands.
482. **The Chairperson:** Do some councils do more than is expected of them, while others just do what is expected?
483. **Mr Martin:** There is a limit to the number of premises that you can visit in a day, and, therefore, those councils that are much larger and have many more premises are required to do it on a number of days in order to do a reasonable proportion of them. So, yes, I think that the activity level reflects the number of premises in an area. The council that I work for has 40-odd premises on the register. Ballymena, which says that it has 90, has twice as many premises on the register. Belfast has hundreds of premises on the register, so the number of days on which Belfast undertakes test purchasing will be greater than Larne.
484. **The Chairperson:** Therefore, in general, if you are taking on board local intelligence or information brought to your attention, is there a standard policy or criterion across all councils that decides how shops are selected?
485. **Mr Martin:** The selection process depends on whether there is intelligence, from parents, children or other groups. We engage with such groups if there are indications that shops are selling tobacco to people underage. It also depends on when the shops were last visited and their history of compliance in previous test-purchase exercises. Such factors determine that. There is a desire to get round all the premises in the borough within a period, but that is added to by intelligence and there is specific targeting of premises that have a history or where intelligence suggests that there is sale of tobacco to persons under 18.
486. **Mr Beggs:** I have a question for the environmental health officers. Do you accept that if the criterion was three sales within a five-year period, it would be easier for you to get a conviction and greater rigour would be required by the retailer to ensure that no sales were being made to underage people?

487. **Mr Martin:** However long the period is, it is no easier to obtain a conviction, but it is easier to get a restricted sales or restricted premises order, which I think is what you are asking. The longer the period, the wider the window, then, yes, the ability to apply for that order would mean that a greater number of premises would be likely to fall foul of that provision and, therefore, we could apply for an order against more premises.
488. **Mr Wells:** The councils have come out in favour of separate registers for each district council area. At the moment, that is 26, but we suspect that it will soon be 11. Why have you gone for that rather than having one Province-wide register?
489. **Mr Martin:** We have a system already. We hold many registers for businesses: pollution prevention and control permits, dog licence registers. Many registers are held by councils, and councils have the systems and procedures already there to set them up and deal with them, at little or no cost. We would have no difficulty with a requirement for a central register. However, the issue would be communication from that central register, because the targeting and registering of tobacco retailers will assist councils in their tobacco sales control functions. It is our view that it is much better for the register to be held by the council. Then, if there was a need for a council to share it with others through a central register, it could be made available. We would have no difficulty with that, or with one council holding the register for all. However, keeping the register up to date is important, and I think that would be easier for a council to do.
490. **Mr Wells:** Councils in Scotland quoted a figure of £50,000 to have a central register. Can I make a suggestion that will save £49,500 of that? Every council could have a separate register that could be brought together on one website. Whether 26 or 11, someone could go in and see them all listed, at no more work than a click of a button to the council. At least then one could check, if they are not clear about what area they live in, whether Willy or Seamus's shop on the corner is on the register. There is something clearly wrong with me, because that is so blindingly obvious. Why can that not be done?
491. **Mr Martin:** I made this point about clause 1: councils would have no difficulty sending the information containing the register through to be held by a central body on a central website and for that to be uploaded and accessible. I do not think that that would be problematic. A clause could be inserted requiring a council to notify the register and any changes to it and then to update the website. If we move to that scenario by agreement, one council could perhaps do that on behalf of all 11. Provided that there are sufficient powers in the Bill to enable us to share information in that way, I see no difficulty in doing that.
492. **Mr Wells:** If it is in the public domain in your council, I cannot see what is wrong with putting it in the public domain and making it available to everyone. You represent Larne Council; say someone has been subject to an offence or a fixed penalty in Ballymena, for example, how would you know that and how would you know about it in the future?
493. **Mr Martin:** Fixed penalty requirements are contained in the Bill for most of the offences that we are looking at here, so we are really looking at prosecutions for underage sales, and those go through the courts. We have a fairly tight network of information sharing in tobacco control. However, there should be a proactive duty in the Bill requiring councils on either the payment of a fixed penalty if a fixed penalty notice has been issued and paid or on conviction to notify that offence and the details of that offender to other agencies. That would make it very clear. To make the Bill work effectively, there is a need for communication of information.
494. **Mr Wells:** Many tobacconists now are parts of supermarket or newsagents chains, so gone are the days when it was a man and his wife running a corner shop. It is good that you have dealt

- with that. What about someone who has had a restricted sales order made against him or her in one council area who tries to move across the boundary into another council area: how would you know that he is bringing that baggage with him?
495. **Mr Martin:** That is missing from the Bill. If a premises has a restricted premises order, there is a requirement in the Bill for that premises to be removed from the register. We believe that there needs to be a clear clause in the Bill stating that if the person is subject to a restricted sales order, they have to be removed from the register. The council that sought the order should then notify all other councils so that they are aware and the person will be removed from the register in those council areas as well.
496. **Mr Wells:** As you are moving to the 11-council model, the logistics is much easier.
497. **Mr Martin:** Yes. Electronic communication makes it fairly straightforward to establish a key point of contact in each council responsible for the maintenance of the register and the sharing of that information.
498. **Mr Wells:** So, you envisage a situation where, at the push of a button, a member of the public could find out whether a tobacconist is on the register to start with and what convictions or restrictions have been imposed on him or her, and that information could be shared between all district councils. Do you see any data protection problems with that?
499. **Mr Martin:** I do not particularly. These things are subject to court process; my only caveat is around fixed penalty notices. My understanding is that because that is the discharge for the liability for an offence without the court process, there is some restriction on the sharing of that information generally with the public. However, there would be no difficulty in sharing information on convictions or the restricted sales order. I do not think that there would be any difficulty with sharing information on fixed penalty information between agencies, HMRC and those charged with responsibilities in councils.
500. **Mr Gardiner:** What authority under legislation do councils have to carry out test-purchasing exercises?
501. **Mr Martin:** The Health and Personal Social Services (Northern Ireland) Order 1978 places a duty on councils, and, under section 3, it makes it an offence to sell tobacco products to persons under 18. That order requires councils to consider their activities in respect of that duty, so the offence of selling to a person under 18 and the activity come from the 1978 order.
502. **Mr Gardiner:** Has the use of a test-purchase exercise in bringing a case against a retailer ever been challenged in the courts?
503. **Mr Martin:** In broad terms, test purchasing is used for a range of products, not just tobacco. There have been challenges to that under similar legislation up through the courts in other jurisdictions. However, it has been clearly held that a test purchase merely replicates an everyday activity; there is no legal reason why a council cannot carry it out. It is not entrapment; it is just the recreation of an everyday event. The retailer has every opportunity to refuse to sell or to ask for ID as the law requires.
504. **Mr Wells:** I have come in late, so if this has been answered, shoot me down. At the last Committee meeting, we were told that you have to give three months' notice of a test purchase.
505. **Mr Martin:** That specifically relates to the Regulation of Investigatory Powers Act 2000, which deals with covert surveillance, the use of covert human intelligence sources, and so on, which, again, is a means of gathering data. It does not say anywhere in legislation that we have to give three months' notice.
506. We tend to provide notification in advance to all retailers in an area saying that the council intends to carry out a test-purchase exercise. We do

- that to take us outside the scope of the Regulation of Investigatory Powers Act, which has quite a rigorous process for approval. Under the Act, you have to go before a court to get approval for carrying that out. Councils have an internal process: if they say, “Yes, it is appropriate for you to do this; you have the appropriate systems and procedures in place”, you have to make an application to the court for its approval. If we did not send the letter, we would have to follow that process.
507. **Mr Wells:** So a letter is not just sent to Willie John saying, “We are coming to see you within three months”; it is sent to all the tobacconists.
508. **Mr Martin:** Yes; absolutely.
509. **Mr Wells:** Is that done annually? Is it just a general circular? I know, for instance, that you do not get three months’ notice for VAT inspections; they just arrive at your door and demand to see the books. That is a similar parallel.
510. **Mr Martin:** We would rather not have to do that. However, we are constrained by the guidance that indicates that, for the purposes of the Regulation of Investigatory Powers Act, test purchasing, as we do it, is surveillance. Therefore, we have to deal with the outcome of that. Would it be easier and simpler for us if that were not the case? Yes, absolutely.
511. **Mr Wells:** If it is on that level, I am not so worried. If it is just a general circular, that is fine. Thanks.
512. **The Chairperson:** I am glad that you have settled the Deputy Chair. I was getting a wee bit upset that he was upset.
513. **Mr Brady:** Thanks for the presentation. I just want to get clarity on the circumstances under which councils would apply for a restricted premises order as opposed to a restricted sales order, and vice versa.
514. **Mr Martin:** The wording of the orders in respect of the actual legal requirement is, in essence, very similar. Restricted premises orders are for the premises on which the relevant offence, which is the third offence, takes place. Therefore, if there had been two previous offences — again, it does not say that they have to be on that premises; the definition in both clauses applies to the offender — and that person is convicted of their third offence, you can ask for a restricted premises order at the premises on which the offence occurred. Restricted sales orders are fairly straightforward in that if the person has committed a third offence, you can make an application to the court. Restricted premises orders, however, are specifically for the premises on which the third offence occurs.
515. **Mr Brady:** Is one of more benefit than the other?
516. **Mr Martin:** We see them working in tandem, in that you could make an application for both. A restricted premises order relates specifically and only to the premises. Our reading of the Bill is that if you are a multi-site retailer with a number of premises, a restricted sales order would restrict you from running a tobacco business from all those premises.
517. **Mr Brady:** To go back to Jim’s example of Willie and Seamus, if two offences —
518. **Mr Wells:** Willie is mine; Seamus is yours.
519. **Mr Brady:** That is what I thought. You are getting very equal in these things. If a council was aware that two offences happened in one council area and a third in another council area, or that there was one offence in each of three different council areas, could a council apply for a restricted premises order on that person or those premises?
520. **Mr Martin:** Our reading of the Bill is that it does not say that the previous two offences have to happen in that council area: it is only the third offence. Therefore, our reading is that, yes, you can take account of offences in other council areas.

521. **Mr Brady:** It is really like a topping-up procedure.
522. **Mr Martin:** Yes.
523. **The Chairperson:** What happens if you do not know? What happens if the list is not the regional list?
524. **Mr Martin:** That is one of the critical things. In the comments that we submitted in writing through the Chief Environmental Health Officers Group to the Committee, we said that there is an absolute need for the sharing of information on the fixed penalty notice and convictions for the system to work, particularly if the Committee is considering offences for the illicit sale of tobacco as being relevant offences for the purposes of the Bill, as you are then talking about HMRC providing information. Therefore, the requirement to share information between agencies is critical to the Bill working effectively.
525. **Ms Maeve McLaughlin:** I would like some clarification on the test purchasing and the figure of between 15% and 20% and the back work that has been done in relation to the visits, which you said was at 52%. Are you suggesting that the reason why the figure for test purchasing is so low is because of the restrictions on guidance with regard to the internal processes in councils and the external process? I want to be clear. Is that what I am hearing?
526. **Ms Allen:** We are suggesting that there are many logistical issues that restrict how many test-purchase exercises can be conducted annually. The point that I was trying to make is that low test purchasing is the only way of securing a conviction, because you have to witness the sale. We use the visits to check on compliance and we use our correspondence to remind businesses of the responsibilities to keep the pressure on. It is not a case of their saying, "Well, I have not been visited, and I don't suppose that I will be visited for the next five years." There is a constant reminder, and there is face-to-face contact with businesses to ensure that they know what is expected of them, to stress the standards that we expect and to remind them that there could still be test purchasing.
527. **Ms Maeve McLaughlin:** I accept that. However, the point was made that it is viewed as surveillance, so there are specific criteria to address. The suggestion is that it is quite restrictive and that is why the figure is low.
528. **Mr Martin:** That is not the only factor. We get round that by the correspondence that goes out beforehand to prevent us having to go through the process of seeking authorisation internally and then to the court. The correspondence that goes out beforehand negates that. One of the issues is finding suitable children. Generally, children of that age go to school for most of the year. When choosing children, we try to pick a child who looks appropriate for their age. We are not trying to dupe anyone; we just want retailers to ask for ID before they sell tobacco. Rather than necessarily using our resource only with regard to the number of officers — a test-purchase exercise is generally carried out by three or four officers, depending on how it is done, and one or two children — it is accessing an appropriate child, which sometimes restricts activity levels. However, that is not the only factor.
529. With regard to the evidence that my colleague presented, over the past number of years that we have been pursuing, the activity level of sales has gone down and down, but it has not indicated to us that it has plateaued at its lowest level. Therefore, it is working. If we did more, would it help? Yes, it probably would. However, the powers in the Bill will assist in making the clear point that the sale of tobacco to persons under 18 is unacceptable. The fixed penalty provisions will make the enforcement process much more straightforward for us. Furthermore, they will free up resources, which can be redirected to more proactive contact with businesses, through advising them of what we expect to see, for instance, or more test purchasing.

530. **Ms Maeve McLaughlin:** Currently, probably more so from NILGA's perspective, there is no requirement on councils to charge fees to register. Do councils envisage that changing or do they envisage a time when they will have to consider fees for registering a tobacco business?
531. **Mr Martin:** The Bill contains the ability to introduce a requirement for councils to recover the cost of that. It is a "may". Do I think there are large costs associated with the back-office system? I do not think so. I think that most councils' current database systems could cope with this. There would probably be initial costs associated with the set-up. It is probably a question for each council as to whether it would be prepared to absorb that cost, or, if power was granted, to recover it.
532. Registration fees are generally quite small, because it is a case of taking the data, verifying it and adding it to the register once you have the database set up. They are not on the same scale as licensing fees, which have a much more robust process behind them. I do not see it being an expensive process, even if charging were introduced. I do not think I could speak on behalf of all councils on whether they would seek to recover that, but I think it is prudent to put the requirement in the Bill and consider the issue at a later date through secondary legislation.
533. **Mrs Smyth:** Chair, I will come in on this issue. Cost recovery is a major issue for councils in a number of areas. Councils are very good at working collaboratively, particularly on environmental health work, an area in which they are already working in group systems and looking at how to redesign that collaborative working post-reform. Twenty-six councils are working on an improvement, collaboration and efficiency programme to look at efficiencies, cost savings, how we deliver services and how to improve service delivery to our citizens. Part of that is to improve ICT systems. That goes back to Mr Wells's earlier point about how we improve the software and technology that we use to cut costs. I anticipate that this will be part of that work.
534. **Ms Maeve McLaughlin:** Finally, in a similar vein; I listened carefully about what was said about the Department setting aside a budget and to your conversation about some councils, perhaps, being able to absorb this. As it stands, with the additional requirements as part of this Bill, can councils, on their own, absorb the additional costs, or is there a view taken on —
535. **The Chairperson:** Jenny, you were in very quickly.
536. **Ms Palmer:** I was. It is the view of the councils that they are finding it very difficult to maintain the costs of delivering the programme of work that is needed on the ground for a lot of the legislation that is coming to them, even that which has been brokered to councils. You only have to look at the veterinary aspect of the Welfare of Animals Act (Northern Ireland) 2011, in which there were a lot of associated costs. We have even heard the talk about the transfer of road closures to councils and the costs associated with administering that.
537. Obviously, no matter what happens through the Bill, we welcome the fact that it gives councils the powers to deal with tobacco testing, but if we are going to enhance the process in the way that the Assembly would like us to at a local level, we certainly need some funding from the Department to cover costs. Even when we merge into our new, reformed councils, I believe that there will be a requirement for extra funding to facilitate the necessary officers and commitment.
538. One difficulty that has been highlighted is accessing the use of a child of 15 years of age to go through the process, because that is quite cumbersome. It takes hours. In Lisburn, we have been able to recoup our costs by asking the courts to award the council costs for bringing the prosecution in the first place. We have been very successful in

- the courts agreeing to that over the past six months, which is a bonus.
539. **Ms Maeve McLaughlin:** Thank you. That is very clear.
540. **Mrs Smyth:** If I could add something to that; there is an issue in relation to the shape of funding on the form. If we are looking at a programme over a period of years and if we are looking at a circular and ongoing approach to the inspection of premises, there is a difficulty if the funding is year-on-year. If we can look at this on a programme basis over a period of time, I think that would be much more helpful.
541. **The Chairperson:** Sam, did you want to come in on this point?
542. **Mr Gardiner:** On something similar: what is the time lag between an official reporting an irregularity and the case being brought to court?
543. **Mr Martin:** The cases get to court probably within six or seven months.
544. **Mr Gardiner:** Sorry, but that is ridiculous. That is far too long. We have no jurisdiction over it, as you can appreciate.
545. **Mr Martin:** It is not necessarily the fault of the courts' process. After a test purchase happens, there is a follow-up process, which involves giving the offender the opportunity to be interviewed under caution, the interview being carried out and the evidence being taken into account. In many councils, legal proceedings are still not issued unless the council approves the decision, so then there is a council report process. The information is then sent to that council, the council makes a decision and the information goes to the legal people, so, the restriction in initiation is six months. My best estimate is that most cases are listed with the courts probably in four or five months; it would take that period of time. If they are dealt with on first hearing, the process will be dealt with probably within six months. If they are contested, it could run to 12 months before the case is heard and dealt with.
546. **Mr Gardiner:** Could the council official do another inspection within that six months or 12 months?
547. **Mr Martin:** There is nothing in any of the provisions to prevent you from doing another inspection during the period in which the other legal process is ongoing.
548. **Mr Gardiner:** Are you aware that they do it?
549. **Mr Martin:** Most councils would go back to give advice and to try to help the business by making sure that the failures evidenced by virtue of the sale were being rectified rather than leave it to the other side. They would probably not do another test purchase until the initial legal proceedings were dealt with.
550. **The Chairperson:** Sean, are you aware of any businesses that do their own test purchasing?
551. **Mr Martin:** My understanding, again from conversations that we have, is that businesses come together and do their own test purchases to test whether their systems are working. I do not have any specific details, but just from conversations —
552. **The Chairperson:** The reason I ask is because I know that some premises in my constituency did that with alcohol sales.
553. **Mr Martin:** It is my understanding that it is also done by some of the multi-site companies in order to test whether their systems are working and to help them to improve their performance. Certainly, that is some of the information considered in reaching a conclusion. There is a defence of due diligence in the legislation, and those are some of the factors that we would look at in considering whether the business has —
554. **The Chairperson:** There is not even a legal aspect to this. It means that they can deal internally with the person who has done it. Unfortunately, it always seems to be young men who were

carried away with young women coming in. *[Laughter.]*

555. **Mr Dunne:** I welcome the panel here today. I know that the councils do a good job in many aspects. Some do better than others, but we will not go there today. As regards the requirement to display a notice advising the ban, do you see benefits in displaying a notice saying that the premises are restricted or have a restricted premises order on them? Do you think that that would act as a good deterrent?
556. **Mr Martin:** We believe that it would be appropriate. To get a restricted premises order, there have to have been three offences, and the court would have obviously weighed up the circumstances leading to the application. If it grants an order, I think it would be appropriate to require it to be displayed. It makes it very clear that those premises cannot sell tobacco. It also makes it easier for the premises, in that people coming in will not be asking for tobacco. Those premises will have been restricted from selling tobacco for the period of the notice, and we certainly believe that it would be appropriate to display that.
557. **Mr Dunne:** So, legally, they would have to do it? They would have to clear the shelves, I take it.
558. **Mr Martin:** Those are some of the comments that we have made in a written submission from CEHOG. Those things are currently not in the Bill, and we believe it would be advantageous to require the display of the notice and for the tobacco to be removed from the premises to prevent inadvertent sales and make enforcement easier from our point of view. I think they would be welcome additions to the Bill.
559. **Mr Dunne:** I have just one other point. You are suggesting that the restriction be increased from one year to three years. How do you justify that? It sounds fairly drastic.
560. **Mr Martin:** Our experience of the court process is that a court would rarely ever apply the maximum on the first time of hearing an application such as

this. It looks at the scale and applies a penalty on that scale; so we are saying that the court should be given greater latitude. You have to cross the bar of three offences before you can make an application, but if there are many more offences than that and someone is not taking their responsibility seriously, we are saying that the court should be given latitude to decide where that sits on the scale of things and make a decision on it. It is worth considering whether the scale of between one week and 52 weeks is sufficient for someone when there is evidence to suggest that there is a persistent problem with that retailer, and whether a greater scale is needed.

561. **Mr Dunne:** Do you feel that it should be up to three years?
562. **Mr Martin:** That is what we have suggested in our submission. Again, it is a court decision. The councils' role is to put the matter before the court and make the application for an order. We think that the court should be given greater scope regarding the scale, of between zero and three years. That would send out a very strong message about how seriously the issue of selling tobacco to under-18s is as regards the long-term health consequences if people become addicted to the product and find it difficult to give up.
563. **Mr Dunne:** I want to make a point about surveillance. Are you carrying out risk-based surveillance? Is it based on history or your knowledge of a premises or similar premises within an area? I take it there would be some audits done as well. Are those carried out based on risk? You obviously have limited resources, as Jenny has said. If so, you have to use them where the risk is highest; so is it the case that surveillance is risk-based?
564. **Mr Martin:** It is a bit of both. There is a level of routine activity, in that we like to get round most premises, but there is specific targeting where there is intelligence to suggest that particular premises are a problem or where there is a previous history of non-compliance. There is a level of ongoing activity and a

- level of targeting to make sure that our resources are used to best effect. It is a combination of those in the current level of activity.
565. There will never be unlimited resources, so it is important that we use those we have to best effect, and targeting is important. We are hoping to undertake a piece of work — we are just trying to get it off the ground — to look at whether there is any difference in the type of retailer involved, whether it is a petrol station, a multi-site operation or a convenience store. We are hoping to do a little piece of broad targeting to see whether there is any difference. It may well be that there is not, but, at some point this year, we hope to do a bit of work to see whether that will help us in our targeting and use of resources more effectively.
566. **Mr Dunne:** So, at the moment, your resources are hitting about 18% or 20%. It seems relatively low.
567. **Mr Martin:** As regards the information my colleague presented, that is not the only contact that we have with a business. That is the test purchase level of activity.
568. **Mr Dunne:** You are also carrying out surveillance over and above that.
569. **Mr Martin:** Most of the other visits are really to provide information. They are calls to the premises to make sure that they understand the law, to check that they are training their staff, to check that they have —
570. **Mr Dunne:** Is that an audit as such?
571. **Mr Martin:** Absolutely; it is a bit of an audit to check their system but without the actual test purchase. The test purchase is to check that the system that you have audited is working. It is a bit of both. We have the figure here: we visit and actually contact in and around 50% of premises and give advice and audit them, as opposed to the 18% that we are referring to now with regard to an actual test purchase visit.
572. **Mr Wells:** If you do a succession of test purchase visits and the shop gets a completely clean bill of health, do you tell the shop?
573. **Mr Martin:** Absolutely.
574. **Mr Wells:** So it is not completely blind in that sense.
575. **Mrs Smyth:** I want to emphasise that although we are inspecting and test purchasing between 15% and 20%, the officers would be keen to point out that there is an ongoing improvement — a demonstrable improvement — in the situation as time goes forward. We are working, but resources are somewhat of a barrier.
576. **Ms Palmer:** When we decided to do the test-purchasing exercise in the Lisburn City Council area a few years ago, councillors were very keen at the very outset that we would name and shame immediately. We did some work to educate all our retail outlets about their responsibilities in serving underage children with cigarettes, and we warned them that we would be going out to test purchase. Year-on-year, we are seeing a reduction in the number who breach the regulations on selling to young people. That is a response to the council officers in environmental health going out and talking to those retailers, giving them advice, doing the audit with them and offering them assistance. We do name and shame those that we have taken to court. We publicise it in the local press so that everybody knows that they have breached it, and that is a reminder to everyone else to comply. Good work is being done out there through the councils.
577. **The Chairperson:** I do not think that anybody is criticising. Since my time on council, the work that the environmental health officers carry out, even around litter, has moved on. It is not perfect, but the proactive approach from councils and council officers has helped. Therefore, I agree with you.
578. Jenny, with regard to the point that you made about test purchasing, you talked earlier about recovering costs in a

- recent court case. Was that the full cost, and was it from the very start of the process to the end of the process?
579. **Ms Palmer:** I am not 100% sure on that. On many occasions, we discussed the costs associated with councils going to court to get the prosecution and the fact that they were not recovering the full costs. In the last two court cases, the full cost has been recovered.
580. **The Chairperson:** Can you get us more details on whether councils can recover costs from the start of the test purchase and the average cost of the money recovered? This is not specific to this issue but, in general, when you hear of somebody being brought to court, and it might take £2,000, £3,000 or £10,000 to get to that point, it is a bit frustrating when the person is fined £250. That information would be useful for us —
581. **Ms Palmer:** That is because of whoever is kindly on the judiciary at the time.
582. **The Chairperson:** I appreciate that, but I am talking about it from a constituency point of view.
583. **Mrs Smyth:** NILGA did a bit of lobbying a number of years ago, because a limit was placed on the magistrates' rules as to how much of the cost councils could recover. A change was made to that last year, so that situation has improved greatly. However, I will get you the figures for the cost.
584. **The Chairperson:** We have a unique opportunity, when drafting this Bill, to deal with some of those points that have come up — if we can, legally — and we will be guided by our own legal team.
585. **Mr Beggs:** I have a question about clause 3 and the duty to notify certain changes to the register. The chief environmental health officer's report indicates a preference for 28 days rather than the period of three months to notify any change. Will you elaborate on why you prefer the shorter period?
586. **Mr Martin:** It really is about keeping the register accurate and up to date. Given what the changes actually are, three months seems like a very long period to be allowed to notify of them. We felt that we could allow a bit of a time lag. However, if it is felt important to have a register and for it to be up to date and accurate, we feel that 28 days would be more appropriate. If you look at the wording on councils' responsibility to maintain the register, it is much sharper than three months.
587. **Mr Beggs:** Is there a danger of people getting drawn into court or receiving penalty notices over just a few days? Are you getting into too much bureaucracy?
588. **Mr Martin:** Councils tend to be pragmatic in how they use their powers. It is just about impressing on the business the need to keep the register up to date and to notify changes. I do not envisage fixed penalties being issued.
589. **Mr Beggs:** Would the 28 days fit in more with other requirements to notify councils? What is the requirement for changes to entertainments, food hygiene or whatever? Would it fit in more naturally? Is it a more familiar time limit?
590. **Mr Martin:** It is a much more familiar time limit. I think that some people might even be fairly clear that they are supposed to do it when the change happens. I think that allowing a period of 28 days is appropriate. Again, it is notification of changes. If we are to have a registration requirement and if the register is to be useful, it needs to be reasonably up to date and accurate in order for it to be useful. For us, three months seems a long time.
591. Regarding the fact that not notifying would be an offence, I do not envisage that it would be used for enforcement in that way. We tend to phone people up. If we are aware that a change is happening — say, a business has changed its name or there has been a change of ownership — we ask the owners to notify us of the changes. We usually send them a form and get them to fill it in. If we are out there,

- we get them to fill it in and we take it with us. I do not envisage that leading to enforcement action. However, it is about impressing on people the need to notify the council of the changes and to maintain an accurate register.
592. **Mr Beggs:** Is there a danger that if it sits at three months, it will be considered to be not really that important?
593. **Mr Martin:** That is the point that we are trying to make.
594. **The Chairperson:** It has been a very useful session. We are at an early stage of the legislation and the Committee's work on it. I thought that it was important that we got the presentation at the start of our work. I appreciate that you seem to have taken time to look at what we were told last week and what the Department is saying. That was actually quite useful.
595. We have asked for different pieces of information. It would be useful if we could get that sooner rather than later. If you feel that there is other information that we might need or require, feel free to send it in to guide us in our work. We are not here to put pressure on, or criticise, anyone: we are trying to ensure that the legislation is real, right and actually works. We live in the real world.
596. **Mrs Smyth:** Just to let you know, Chair, the next NILGA executive meeting is on 14 June. I anticipate that we would get back to you with decisions.
597. **The Chairperson:** OK. That is fair enough. Thanks very much for the presentation. It cleared up some of the questions that I had in my head on a lot of those issues. On behalf of the Committee, thank you.
598. **Ms Palmer:** Chair, we thank you and, of course, the Committee for inviting us along. Certainly, it is a pleasure to share information from local government with you as you go forward to bring about what, hopefully, will be a perfect Bill — although I have not seen very many of those. *[Laughter.]* There is always the first. That is your challenge.
599. **The Chairperson:** There is always the first. This Committee amazes people all the time.
600. **Ms Palmer:** Certainly, we are here to assist. Thank you, Chair.

29 May 2013

Members present for all or part of the proceedings:

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

Witnesses:

Mr Aodhán Connolly	<i>Northern Ireland Retail Consortium</i>
Mr Glyn Roberts	<i>Northern Ireland Independent Retail Trade Association</i>

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

602. **Mr Glyn Roberts (Northern Ireland Independent Retail Trade Association):** Thank you, Chair. I will go first, and my colleague Aodhán will follow. We welcome the opportunity to make sensible and pragmatic changes, of a fairly technical nature, to the Bill. We do not in any shape or form oppose the Bill; we support it, and we think that responsible shop owners have absolutely nothing to fear from it. The Northern Ireland Independent Retail Trade Association (NIIRTA) and our colleagues in the Association of Convenience Stores, an organisation that represents convenience stores in England and Wales, are very happy to make this presentation. We are very much committed to ensuring that retailers play their part in tackling

the ongoing problems of smoking, particularly underage smoking. The Bill should not be taken in isolation from the need for the better education of young people. It is crucial that we do that and tackle the problem and all its roots. We also want the Bill to do more to tackle the problem of illicit trade, and I will touch on that in a moment.

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

604. Scope for tackling illegal tobacco products should be extended. In the debate in the Assembly, the Committee's support for that was made very clear. There is also some engagement with Her Majesty's Revenue and Customs (HMRC) to ensure that we get that right. The three strikes should be an integral part of that. This highlights the wider problem of a culture of acceptance in many communities of illicit tobacco products. I have come across incidents regularly over the past couple of years. In one incident last year, when one of our members on the Ormeau Road, Belfast was robbed, the criminals stole only tobacco products. One of the main points that we need to get across, to retailers who sell illicit tobacco and, more importantly, to the people who buy those products, is that they are directly contributing to organised crime. That needs to be made very clear. We need to tackle the culture of acceptance

whereby it is somehow OK to buy illicit tobacco products — it is not. I am very worried that, as a result of a lot of work to prevent some of the illegal tobacco coming in, particularly from China, some indigenous criminal gangs are targeting local retailers to replenish stocks that they may have found difficulty in getting elsewhere. So this is a broader issue, and I would be very interested to hear the police response to it.

605. I think that that covers our proposed amendments. We very much support the Bill. We have a role to play, and we are very willing to play further roles, particularly in educating young people. I believe that the independent retail sector, particularly many of our convenience store members, provide many housing estates with their only access to five fresh fruit and veg a day. We want to play a greater role in community health. We want the Change4Life programme, to which multiple and independent retailers sign up, brought to Northern Ireland. We suggest a couple of fairly technical or minor amendments, but, by and large, we support the Bill, and we want to engage further with the Department on how our members can play a greater role in tackling the problem.
606. **Mr Aodhán Connolly (Northern Ireland Retail Consortium):** Like NIIRTA and its members, the Northern Ireland Retail Consortium (NIRC) members support the Executive's objective of reducing the prevalence of smoking in Northern Ireland. We are committed to playing our part in restricting the availability of tobacco to young people. Our members take their responsibilities as retailers very seriously and have implemented robust systems and successful policies, such as Challenge 25, across our stores. Under Challenge 25, instead of retailers just challenging someone who looks 18, anyone who looks 25 or under will be challenged.
607. **The Chairperson:** It happens to me every week.
608. **Mr Connolly:** Unfortunately, it does not happen to me. The Challenge 25

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

609. As far as the proposals are concerned, our members have specific concerns about the potential for disproportionate application of the sanctions included in the Tobacco Retailers Bill. Current licensing arrangements provide retailers with a legal framework within which to operate and which, therefore, gives stability to licensing operations. The current proposals suggest that failing a specific number of test purchases within a proposed time will mean removal from the register and, therefore, the imposition of a ban to stop a retailer being able to sell tobacco within a given period. A clear understanding of how that approach to test purchasing will be applied is essential to ensure that local enforcement officers approach it in a constructive, measured and certain manner across Northern Ireland.
610. You asked us to refer to specific clauses. At clause 7(8)(b), we feel that the three-year period for holding test purchase failures on record is disproportionate and should be amended to reflect the Scottish model of two years. That would also be more appropriate given the nature of retail employment and its comparatively high turnover of staff.
611. At clause 2(7), given the current economic climate, we, like NIIRTA, feel that retailers should not have to pay for registration. We understand that the Executive have suggested that additional regulations would be required to

- introduce such charges. We support that position. The priority of the Executive should be to increase private sector job growth, productivity and competitiveness and to encourage investment rather than making it more difficult for responsible businesses to thrive.
612. Lastly, as far as the clauses are concerned, is clause 8. NIRC members seek clarity on where any list of individuals subject to a restricted sales order would be kept. Our members, and any retailer conducting thorough pre-employment checks, would find it beneficial to have access to that information to ensure that they are not unintentionally breaching any of the new conditions by hiring a person who has not declared a ban. It also gives the extra safeguard that retailers are not hiring someone who has already faced a restricted sales order.
613. Finally, as far as illegal tobacco products and the criminality element are concerned, we share NIIRTA's concerns. Our members are responsible retailers. More should be done against people who sell and bring illicit tobacco products into this country.
614. **The Chairperson:** Thank you. On clause 2(7), which concerns the regulation on a charge for registration, Glyn, you said that there was widespread support for no registration fee. I may be wrong, but I think that you went on to say that the Minister had said that during the Assembly debate.
615. **Mr Roberts:** About the fee? Yes, I understand that that was so. The reference to a fee is in the Bill, but the situation could change. I am saying that we would prefer the removal of any reference to a fee from the Bill.
616. **The Chairperson:** So there is the possibility that, if a reference is there, it could be used. If not, —
617. **Mr Connolly:** If we take the Bill as a proportionate response, we feel that our members have been at the forefront of tackling underage sales, and, particularly given the economic climate, retailers should not have to pay for this registration scheme.
618. **Mr Roberts:** Although a retailer being caught out by the test purchasing regime makes the headlines, it is worth pointing out that there are also hundreds, perhaps thousands, of refusals to sell every day. So retailers play their part in tackling that problem. Aodhán referred to Challenge 25. There are a lot of good case studies of successful challenges, but those who do not challenge make the headlines. Retailers, however, by and large, particularly independents, realise the role that they have to play. They are part of the community, understand the issues there and take that role ever more seriously.
619. **Mr Connolly:** We have seen that Challenge 25 cuts out not only underage sales of alcohol and tobacco but cuts down on proxy sales to people aged 18, 19 or 20 who buy cigarettes for those who are underage.
620. **The Chairperson:** Many members are indicating that they want to come in with questions. For the sake of focus, I suggest that we get one response to each question because I think that both of you are saying basically the same thing.
621. On clause 2, in general, I know that you are asking what the point is of having a clause there if the indication is that it will not be used, yet there is always the possibility that it could be used because it would become law. Have you any evidence from the councils or the Department to suggest that they would use it in the future?
622. **Mr Roberts:** Nothing that springs to mind, but circumstances change. Look at the amount of new legislation in this area, from the display ban right through. Retailers did not oppose, as such, the display ban; they wanted some sensible changes to its timing, which they ultimately got. However, it still cost an awful lot of money to make the necessary changes to shops, particularly small shops. By and large, those changes have been made. So

- we just want to give peace of mind to retailers who have enough on their mind, such as the 18% increase in electricity bills that Power NI announced last week. Removing the provision for a registration fee would give them that bit of certainty that this is not another payment that will be landed on them. I think that the Minister gets that. From reading the Hansard report of the debate in the Assembly last month, I think that that is the Committee consensus.
623. **Mr McDevitt:** On clause 2, there will be no fees, so the question is whether we want to reserve the power to, by way of secondary legislation, introduce them at a future stage. I am trying to understand why the sector's representatives would oppose the Executive's reserving that power. If circumstances changed and there was a consensus that we needed to introduce fees at a future point, not reserving this power now would mean that we would have to go through the much more expensive and cumbersome process of amending primary legislation. Is it not good law to keep the power now in the certainty that it will not be used unless circumstances change?
624. **Mr Connolly:** If the power is in statute, there is no certainty. Our members on both sides like certainty, so if it is not to be brought in, remove it altogether. If it is to be brought in, it needs to be in the Bill.
625. This Executive's priority — this Government's priority — should be to increase private sector job growth, productivity and competitiveness and take into account that our members have been at the forefront of tackling underage sales. Given the current economic climate, we do not think that this is the right time to ask retailers to take on an extra burden.
626. We already abide exactly by and beyond the letter of the law on enforcement. Instead of Challenge 18, we work to Challenge 25. Our members would be a lot happier if there was certainty that paying for registration would not come in.
627. **The Chairperson:** Roy, do you want to come in quickly on the same point?
628. **Mr Beggs:** My question is about a different issue.
629. **The Chairperson:** OK. I will bring you in later
630. **Ms Maeve McLaughlin:** Thank you, folks. I want to talk about clause 3. Last week, we heard from NILGA (Northern Ireland Local Government Association) and environmental health officers that they favoured an amendment so that any changes to the register would have to be notified within 28 days as opposed to three months. Do you, collectively or as individual organisations, have a view on that?
631. **Mr Roberts:** It is not a huge issue and certainly not our top issue. In the grand scheme of things, it is about building an effective partnership with retailers to tackle this problem. If we can get some sensible and pragmatic changes, we can get an effective regulatory system. You also need to build goodwill with retailers, and I know that the Assembly is taking a bit more time to look at these changes. I do not think that there would be any fundamental objection to the amendment that you are talking about.
632. **Ms Maeve McLaughlin:** Following on from that, I picked up on what you said about the existing powers and that although they are not insufficient, they could be used more. Over the past number of weeks, we have heard evidence on test purchasing. I think that the figures were that local authorities were conducting about 15% of visits as opposed to 52%. The case was put that that was because the guidance is quite restrictive. Is that what I sense coming from you? I am trying to tease out whether you are saying that what is in place just needs to be better enforced. Is that what you are suggesting?
633. **Mr Connolly:** Our members feel that an emphasis on fully and proactively enforcing the existing legislation would have been a better way forward. In saying that, however, we understand that

- the Executive are minded to pursue the option of this Bill.
634. I will reiterate what Glyn said, which is that we are talking about a model of partnership with the Department and the local councils that will work with the legislation as it is, with a view to making it the least burdensome option possible for retailers and working with them on enforcement.
635. **Mr Gardiner:** What sort of relationship do retailers have with enforcement officers, particularly council environmental health officers, when it comes to legislation?
636. **Mr Roberts:** It depends on the council. As you know, local Chambers of Commerce and local traders' groups have varying relationships with local councils. Sometimes, we get feedback from traders saying that, for example, a council has used a test purchaser who is, say, six feet two inches tall and looks older than he is. The law is the law. If the young person is underage, the law must be adhered to. Retailers need to be responsible.
637. As I said at the outset, responsible retailers have nothing to fear from the legislation. That needs to be the starting point. Our members have been involved in thousands of refusals, and I think that is playing an important role. In fact, they are policing this on the ground, to some degree, along with the enforcement officers. Obviously, that requires a hands-on partnership approach with the local council and the Department. We are going to crack this problem only if we have partnership not just among all those agencies, but with HMRC and schools, because it is an education process.
638. One of the most interesting things that I am seeing now is the growth of electronic cigarettes. I was at the national convenience store trade show, and every other stand was promoting a brand of electronic cigarettes to try to tackle the problem. There are some interesting developments. A lot of our members on the pharmacy side are developing smoking cessation options. The more we can build that partnership, the easier the problem is going to be for us to tackle.
639. I noted the Southern Health Minister's comments. I think it is about making smoking no longer the norm; it is about addressing that. The more effective we can be in doing that, the better. We all have a role to play.
640. **Mr Gardiner:** Do retailers have any information on the plans that the local councils hope to implement?
641. **Mr Roberts:** That very much depends on the council engaging with the local traders.
642. **Mr Gardiner:** Are they not engaged with you at the moment?
643. **Mr Roberts:** By and large, there is engagement, but it varies from council to council.
644. **Mr Gardiner:** Would you like to name the councils that are not co-operating?
645. **Mr Roberts:** I do not have that information.
646. **Mr Gardiner:** We do not want this to be a two-tier system. It is for all, and it must be carried out to the highest degree. I think that that is something that you have to look at very carefully.
647. **Mr Roberts:** It would be worth engaging with NILGA on that, because I think we need to work at all the relationships to get it right.
648. **Mr Gardiner:** You have a job to do.
649. **Mr Brady:** Thank you for the presentation. My question is about the length of the banning orders. Last week, NILGA and the environmental health officers said that they favoured an amendment to extend the restricted premises order on sales from one year to three years. What is your view on that?
650. **Mr Roberts:** It strikes me that there is nothing that causes huge problems. Quite often, the implementation of legislation will be the key issue. That

- is why we need to be hands on with the Department if there are any issues that we need to get right. With the best will in the world, legislation is not worth the paper it is written on unless it is effective and implemented on the ground. We will keep a close eye on that. We need to monitor it carefully in the first year. If further legislation is required to tighten things up — or even loosen things — in some areas, we will have to approach that in a pragmatic way.
651. **Mr Brady:** So if enforcement is effective, you would not have particular problems?
652. **Mr Roberts:** I think we have got to look at that. Perhaps it would be worth looking at some sort of implementation paper with the Department, environmental health officers and local councils so that we can make sure that the right information is out there for traders so that they are clear about what is required from them under the law and so that nobody can claim that ignorance is an issue.
653. **The Chairperson:** We had a presentation last week from NILGA and the environmental health group, as was touched on earlier. They told us that councils visit between 15% and 20% of premises to carry out test purchasing. That means, in reality, that a retailer could receive only one visit every five years, yet the legislation as drafted states that a person or a premises needs to be convicted of an offence three times in three years. If they are getting a visit only once every five years, it is highly unlikely that that is going to happen. Let me tease this out. I know you mentioned Scotland, Aodhán, but where do you stand on the possibility of amending the legislation to specify three offences committed in five years?
654. **Mr Connolly:** As I said, our members would like to follow the Scottish model of three offences in two years. You said that they could be tested every five years. If someone fails the test once, you can be very sure that they will be tested again, and with a certain amount of regularity.
655. **The Chairperson:** But that does not allow you to be proactive. You are then dealing only with the ones who are already in the system.
656. **Mr Connolly:** As far as us being proactive —
657. **The Chairperson:** Sorry; I am not talking about retailers; I am talking about councils. If they have only the ability to test one shop every five years and somebody is breaking the law, human nature means that you will concentrate on those but how, then, do you allow councils to be proactive with this legislation to catch those who might never get a visit?
658. **Mr Connolly:** As Glyn said, the responsible retailer has nothing to fear from this. If someone is caught out, they have two years to sort their ship out. It should not take that long. Any responsible retailer, if something is found to be wrong, should address that immediately, and that is what our members would say. If the legislation specifies two times in three years, I think that is an onerous burden because it does not allow people the chance to implement the changes that are needed if they are caught. I believe that if a retailer has been caught once, as far as the environmental health officers are concerned, I am sure that they will become a priority. I do not think that responsible retailers have anything to fear.
659. **The Chairperson:** I agree, for the record, that there are a lot of people out there who are very responsible, but the reality is that there are some who are not. If the council and NILGA are telling us that there is a possibility of a premises being visited once every five years, three offences in three years is not going to happen. We need to ensure that, whatever powers are given to councils, they are continually proactive.
660. **Mr Roberts:** There are clearly resource issues for councils, particularly the smaller ones of the existing 26. Obviously, we are in a big state of flux with local authorities over the next couple of years, so there will be a lot

- of issues for local authorities to work through with resources and who will take on this responsibility, as well as all the other additional powers they will have. There is a big job of work to be done around resources, and we would be very keen to engage with NILGA and the 11 new councils as we go forward.
661. **Mr Beggs:** If my memory is right, NILGA indicated that there would normally be one test purchasing session in most councils each year. If there are three failures in two years, it would be impossible to catch anybody out unless there were extra test periods, and that would mean additional costs. Why should the councils — the ratepayers — pay additional costs, when you do not even want the possibility of paying a fee? Would it not be reasonable to keep an extended period, whether five years or four years, and perhaps have a more efficient system by applying pressure on the retailers to make sure that they do not fail, because you would still have to fail three out of three before you are in trouble? That is a very poor performance rate and would show that there is a major management problem in any retailer. What do you say to that?
662. **Mr Connolly:** It is definitely a resource issue for the councils. If the councils want to be proactive about it, I believe that they should have the resources to do that. What I do not believe —
663. **Mr Beggs:** Do you accept that, if there is a longer period, there will be increased pressure on retailers to make sure that they do not fail?
664. **Mr Connolly:** What I will say is that responsible retailers should not have to pay for the indiscretions of people who are not responsible. I have mentioned Challenge 25, which runs across all our stores, and our idea of having available the list of individual subjects of the restricted sales order. That shows that we are taking this very seriously. One of the reasons why we would like to have two years, the same as the Scottish model, is because, as I said, anything that provides certainty and standardisation allows our member retailers to plan for the future and make sure that whatever is working in one area works in another.
665. **Mr Roberts:** There is also a training issue. We need to ensure that retailers train their staff in the very simple approach of, “No ID, no sale.” You will see that phrase displayed very clearly in a number of our member stores. There is an onus on the retailer. There are obviously resource issues for smaller retailers, but they need to ensure that their staff are fully trained and fully aware. It is very simple: if there is any doubt, staff must ask for ID.
666. **Mr Beggs:** I have another question for Glyn. You indicated that there are examples of people running quite large tobacco retailing businesses from their homes and you advocate giving council officers powers to enter private dwellings. What is the evidence of large tobacco businesses being operated from homes?
667. **Mr Roberts:** It is largely the illicit trade. It can be stolen tobacco. At the start of my presentation, I mentioned the real problem of many local retailers being the victims of robberies in which only tobacco products are stolen. Obviously, the people who are behind those robberies will not put the stolen tobacco on public display. It is about taking a zero-tolerance approach to the illicit trade. That is a response that the PSNI and HMRC have to make. However, I also have to say it is the culture in the community that it is somehow OK to buy hooky tobacco out of a sports bag, whether in a social club or any other setting. That is not OK. We have to reinforce the point that, if you buy illicit tobacco, you are contributing to organised crime. It is somehow seen as a victimless crime, but it is clearly not. As we stated in our presentation, if retailers are selling illicit tobacco products, they should face the rigour of the law.
668. **Mr Beggs:** If there are —

669. **The Chairperson:** Roy, I will let you in for a supplementary. Let me bring in others and then I will come back to you.
670. **Mr McCarthy:** I want to ask about a requirement to display a notice advising of a ban. Last week, environmental health officers and NILGA informed the Committee that they favour an amendment to the legislation to require shops that are the subject of a restricted premises order or restricted sales order to display a notice stating that. What is your reaction to that?
671. **Mr Connolly:** It is not something that I have discussed with our members at any length. I can go back to them and provide you with a written response.
672. **Mr Roberts:** Likewise, we would like to take soundings on that from our members. As I said, a lot of our members pride themselves on stopping and policing this problem on the ground. Retailers who have stepped out of line should be aware that they will face the rigours of the law. If they do get caught, they need to ensure that they do not get caught again. I have experience of members who have been caught and then made doubly sure that they do not get caught again. They refresh their staff training and ensure that, if there is no ID, there is no sale. The more that we can do that, the better.
673. There is a particular need in respect of shops that are near schools. There is also a need to engage with the schools. We need to ensure that we get the right relationship between the local retailer and the local school and that they push the line that this is not acceptable. It is a constant process of ensuring that there is effective staff training. I could take you into a lot of our member stores and show you the signs that state very clearly, "No ID, no sale." If there is any doubt on the part of the shop worker, they should ask for ID. If the person does not have ID, they should not be sold the product. There are no ifs or buts. We could not be more black and white about it.
674. **Mr McCarthy:** You understand where the environmental officers and NILGA are coming from about having a sign, but you are happy enough with the arrangement as it stands.
675. **Mr Roberts:** One of the things that probably both Aodhán and I will take out of this session is to have a meeting with NILGA to try to work through some of those issues and see whether we can come up with a sensible agreement on how to take those forward.
676. **Mr Connolly:** You have heard both of us say that the Tobacco Retailers Bill will not be a panacea or silver bullet. We already have the display ban, which our members have put into place. The Department has a body of work to do to educate future generations. We are already working with the councils, we are already working with the Department, and we are already working as responsible retailers. We feel that the best model to really tackle this issue, as far as both sets of members are concerned, is a partnership model. We have been not only enforcing that partnership model but working within it.
677. **The Chairperson:** That is a good suggestion, but I will nudge you and say that you need to sit down with NILGA and the environmental health people sooner rather than later.
678. **Mr Connolly:** A phone call will be made as soon as we leave.
679. **The Chairperson:** We have only a number of weeks to look at this legislation before it goes to the Assembly. We would not want any suggestions or proposals coming back to us after the summer recess.
680. **Mr McDevitt:** I have a related supplementary question. Another issue on which we sense that you and NILGA might benefit from a conversation is the length of time that a person is banned for. They suggested extending banning orders to three years, but I understand that you are quite content with the Bill as it stands. Can you confirm that?

681. **Mr Roberts:** Again, that is probably something that we should sit down and discuss with them.
682. **Mr Connolly:** Is that the ban on individuals?
683. **Mr McDevitt:** They told us last week that banning orders on restricted premises should be extended from one year to three years. The Bill provides for a one-year ban on premises, and they suggest that that should be extended to three years. Could you come back to us and let us know whether a consensus view emerges?
684. **Mr Connolly:** Yes.
685. **Mr Dunne:** Aodhán and Glyn, thanks for your submissions. Aodhán, in the consortium's submission, there is a suggestion that there should be a register of people who are subject to the restricted sales order. That could be used by retailers as part of a pre-employment check. Who should hold that register and who should manage it?
686. **Mr Connolly:** It is not within my scope to tell you exactly who should hold it. What I can say is that, as far as our members are concerned, it needs to be very clear who has the register, who updates it and who looks after it, and it needs to be easily accessible. As I said, our members and Glyn's members are very responsible in what they do. As for pre-employment checks, if someone is subject to a restricted sales order, they should not be anywhere near tobacco sales. I cannot give an answer on where is the best place to hold the register. However, it needs to be easily accessible and easily checked. There also needs to be a quick turnaround for the people who are applying for a job. There needs to be a very quick turnaround so that we can give them an answer as to whether they are fit for an interview.
687. **Mr Dunne:** Would you favour a regional list?
688. **Mr Connolly:** I would say so. As with most things, one regional list is a lot easier to check than having to go through two or three different people. Even if the number of councils is reduced from 26 to 11, there will still be 11 checks to be made instead of one.
689. **Mr Dunne:** Would you like to see that centralised?
690. **Mr Connolly:** I feel that that should be centralised because of the importance of the restricted sales order. That would provide clarity to the retailer as far as employment is concerned. It also provides the public an assurance that people are selling tobacco who should not be. It also sets down a marker for people who are subject to a restricted sales order who might go to another council district to try to get a job. As with most things that we are asking for, it is to provide clarity and a line in the sand for people who want to be irresponsible.
691. **Mr Dunne:** So the responsibility is likely to fall to local government?
692. **Mr Connolly:** Well, there are no better people. At present, we have many changes going through. This is an important responsibility and one that we cannot really farm out to 26 councils, as is, or to 11 super-councils as will be. The importance of having a regional register cannot be taken away from because of the simple reason of that clarity.
693. **Mr Dunne:** At the end of the day, you are suggesting that the ratepayer will be responsible for it.
694. **Mr Connolly:** I have not seen the proposed regulations that would say who holds that responsibility. I look forward to having that conversation with NILGA and the Department. I can say that there is a need for an easily accessible register.
695. **Mr Dunne:** OK. Thanks very much. Thanks, Chair.
696. **The Chairperson:** You are welcome, Gordon. Before I bring Pam in, I need members to state whether they need to declare an interest.

697. **Ms P Bradley:** I have an interest as a local councillor.
698. **Mr McCarthy:** So do I.
699. **The Chairperson:** I need to register this. That is Paula, Pam and Kieran.
700. **Mr Beggs:** My dad is a local councillor.
701. **The Chairperson:** Is he? I did not know that. Is there anybody else?
702. **Mr Dunne:** Yes. I happen to be a double-jobber.
703. **The Chairperson:** Apologies for that. That was my fault. I do not get carried away too much with technicalities. However, it needed to be done.
704. **Ms Brown:** Thank you, Chair. It is good to get the confessions out of the way. It is good for the soul. *[Laughter.]*
705. Thank you, Glyn and Aodhán, for your submissions. NIIRTA proposes amendments to enforce penalties on illicit traders. I am sure that you are aware that the Department has informed the Committee that it intends to introduce an amendment to the Bill to allow an offence that is committed under the Tobacco Products Duty Act 1979 and/or the Customs and Excise Management Act 1979 to be counted as a tobacco offence with regard to the three offences that are required for a restricted premises order. Are you happy with the Department's proposed amendment?
706. **Mr Roberts:** Yes. However, it remains to be seen whether it is actually effective. One thing about tobacco smugglers is that they adapt very quickly. As with a lot of legislation, we need to look at its implementation to ensure that it is actually effective. There are several conversations with PSNI and HMRC on all of that. This has changed since I took on this job five years ago. When I started, the big issue was a lot of illicit tobacco coming from China. Now, thanks to a lot of the work that HMRC has done, that has largely dried up. It has now become an indigenous problem in that gangs are targeting local retailers to replenish their stocks. We have to make provisions in such a way that we can crack down on those guys. The lack of real convictions for tobacco smuggling and those who sell illicit tobacco worries me. We need to see a zero-tolerance approach to that.
707. What can the community do? They can really hammer home the important message that buying illicit tobacco is not OK. The more that we tackle that culture of acceptance, the easier it will be to deal with the problem. That is one thing that no legislation can do. That can be done only through effective engagement and education.
708. There are several agencies concerned with this issue, including the Organised Crime Task Force, HMRC and the PSNI. Both our organisations are part of the business crime forum, which takes in the main business organisations and a lot of the main agencies in the legal framework. Again, we could hold discussions with them to ensure that all business organisations and agencies are singing from the same hymn sheet.
709. **Mr Beggs:** I like your suggestion of removing the exemption for searching a private dwelling. I agree that there has been a lack of action by HMRC, and that there is a danger of having a very high standard for all the legal retailers, while there is the sale of illicit tobacco to younger users. Do you accept that, in order for councils to carry out those types of investigations, they may have to be accompanied by the PSNI, just as they might be if they were patrolling for underage drinking? Are your members picking up much chatter? If there is hard evidence, it goes to the police. Do you think that there is a considerable amount of illegal tobacco on sale and making its way to underage users?
710. **Mr Roberts:** Absolutely. There is also a danger that legitimate retailers could be selling illicit tobacco unknowingly, and that worries me. We make it clear that retailers should buy their tobacco from recognised legal suppliers only. Likewise, we are telling the community that they should buy, if they choose, tobacco products from recognised

retailers only. There is almost a supply-chain issue, and we need to ensure that it is got right. It may well be that, as we crack down and drill down into the problem, the police might be required to be there. There is a slight issue if we are going down the route of ensuring that the illicit tobacco trade is tackled in the legislation. Clearly, there will be law-enforcement issues and there will be resource issues for local councils, and we need to have that wider dialogue.

711. **Mr Beggs:** Madam Chair, just on that —

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

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

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

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

in with the Bill, because it is more a customs and excise matter.

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

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

718. **The Chairperson:** I think that you are right, and we need to be careful that we are not going into areas that do not fall within our remit. However, there is nothing wrong with raising it, and we have raised it during the debate in the Assembly. We should not shy away from the fact that around 20% of retailers failed the test purchasing. So, it is about tackling that as well. It is not about the illegal tobacco alone, it is about illegal sales by legit retailers.

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

- From the start, we need to get the legislation right. It is how you enforce it.
720. Out of today, I am going to say again that it is important that both your organisations talk to NILGA and look at how this can be implemented on the ground and then come back and let us know. We have mentioned the involvement of HMRC in this, and the Minister has taken that on board. We will raise other issues, but we need to concentrate on this legislation to ensure that we get it right. If you can come up with any proposals that make it easier for your members and council environmental health officers to implement it, feel free to bring those recommendations forward. However, we also have a duty around public health and a duty to accept that some retailers are failing in the Challenge 18 or Challenge 25 campaigns.
721. **Mr Connolly:** Absolutely, Chair. Both of us said in our opening remarks that we support what the Executive are trying to do to reduce the prevalence of smoking in Northern Ireland and to restrict the availability of tobacco products to young people.
722. What our members have asked for mirrors your comments. There needs to be clarity in the regulations about the responsibilities of environmental health officers and local councils. There needs to be clarity on these new proposals and guidance on how they will be applied. There also needs to be clarity and guidance for retailers, which is where we need to step up to the plate. We would then know from day one what is expected from us to make the right decisions and to continue to be responsible retailers.
723. **The Chairperson:** Yes, and nobody would disagree with that, Aodhán. In reality, most if not all retailers are our people. They are members of our community, our neighbours and constituents. So, we want to make sure that we get it right to tackle the issue of public health. As I said, if you have any ideas or suggestions, feel free to let us know in the remaining weeks that we have to
- look at this legislation. It would help if you, NILGA and local councils were to agree on some of those proposals or suggestions, OK?
724. On behalf of the Committee, thank you very much for your paper and your presentation.

5 June 2013

Members present for all or part of the proceedings:

Ms Sue Ramsey (Chairperson)
 Mr Jim Wells (Deputy Chairperson)
 Mr Roy Beggs
 Mr Mickey Brady
 Ms Pam Brown
 Mr Samuel Gardiner
 Mr Kieran McCarthy
 Mr Conall McDevitt

Witnesses:

Ms Jaine Chisholm Caunt *Tobacco
 Manufacturers'
 Association*

725. **The Chairperson:** Do members have any need to declare an interest in this?
726. **Mr Beggs:** My dad is a Larne councillor.
727. **The Chairperson:** Pam, as a councillor, do you need to declare an interest in this session?
728. **Ms Brown:** Yes, I am a member of Antrim Borough Council. Thank you, Chair.
729. **The Chairperson:** I refer members to the correspondence from Cancer Research UK expressing concerns that the Tobacco Manufacturers' Association (TMA) was called to give evidence to the Committee on this Bill. For your information, the association submitted a response to the call for evidence on the Bill, and based on this submission, we invited them to present oral evidence to the Committee. In terms of the World Health Organization guidelines, which Cancer Research referred to, the Committee is interacting with the tobacco industry for the sole purpose of regulating the sale of tobacco products, which is the purpose of this Bill. Are members content to write back to Cancer Research informing it of this?

Members indicated assent.

730. **The Chairperson:** I refer members to the Tobacco Manufacturers' Association submission, and members have their yellow Bill folders in front of them. I welcome Jaine Chisholm Caunt, who is secretary general of the Tobacco Manufacturers' Association. I will hand straight over to you for your presentation, and then we will open it to members' questions. I know that you have travelled in this morning, so thank you very much for coming and for giving information to the Committee.
731. **Ms Jaine Chisholm Caunt (Tobacco Manufacturers' Association):** Thank you very much for inviting me. I am the secretary general of the Tobacco Manufacturers' Association. We appreciate the opportunity to come here today to comment on the Tobacco Retailers Bill. TMA is the trade association for tobacco companies that operate in the UK; its three member companies are British American Tobacco; Gallaher, which is a member of the Japan Tobacco International (JTI) group; and Imperial Tobacco.
732. TMA believes that smoking is a matter of informed adult choice. Children should not smoke and should be discouraged from doing so. Under current legislation, it is illegal in Northern Ireland and the rest of the UK to sell tobacco products to those under 18. TMA believes that children should have no access to tobacco products and that practical, access-based interventions are an appropriate way to reduce youth smoking. Children who gain access to tobacco often do so in one of three ways: via friends and family, often referred to as proxy purchasing; via an unscrupulous criminal who sells illicit tobacco; or via a retailer who breaks the law.
733. A registration scheme for tobacco retailers would apply only to one of those three channels. Although we

- do not oppose a tobacco register for retailers, we echo the concerns raised by other witnesses regarding the potential administrative burdens on retailers, and particularly the potential for introducing costs. Those are also our concerns. TMA suggests that the Committee also fully considers the following options to tackle underage smoking.
734. First, introduce proxy purchase legislation. TMA would support the introduction of an offence for adults to knowingly buy or attempt to buy a tobacco product or cigarette papers on behalf of a person under 18. It is illegal to proxy purchase alcohol in the UK on behalf of a person under 18, but not — except in Scotland — to proxy purchase tobacco. TMA was encouraged by the inclusion of this provision to prevent the proxy purchasing of tobacco products in the Tobacco and Primary Medical Services (Scotland) Act 2010, which was passed by the Scottish Parliament on 27 January of that year. We suggest that the Northern Ireland Assembly also considers including that provision in its Bill.
735. We also suggest that there should be further measures to tackle the illicit trade in tobacco in Northern Ireland. The empty pack survey, which is carried out jointly by all tobacco manufacturers in the UK, shows that 18% of cigarettes and 43% of hand-rolling tobacco in Northern Ireland was either illicit or cross-border shopped in 2012, creating an estimated £80 million loss in retail sales in Northern Ireland, which is equivalent to £27,000 in lost turnover for each one of the 1,300 small shops operating in the country.
736. As well as depriving the Northern Ireland economy of revenue, illicit traders do not care who they sell to and frequently target children. A report carried out by the anti-smoking organisation FRESH in the north-east of England found that 14- and 15-year-olds were twice as likely to buy illicit tobacco as adults. We would also like to see further promotion of the Real Deal campaign for fake-free markets, to stop street markets and car boot sales selling illicit products, including tobacco.
737. We would also like to see increased participation in proof-of-age schemes. Retailers face difficulties in assessing age without the use of ID cards. In that regard, TMA is a principal supporter of CitizenCard, which is the UK's leading accredited proof-of-age standards scheme, with over two million cards issued since its launch. TMA also initiated the No ID, No Sale (NINS) campaign, which is operated by CitizenCard and promotes age verification at point of sale.
738. The NINS campaign has engaged more than 100,000 retailers nationwide and assisted in creating a culture in which young people routinely expect to be asked to prove their age, and in which retailers accept only the correct ID. We encourage the Northern Ireland Assembly to promote participation and uptake of those schemes.
739. **The Chairperson:** Thank you, Jaine. Over the weeks, a number of organisations, including the Department, have briefed us on the proposed legislation, and, unfortunately, JTI could not be here today. You said that, in general, from the Tobacco Manufacturers' Association point of view, you are not opposed to the register. You said that there is a concern about the possibility of the introduction of a cost to that. JTI suggested removing clause 10, which is the issue of registration. Do you support its position in removing clause 10?
740. **Ms Chisholm Caunt:** I represent the industry as a whole. If you have a specific question on JTI's submission, it will have to be directed to it. I have spoken to JTI in advance of appearing here today, and it is very happy to provide any further clarification in writing.
741. **The Chairperson:** OK. That is fair enough. It is JTI's suggestion, so it is right that it should answer it. You said that you are not opposed to the register. Do you think if that clause were removed, it would undermine the whole

- ethos of the Bill or the whole issue of registration if there was no comeback for failing to register?
742. **Ms Chisholm Caunt:** TMA has actually just provided comment overall on the Bill rather than on individual clauses, so I am not able to provide any further detail on specific clauses, just on the principle.
743. **The Chairperson:** On the principle of the overall part of the Bill, you are not opposed to the register.
744. **Ms Chisholm Caunt:** We stated that we are not opposed to the register in principle, but we are concerned about potential for administrative burdens on retailers, particularly small retailers, and the potential to introduce costs at a later date. I would be pleased to hear how those could be ameliorated.
745. **The Chairperson:** It is not, per se, an issue about the register; it is the issue that there is a possibility that there could be costs attached to it.
746. **Ms Chisholm Caunt:** Sorry. Can you repeat the question, please?
747. **The Chairperson:** You are not necessarily opposed to a register.
748. **Ms Chisholm Caunt:** No.
749. **The Chairperson:** But the issue is that there could be a possible cost. So, it is not the register that you are opposed to.
750. **Ms Chisholm Caunt:** It is not the register, per se.
751. **Mr Wells:** As you know, smoking kills 2,300 people every year in Northern Ireland. Some of them, including friends of mine, have recently died particularly horrible deaths as a result of lung cancer. Therefore, my view and that of others on the Committee is that this legislation should make it as difficult as possible for under-18s to access tobacco, because we know that the stats show that your product is taken up by people mostly in their teens. The vast majority of people who start smoking do so when they are young, so it is important to stop them from having access to the product.
752. **The Chief Environmental Health Officers Group and the Northern Ireland Local Government Association (NILGA)** told the Committee that they visit between only 15% and 20% of premises in any given year for test purchases. So, in reality, most retailers will receive only one visit in a five-year period. The legislation states that a premises or person will be convicted if they commit three offences in three years. Obviously if you are only visiting a property once every five years, that makes it almost impossible to obtain a conviction. It was suggested that that should be changed to three offences committed in a five-year period, which would then be the threshold for restricting premises or a sales order. What would be the view of your group on that proposal?
753. **Ms Chisholm Caunt:** We are totally in support of measures to stop under-18s from accessing tobacco. We would like to see stricter enforcement of the law and greater penalties. We would certainly welcome the opportunity to make sure that the law is enforced. It would be helpful if the number of visits could be increased. It is also important to make sure that retailers are aware of the law and know that they need to enforce it.
754. **Mr Wells:** So, basically, you would support it being three offences over a five-year period to make it more likely that councils would get prosecutions?
755. **Ms Chisholm Caunt:** Well, we certainly do not support retailers breaking the law, so we would be in favour of measures to make sure that retailers abide by the law.
756. **Mr Wells:** There was a proposal that if a retailer was caught selling cigarettes to under-18s, a notice would be put up in the store to say that they had been prevented from selling tobacco products and to give the reason why, so that their customers would know that they had been convicted of what many perceive to

- be a serious offence. What would your view be on that?
757. **Ms Chisholm Caunt:** That is a measure that my member companies would be interested in talking to politicians about further. We are certainly not opposed to registration and measures to enforce the law on ensuring that young people do not have access to tobacco.
758. **Mr Gardiner:** The Chief Environmental Health Officers Group and NILGA told the Committee that they were in favour of an amendment to the legislation to change the maximum period for a restricted premises order or sales order from one year to three. What are your views on that proposal?
759. **Ms Chisholm Caunt:** Further to my previous answers, in responding to the actual Bill, we have commented overall on the principle of tobacco registration, but also on looking at some other solutions that we feel would be beneficial to the aim of reducing the access of young people to tobacco products. I believe that my member companies would be happy to talk with policymakers further about how the law could be enforced.
760. **Mr Gardiner:** Have you made any representations to those companies?
761. **Ms Chisholm Caunt:** Have I made any representations to those companies? My member companies have submitted evidence to this Committee.
762. **Mr Beggs:** You indicated that there are three strands that could perhaps be used to drive down the sale of tobacco to the under-18s. This particular legislation that we are looking at deals with the retailers. You mentioned proxy purchase tobacco being illegal in Scotland.
763. **Ms Chisholm Caunt:** Yes.
764. **Mr Beggs:** Have there been any successful prosecutions for that? Has it had time to show a benefit?
765. **Ms Chisholm Caunt:** That has only been on the statute books for, I believe, about a year. I believe that, so far, there have not been many prosecutions under that legislation. However, I think it needs some time to bed in.
766. **Mr Beggs:** The third element is illegal tobacco. Have you or your organisations any suggestions as to how this legislation might be able to be adapted to proactively assist in challenging those using illegal tobacco?
767. **Ms Chisholm Caunt:** One suggestion we would make is that in a retailer potentially committing an offence — the three offences that were referred to — those offences should include the sale of illicit tobacco as well as the sale of tobacco to under-18s. That would be one of the things that we would support. To address the scale and problem of the illicit tobacco trade in Northern Ireland, there needs to be greater partnership working between the various enforcement bodies, including the industry, sharing intelligence and data.
768. **Mr Beggs:** You have quoted figures of 18% and £80 million in Northern Ireland. Are those the estimates for Northern Ireland, or just a pro rata figure?
769. **Ms Chisholm Caunt:** Those are the estimates for Northern Ireland.
770. **Ms Brown:** Thank you for your presentation. It has been suggested that the register should be based at each of the local councils in Northern Ireland. Has your association any objection to it being centralised in one place in Northern Ireland, as opposed to held by the councils?
771. **Ms Chisholm Caunt:** We do not have a view on that at the moment. The position in Scotland is that there is a central register.
772. **The Chairperson:** Do any other members wish to comment?
773. **Mr Wells:** Just one point. Are you aware that some of what you are suggesting would affect what are called “reserved matters”? Some of these issues are relevant to the Northern Ireland Assembly because they are devolved. However, issues involving the taxation of

cigarettes, smuggling, etc, are reserved to the central Westminster Government. They are not covered in the Bill because we cannot do it. It is not due to a lack of co-ordination. If we could, we would, but that has to come from London.

774. **Ms Chisholm Caunt:** I understand that, but proxy purchasing is within your power.
775. **The Chairperson:** We could mention some of the issues that you have raised to departmental officials. Around the illicit tobacco stuff, we did mention HMRC to the Minister, and he has agreed to look at that. This is work in progress for us; we are scrutinising the Bill that is in front of us. This is not the final Bill; this is not the final legislation. That is why we have presentations and responses to the Bill from a lot of people so that we can get everybody's views on this.
776. That was very quick and painless. Well done. That was probably the quickest presentation that we have had on this Committee for a long time, so thank you for that.
777. **Mr McCarthy:** That is because I was not in.
778. **The Chairperson:** That is what it was, Kieran. I am trying to get it over before you start. So on behalf of the Committee, Jaime, thank you very much for travelling here and presenting us with your paper.
779. **Ms Chisholm Caunt:** Thank you very much for inviting me. If it is OK with you, I would like to leave behind some materials for the Committee to read.
780. **The Chairperson:** Thank you.

12 June 2013

Members present for all or part of the proceedings:

Ms Sue Ramsey (Chairperson)
 Mr Roy Beggs
 Ms Paula Bradley
 Mr Mickey Brady
 Ms Pam Brown
 Mr Samuel Gardiner
 Mr Conall McDevitt
 Ms Maeve McLaughlin

Witnesses:

Mr Gerry McElwee	<i>Cancer Focus Northern Ireland</i>
Ms Fidelma Carter	<i>Northern Ireland Chest Heart and Stroke</i>
Mr Neil Johnston	<i>Northern Ireland Chest Heart and Stroke</i>

781. **The Chairperson:** Do any members need to declare an interest under this agenda item?
782. **Ms Brown:** I declare an interest as a local councillor.
783. **Ms P Bradley:** I am a local councillor and vice-chair of the all-party group on heart disease and stroke, which is involved with Northern Ireland Chest, Heart and Stroke.
784. **Mr Brady:** I am chair of the all-party group on heart disease and stroke.
785. **Mr Beggs:** I declare an interest in that my father is a local councillor. Can we have clarity about whether we need to declare an interest as a member of an all-party group? I am not aware that we do.
786. **The Chairperson:** I do not know, but it is probably better that it is done and we can check it.
787. OK, thanks very much. We are looking at the Tobacco Retailers Bill. We are receiving presentations from a number of groups and organisations because this is legislation. We will hand straight over to you to do your presentation and then we will open the meeting

for questions and comments from members.

788. **Ms Fidelma Carter (Northern Ireland Chest Heart and Stroke):** I welcome this opportunity to address the Committee on the Tobacco Retailers Bill. My name is Fidelma Carter, and I am the director of public health for Northern Ireland Chest, Heart and Stroke. I am accompanied by my colleague Neil Johnston, public affairs adviser to Northern Ireland Chest, Heart and Stroke.
789. **Mr Gerry McElwee (Cancer Focus Northern Ireland):** I am representing Cancer Focus and am head of cancer prevention. We also welcome the Bill and see it as one element of what is needed in a comprehensive strategy for tobacco control. We have campaigned on this issue for 40 years. Progress has been good but much too slow. We need this Bill to be brought forward and strengthened, along with a number of other measures, if we are to achieve by 2020 the targets in the tobacco strategy for prevalence rates.
790. **Ms Carter:** Just to set the scene, smoking is responsible for around 2,300 deaths in Northern Ireland each year. It is a major risk factor for coronary heart disease, stroke, cancer and other diseases. Around 83% of smokers started in their teens. The latest research shows that 8% of 11- to 16-year-olds are smokers and half of those purchase tobacco from newsagents and other retailers, despite legislation that makes it illegal to sell tobacco to anyone under the age of 18.
791. In our view, the Bill gives the Assembly the opportunity to send out the message that it is serious about tackling smoking among young people. It also addresses premature death, preventable illness and health inequalities that exist in Northern Ireland that are contributed to mainly by smoking and tobacco. Tobacco

- is a legal product. However, it kills at least half of its users. The Bill will help to prevent young people from taking up smoking by making it more difficult for those who are under 18 years of age to access tobacco products.
792. In short, it also presents an opportunity to the Assembly to redress its own past failures. The Northern Ireland Executive's Programme for Government document entitled 'Building a Better Future 2008-2011' contained a range of ambitious targets that related to health inequalities and smoking. Those targets aimed to facilitate a 50% reduction in the life expectancy differential between the most disadvantaged areas in Northern Ireland and the average; by 2011, to reduce to 21% the proportion of adults who smoke; and, by 2011, to reduce to 25% the proportion of manual workers who smoke. In an Assembly report in June 2011, it was apparent that none of the above targets was achieved. Health inequalities continue to widen.
793. From the beginning of devolution, from 1999 to 2010, male life expectancy increased by 2.3 years to reach 77.1 years. It is a fact that male life expectancy in the most deprived areas had a relatively small increase of 1.6 years to reach 72.6 years, which has caused the life expectancy gap to widen from 3.9 years to 4.5 years. The gap in male life expectancy between the most and the least deprived areas was 7.6 years. Again, the main contributory factor for that gap is smoking.
794. Over the lifetime of the Assembly, female life expectancy in Northern Ireland has risen by 1.7 years to reach 81.5 years. A similar increase occurred in the most deprived areas, which resulted in life expectancy rising to 78.9 years. Therefore, the inequality gap, despite some fluctuations, was similar in 2010 to what it was at the beginning of that period of the Assembly. The gap is 2.6 years. That was also true about the gap in female life expectancy between the most and the least deprived areas, which stood at 4.5 years. Again, there was very little movement.
795. In short, if you wish to begin, after all these years, to address health inequality, you must take firm action against smoking. Specifically, you must send out a strong Act and a strong message to prevent young people from taking up smoking. I want to refer to smoking targets. In 2008, the Assembly's target was, by 2011, to reduce to 21% the proportion of adults who smoke. Currently, 25% of adults smoke, as is evidenced by the most recent health and lifestyle survey. Rather than the proportion of people who smoke being reduced from 24% to 21%, it stayed static at 24%. Indeed, it has now increased to 25%. We failed to reach the target to reduce the proportion of manual workers who smoke to 25% by 2011. It is currently 31%.
796. The other point that I want to raise is that we currently have the Department's 10-year tobacco control strategy, which was published last year. Again, there are some aspirational targets to be reached by 2020. I will just recap them. There is a target to reduce the proportion of 11- to 16-year-old children who smoke to 3%. It is currently 8%. Where do those young people access their tobacco? There is a target to reduce the proportion of adults who smoke to 15%. It is currently 25%. There is a target to reduce the proportion of smokers among manual workers to 20%. It is currently 31%. In reality, those new targets will be missed just as the previous ones were missed unless the Assembly takes action and sends out the message of its desire to prevent and discourage young people from taking up smoking.
797. We have submitted evidence to the Committee. My colleague Neil would like to highlight a couple of points in the evidence that we have already submitted. We are also happy to take any questions.
798. **Mr Neil Johnston (Northern Ireland Chest Heart and Stroke):** I welcome the Department's climbdown on the issue of illicit tobacco, and I know that

many members here pushed for that. I praise the Committee for bringing that about. Indeed, the Department's original position was completely illogical, and it is great that the pressure from the Committee has already forced a rethink on that issue. Sadly, that omission seems indicative of the Department's approach to the Bill in its entirety. It appears to have looked at Scottish legislation and the legislation in other jurisdictions with a view to replicating it but then, in effect, watered it down. I have sat in on and heard all the conversations about the register, and we seem to have an issue about whether it would be a local register or a central register. We are quibbling about the fact that it might cost £50,000, although I know that Jim Wells is a bit sceptical about that. In this jurisdiction, the Department spends £119 million on hospital costs associated with smoking-related illnesses, and we are quibbling about the cost of a register.

799. We had all the discussions about the number of offences leading to a ban. Again, it seems to be more driven by the councils' desire not to have to increase their enforcement workload rather than any desire to deal with the issue of underselling. In the run-up to introducing their similar legislation, Scotland increased the amount of spending on enforcement by £1.5 million a year the year before and in the two years after. Therefore, there was a serious desire to deal with the issue.
800. I want to mention briefly two other issues. With regard to our Bill, Chairperson, you drew attention to the issue of the display of notices for those who have been convicted three times and are then subject to a banning order, but that was not mentioned. To me, the simple inclusion of a similar clause in our Bill would have been a great addition. Why the Department did not include that is beyond me.
801. One issue that I did not put in our written evidence and which the Committee should consider — it was raised by the tobacco manufacturers last week — is proxy buying, which is included in the Scottish Bill. Basically, it would make it an offence to buy cigarettes for someone who is under the age of 18. That is not in our Bill, although it is in the Scottish Bill. The Scottish research has shown that 55% of children get their cigarettes via proxy buying. Obviously, there is a whole issue about how you would enforce that legislation. I am not in a position to make the case for how you would do that. However, you also had a good session with representatives of the retailers — the Northern Ireland Independent Retail Trade Association (NIIRTA) and the Northern Ireland Retail Consortium (NIRC). They talked very much about Challenge 25 and about challenging people. If you were to make it an offence to proxy buy, perhaps we could have discussions with the retailers to say that, when they challenge somebody about their age, perhaps they might also be able to ask them whether they realise that it is an offence to buy for children. We all see that happening. Fidelma told me this anecdote: children stand around in their uniforms outside shops and approach adults whom they do not know, and those adults go in and buy the cigarettes. If those adults were asked for their ID and somebody was to tell them that it was an offence to buy cigarettes for those under 18 years of age, perhaps they might decide not to take the risk — the unlikely risk, perhaps — for children that they do not even know. At the moment, that is not an offence, and we are not even considering making it an offence. You wonder why the Department did not read the Scottish Bill and think that that looked quite useful and should be included in the Bill. I will leave it at that for the moment.
802. **Mr McElwee:** We would have welcomed a licensing scheme similar to that in Scotland. However, I see this as a first step. If this legislation is not effective, I think that the case will be made for a licensing scheme. The organisation has campaigned on this issue of tobacco for 40 years. I campaigned way back in 1989, 1990, 1991 and 1992, and that led to the 1992 order. Unfortunately,

- more than 20 years later, we are still trying to mend what was not mended then. We get too few opportunities to do this, and we need to get it right.
803. One of the things that we asked for then was that the maximum penalty should be raised from £2,500, which was set by Lord Melchett in 1978. It was not done in 1991 or 1992, and we need to do it now because the fixed penalties tend to be a percentage of that maximum. Therefore, if you are setting the maximum at £2,500, you are going to get a fixed penalty of a couple of hundred pounds. We recommend that it goes up to around £20,000 so that we get realistic fixed penalties for people who are selling a product that is killing half of its users. It is a lethal, addictive product.
804. One other major point is that we need communication and a central mechanism for recording information, so that the different penalties and offences, whether for a named individual or a store, are easily accessible to all enforcement agencies, such as councils, customs or others, so that we can quickly share information and keep an eye on where enforcement should be happening.
805. **The Chairperson:** You are well aware that this is only a draft Bill and not yet legislation. Our call for evidence is to try to get it right. We have a responsibility to listen to everybody, and we are doing that. Some presentations that we have been getting have allowed us to tease out some of the issues with the Department. The Department is listening to and watching this closely as well. I do not know of any Department that wants to start a battle with its Committee if it does not need to. Hopefully, by the time that the Department comes back to us, it will have taken on board some of the points made.
806. When you look at what councils are saying about the banning order — and you are well aware of this because, Neil, you said that you sat in on some of the presentations from others — they estimate that around 2,500 premises sell tobacco and that councils test-purchase visit about 15% to 20% of them each year. That means, in a three year period, 45% to 60% of premises will be subject to test purchase. To me, that shows it to be highly unlikely that a shop will commit three offences in three years because, statistically, that cannot be done. So, we have been looking at amending the legislation to three offences in five years. Have you any views on that issue?
807. **Mr Johnston:** It seems counter-intuitive to leave a longer time, but the logic is sound in that an offence that is committed will hang over them for longer and there will be more chance of their being caught. We would support that. The issue here is around the level of enforcement and the number of purchases. The environmental health people made the case that they would pay more attention to shops that fall foul and would rely on intelligence, so they may be revisited more frequently. However, there is an issue about the level of enforcement and the money devoted to that. In general, we would support the idea of acting on three offences in five years. Otherwise, it is difficult to envisage how somebody would be as unfortunate, as Mr Beggs put it, to get caught. How could somebody be unlucky enough, almost, to be caught three times in three years?
808. **The Chairperson:** Again, for your information and that of Committee members, we are looking quite closely at what Dublin and even Scotland are doing and have been talking to officials from both. My view is that we should look at and pick out the best bits from legislation throughout the world, so we end up with the best legislation on whatever issue. We are not daft to the facts of what is happening in different jurisdictions as well.
809. **Mr Gardiner:** Chair, your comments touched so closely on what I was going to say that we could marry them. The Northern Ireland Local Government Association and the environmental health officers told the Committee that they believed that the Bill needed

- amending to include a mechanism for one easily accessible, central body to hold all the information contained on the 26 council registers, including all the information of the relevant convictions. Do you support that view?
810. **Mr McElwee:** Yes, we completely support that view. If there are to be 26 different databases, we will not get very far in enforcing legislation. We have had two goes at legislation; its enforcement and keeping track of it all have been a problem, as has commitment to enforcement. If we commit to enforcement now, we need to quickly share that information across the 26 councils and with other agencies, so that other relevant convictions, such as selling illegal or smuggled tobacco, can be shared as well. That will show us whether a business or group of businesses are a problem and where those limited numbers of inspections can be targeted. Communication among the agencies is vital. It should not be that difficult to set up a system in which those organisations can communicate convictions very quickly. It will be vital. If we do not have that system, a lot of the other things will not succeed.
811. **Mr Gardiner:** I welcome your views. That is my impression, too. Let us hope that we are successful.
812. **Ms Maeve McLaughlin:** The submission from Chest, Heart and Stroke indicated that there will be a minimum period of three months for an order. Exploring your rationale for that timeline would be useful.
813. **Mr Johnston:** The issue is if there were no display notices. If somebody gets a ban of a month and there are no display notices, it will be almost glossed over, whereas, if there are display notices and they are there for a considerable period, the public will know that that retailer has broken the law. We hope that the public will shop accordingly. I go back to the point that getting to the stage at which somebody is subject to a banning order is, sadly, as we have established, going to be quite an unusual occurrence. Somebody would have repeatedly broken the law and would have been caught three times. The sanction needs to be substantial. A ban of a matter of weeks or a month is not going to send that signal.
814. **Ms Maeve McLaughlin:** OK. Thank you.
815. The Committee discussed whether the maximum period should be increased from one year to three years. The environmental health officers who spoke to us were certainly in favour of that. What are your views?
816. **Mr McElwee:** Cancer Focus supports the increase in the maximum penalty from one year to three years. On the earlier question from the Chair, we also support the period in which three breaches of the law would be considered as a conviction being extended from three years to five years.
817. **Ms Brown:** Thank you for your presentation. Obviously, you are in favour of the display notice being displayed. I have heard some of the benefits, but are there any other benefits in the display of signs advising that premises are subject to a restricted order? Do you think that that would act as a good deterrent?
818. **Mr Johnston:** The display notice is, in some ways, almost a bigger deterrent than the ban. We hope that retailers will not want to have a sign in their shops saying that they have been banned for a breach of the law because it will not go down well with their customers. We are trying to bring to bear the power of public opinion as much as that of the law.
819. **Mr McElwee:** It will increase awareness among their customers, particularly the children. It will definitely increase awareness among other retailers, at least in that geographical area and perhaps further afield. We support that. We would also support the removal of tobacco products from the premises so that there would not be any inadvertent sales. That would make enforcement easier.
820. **Ms Brown:** Do you believe that signs should be required when a restricted

- premises order and a restricted sales order are in use?
821. **Mr Johnston:** I think so. It is very easy to blame the staff and say that it was some student who was in. At the end of the day, it is the retailer's job to make sure that the staff are trained and understand their responsibilities. He or she will suffer the consequences if the staff let him or her down.
822. **Ms Carter:** That would send out a very strong message and would prevent it from happening again.
823. **Mr McDevitt:** I noticed that Chest, Heart and Stroke's submission expressed concern that the financial penalty of £5,000 for non-registration was too low. How much do you think it should be?
824. **Mr Johnston:** That is something on which I have been trying to seek clarification. My understanding is that, in Scotland, it is £20,000.
825. **Mr McDevitt:** Do you think that £20,000 should be on the face of the Bill?
826. **Mr Johnston:** Obviously, some of these are small corner shops, but a lot of them are quite substantial convenience stores, employing large numbers of staff, and with huge turnovers. They are substantial businesses. They are not tiny, two-man operations. A lot of them are substantial businesses, as I say, and, therefore, a substantial penalty is needed to make them conform. In the unlikely event that we get to the stage of a banning order, there would need to be a fine of some magnitude.
827. **Mr McDevitt:** I understand that that is the case for a large retailer. However, £5,000 is not an insignificant sum of money. What is your specific rationale for saying that the fine should be higher than £5,000?
828. **Mr Johnston:** I was looking at what the Scots were doing. If you look at shops — and I do not want to give examples — a lot of them, as I know from my own locality, have turnovers in the millions of pounds. They are not tiny enterprises. We want to get to the stage whereby if someone is convicted three times in the five-year period, they are going to suffer a significant financial penalty. Frankly, £5,000 is something that the larger convenience stores could wear, but £20,000 is a serious dent in anyone's finances.
829. **Mr Beggs:** Thank you for your presentation. Gerry said that there has been a £1.5 million per year increase in enforcement activity in Scotland, in conjunction with the new legislation. Given the fact that so many of our young people are smoking, it is clear that we need to do something like that. My question is this: have you any sense of where our level of test purchasing is compared to that in other regions at present? Are we doing the same level of test purchasing as elsewhere, or are we giving this a light touch?
830. **Mr Johnston:** The Scots claim that they are at 20%, whereas we claim to be at 15% to 20%. However, more resource is devoted to this in Scotland. It is something that needs to be looked at. I am not aware of comparisons between what financial resources have been put into this in Northern Ireland, for example, relative to Scotland.
831. **Mr Beggs:** Do you agree that, when the new legislation is introduced, it would be an opportune time to move the whole thing up a gear and get an effective reduction in this habit, which, ultimately, results in reduced life expectancy?
832. **Mr Johnston:** I am not sure whether Gerry mentioned this, but the Department provides money for 11 or 12 tobacco enforcement officers at the moment. The rationale for those officials, which was given to the Committee, was that, as they were now freed up because the ban on smoking in public places was so well enforced or accepted, they could be devoted to other enforcement actions. However, I do not want to comment on whether that is a sufficient resource. This is a serious public health issue. Some 8% of 11- to 16-year-olds are smoking. If we want to get that down to 3%, we are probably

- going to have to devote more resources to this.
833. **Mr McElwee:** I agree. Having looked at the old legislation, one of the problems was enforcement. Of course, enforcement did happen in certain areas. I remember that it seemed to be higher than average particularly in the old Western Board area. The problem was that, when cases came to court, fines were very small and were not a deterrent. I remember, at that stage, which is close to 20 years ago, Liverpool and Coventry had much stricter enforcement from trading standards and much higher penalties. That had a big impact on the number of children who were able to access tobacco.
834. I agree that this is a great opportunity. We now have tobacco control officers in place who have very successfully implemented the smoke-free law and who, therefore, have the experience to implement the law. However, we also need the penalties to be a deterrent. The entire system needs to communicate and work together and see the rationale for imposing those penalties rather than giving people yet another slap on the wrist.
835. **Mr Beggs:** If I may, I would like to ask a final question. Neil, you mentioned that there are a number of central tobacco control officers. Would it be better if this were regulated at a local government level, where there is local knowledge and local buy-in, or do the officers who are housed centrally in the Department provide that?
836. **Mr Johnston:** We know that the officials work with the councils. Certainly, across the UK, it is a local government issue. I think that there may be a slight difficulty because, although councils in GB tend to have a bigger public health remit, our councils have not really been involved in that to date. Sadly, it is just a bit of an add-on for our councils and is not regarded as a core activity.
837. **Ms P Bradley:** Neil, in your presentation, you mentioned proxy buying, which we all know happens. When I was a teenager, all those years ago, that happened outside the shops, and we still see it happening. I know that if you go round any of the local shops where I live at 3.30 pm or 4.00 pm, you will see a group outside and others inside. Quite often, it is their friends, older brothers or sisters, or whoever. It is usually somebody they know, and so they are quite aware of what they are doing. I am 100% behind this as well, but how would you enforce it? The person committing the crime is the buyer, and the shop assistant or owner would have to have full knowledge that they are buying for someone else. How do you imagine it working? How has it worked in Scotland?
838. **Mr Johnston:** To be honest, at the moment, it is a bit of cop-out. The Department is basically saying that the primary responsibility for selling cigarettes to under-18s rests with retailers, but, as you say, if I go in and buy cigarettes, what is the retailer to do about it? He cannot even say, "Do not sell this to the kids outside", because it is not an offence. Obviously, enforcement of this sort of legislation is difficult. As I say, I think that the idea of saying to people, "It is an offence for you to go outside the shop and sell this to children", may discourage them from doing so. Enforcement would be difficult. My understanding is that three or four test purchasers are involved in trying to witness the offence and whatnot, and to get a case prosecuted.
839. **Ms P Bradley:** You said that it is in the Scottish legislation.
840. **Mr Johnston:** Proxy buying is provided for in the Scottish legislation, so it is an offence in Scotland to proxy buy.
841. **Ms P Bradley:** You could not even put a sign up in a shop to say that it is illegal to buy on behalf of someone else because the person committing the offence is the buyer, not the seller. I would love it; it is a fantastic idea, and it should be in the legislation, but I do not know how you would do it.

842. **Mr Johnston:** In Scotland, they can put up a sign that says, "It is an offence". It is not an offence here. I do not underestimate for a moment the difficulties in trying to enforce such legislation. Again, I think that this is about trying to use public opinion to say to people that it is an offence to do it. People know that they should not do it, but I feel that the issue is about trying to increase awareness that it is an offence, although, at the moment, it is not.
843. **Mr Brady:** Thanks for the presentation. In respect of the tobacco retail legislation, I am not sure how you can introduce something without dealing with the whole issue of illicit cigarettes and tobacco. The all-party group had a very good presentation from Professor Bauld on how people can copy packaging, and all that, and how it costs only 10p to 15p for 20 cigarettes.
844. So, although you can enforce restrictions on sales to people who are under age — you can do your best to do that — in my constituency, illicit cigarettes are sold regularly in a huge number of shops. Most are poor quality and, because of the toxins, and so on, that they contain, are probably more damaging to children or adults who smoke. Chest, Heart and Stroke is very much in favour of this being incorporated into the legislation. Can you comment on that?
845. **Mr Johnston:** Illicit cigarettes are obviously a big issue across Northern Ireland, including here in Londonderry.
846. **Mr Brady:** One of the issues that has been raised is that it is an issue for HMRC rather than the Assembly, but, surely, it is common sense that there should be cross-departmental co-operation to ensure that, if there is legislation, it is effective and not piecemeal.
847. **Mr Johnston:** Exactly. That is why the Committee is right. The Department was essentially saying that, if someone were caught selling illicit cigarettes in their shop, it would not take that into account. That was a farcical position, and, thanks to the pressure that you brought to bear on the Department, that will, hopefully, be changed. The whole subject of illicit cigarettes is a big one, because it is widespread in Northern Ireland, and in England as well. In fact, on Channel 4 last week, a retailer said that they are under constant pressure from people coming to them suggesting that they sell illicit cigarettes. In a tough economic climate, who is to say that someone who can make a bigger markup on illicit cigarettes will not do so? Obviously, this legislation deals with legitimate retailers. There are cross-cutting issues about taking illicit sales into account, but there is another whole big issue about illicit cigarettes and how to deal with that. That is a subject for another day, perhaps.
848. **Mr Brady:** Or a couple of other days.
849. **Mr McElwee:** On that, it is very important to point out that there is no such thing as a safe cigarette. All cigarettes are damaging, and we do not know whether illicit cigarettes are any more damaging. Certainly, the damage done by legal tobacco is an absolute scourge and an epidemic. It is killing 2,300 people a year, which is half of its users. So, that is one thing that we need to keep right up front.
850. The second point is that although there is illicit trade, it has dropped from 21% in 2000 to 9% in 2011. This is due to effective enforcement. The tobacco front agencies will always put forward the existence of the illicit trade as an argument for not enacting any legislation across a number of fronts. They use it at the time of the Budget, when we are talking about increases in duty, but we know from looking at smuggling internationally that that is not necessarily related to the price of cigarettes in those countries but more to the level of enforcement. They also use it as an argument against standardised packs, but, again, we know that it is just as easy to forge and smuggle branded packs as it is to forge standardised packs. We have had such a big drop overall because the Border Agency and HMRC have put

- more effort into stopping illicit tobacco. We have also seen the effects in the north-east of England and in the north-west of England of local alliances and local public information. We had some of those organisations over recently to speak to the Minister and others on these issues to show how, if you can activate community support along with all the enforcement agencies and education and health, you can have a big impact, even in areas where smoking prevalence is very high in the north-west and north-east of England. So, we should bear all this in mind when the issue of illicit tobacco is raised.
851. **Mr Brady:** From a purely common sense point of view, fewer people will smoke if they are going to have to pay £8 for 20 cigarettes rather than £3 for illicit cigarettes.
852. Recently, I had a meeting with Cancer Focus, and the point was made that packaging, even of legitimate cigarettes, is being aimed at women. The packaging is very attractive. All of that is targeted, but those cigarettes are still expensive. Illicit tobacco is much cheaper — there is a difference of about £4 or £5 a packet. If people do not have access to the cheaper tobacco, surely it would go some way towards discouraging them, from an economic perspective, from buying a packet of cigarettes at £7 or £8.
853. **Mr Johnston:** Illicit cigarettes are one of a wide range of issues involved in combating tobacco. There have been a lot of improvements, and I am sure that we will be back lobbying about standardised packaging before you know it. We strongly believe that that will be another angle. We know that standardised packaging makes cigarettes less attractive to young people. The Department puts quite a lot of emphasis on smoking cessation services. This is all very well, but we have to think about prevention as much as we do in trying to get people who have already started smoking to quit.
854. **Mr Brady:** As I was travelling down this morning, I was listening to an item about e-cigarettes on the radio. The discussion was on whether they should be classified as medicinal.
855. **The Chairperson:** Let us try to stick to the Bill because we could end up going down all sorts of avenues.
856. This has been a very useful meeting. As I said earlier, we have a duty to listen to everybody who writes to us about legislation, but that does not mean that we agree or disagree with what they say. I just want to put that on record.
857. The Department listens to and takes note of some of the presentations. We will go through this over the next few weeks to decide whether we as a Committee will propose amendments. In some cases, the Department will have amendments. I take on board the point that the Department has accepted the issue with HMRC. The Department would need to decide to come to us with proposed amendments before the Bill goes back to the Floor of the Assembly as part of the process of it becoming legislation.
858. I know that some of you travelled some distance to be here today. On behalf of the Committee, thank you very much for coming and for the paperwork that you provided.

26 June 2013

Members present for all or part of the proceedings:

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

Witnesses:

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

859. **The Chairperson:** Gerard, Jenny and Nigel, you are more than welcome. Thank you very much. We got you out of the Department.

860. **Mr Gerard Collins (Department of Health, Social Services and Public Safety):** It is good to be out and about.

861. **The Chairperson:** Before you start your submission, I advise you that the Committee received 24 written submissions about the Bill. We held evidence sessions with seven organisations. So, we have gathered a substantial amount of information. Some groups raised objections to certain clauses and others raised questions or are just seeking clarification on clauses. Committee members, as you are well aware, have other issues in relation to the Bill.

862. We want to go through the clauses with you and seek the Department's views on the issues that we raise. I hope that by listening to the evidence to date, you will be in a position to give us the Department's view on a number of issues. There may be issues that you need to go back to the Department and seek the Minister's view on, so we have scheduled another evidence session

with you for next week so that you can come back to us on that.

863. We will take each clause in turn. I will relay to you the issue raised in relation to each clause and ask you to respond. Members will then come in with supplementary questions. It could be a long session, so we may take a short break after an hour or so, depending on how far we have got.

864. Do you want to make any remarks before we start or will I just go into the clauses?

865. **Mr Collins:** Well, Chair, thank you for inviting us again. We went through in detail the Hansard transcripts of the sessions that the Committee had with a range of bodies. We noted that a lot of the issues that were raised were raised by the Committee with us in the first session, which, believe it or not, was on 24 April. Time has gone at a fast pace. Those issues included proxy purchasing; frequency of test purchasing; duration of the period over which test purchasing takes place; minimum periods for bans; extending the maximum period for a ban; maximum levels of fine; illicit trade; requirement for information-sharing between councils and enforcement agencies; potential for a central register; and requirement for signs that a restricted premises order is in place. There were one or two new things that we did not expect, such as sales from private dwellings, which the Independent Retail Trade Association brought up.

866. **The Chairperson:** OK, we will go through the Bill clause by clause, Gerard, so that we can highlight for you the points that were made to us, and you can then come back to them.

867. **Mr Collins:** Yes. We thought it best to put together a package to the Minister of what is proposed rather than go back on an individual basis. Hopefully, we will be able to do that next week. The

- package will be what the Committee proposes and what the departmental position may be, and we will see what the Minister says in response.
868. **The Chairperson:** OK. Let me start with clause 1. I will give you some of the background based on the information that we received. The majority of stakeholders were content for councils to gather information for their own registers. There were concerns that there needed to be a central register or database to bring together the information on the 26 separate registers. The register would hold the details of people convicted of, or given a fixed penalty notice for, tobacco offences and people convicted of illicit tobacco offences. It would detail who was subject to a restricted premises or restricted sales order.
869. The Committee's initial view is that we are leaning on the side of having a central registration process, as in Scotland. We are concerned that having 26 separate council registers and also having a central information point would be a duplication of work. What is the Department's position on that; what is the thinking behind having 26 different registers maintained by the councils; and what does the Department hope to achieve by that?
870. **Mr Collins:** In the first instance, the completion of information at council level means that each council will have a register of some sort anyway. We can see the advantages of councils sharing information on enforcement, convictions and fixed penalty notices because that is the information that a council needs in order to see whether someone with retail premises in more than one council area has more than one fixed penalty notice. We are not so sure about the advantages that a central register per se would bring. A central register more in relation to enforcement is key. The register, as it stands, would not have information on enforcement.
871. **The Chairperson:** On the basis that the Committee was leaning towards one central register, people said that they did not see a problem with having one central register. Would it not be easier for the Department to do that rather than face a battle at the next stage of the Bill?
872. **Mr Collins:** One council indicated that one of the councils could hold a central register. Nigel, you spoke before about the difficulty in Scotland about interrogating the register just to find, for example, who has premises and where.
873. **Mr Nigel McMahon (Department of Health, Social Services and Public Safety):** The Scottish register can be interrogated only by local authority, so it would take a long time to search across Scotland for someone who may be registered in more than one area. You talk about a central register. The Scottish register is set up on a council-by-council basis, albeit that central government hold the register.
874. The other point that councils made to us through the Chief Environmental Health Officers Group is that they already maintain quite a few registers for other things and have the systems to do that. In terms of being able to set that up and the cost of doing that, the feeling was that such a register could easily sit alongside other registers that they have. From an enforcement and inspection point of view, it has the advantage of allowing inspection programmes to be co-ordinated. Obviously, you are trying to reduce the burden on business as far as possible. If it is possible to visit premises and consider more than one issue at a time, they would rather do that. Holding their own registers would allow them to do that very much more than if the Department was holding the information.
875. **Mr McDevitt:** I appreciate Nigel's insight on the practicalities of this. However, we are dealing not with the design of the register but with the point of law: should there be a register or registers? A question that springs to my mind is this: why is there a register in the first place? From what I read in the Bill, it is there so that you know who to inspect; there is transparency about who is

trading and, therefore, is eligible for inspection. During the Committee Stage, the issue of enforcement has become a significant aspect or characteristic of a potential register. It seems to me that, because of technology and simple logic, it makes sense that there be a single register; that it be designed in such a way that it is easily segregated by local authority area; but that it serves the basic purpose, which has been identified during this Committee Stage, of being able to identify individuals or entities that may be playing the system, frankly, and seeking to trade in one area when, in fact, they may be limited or disqualified from trading in another.

876. There is nothing in Nigel's answer that says to me that you cannot have a single register, and that you cannot design it using — one would think — technology, which is what we would expect you to be using, in such a way that it allows all the functionality that you have outlined. In other words, it still allows each council to have, effectively, its own sub-register and still ensures that councils are maximising opportunities to double-up on inspections and to do all that practical stuff. Nothing you have said to me is a case against an integrated register. In fact, when we think about it, it is an even bigger case for an integrated register that is properly designed.
877. **Mr Collins:** OK. I think that the key issue there is the information that would be held on the register. This is the issue about enforcement information on convictions. It is important that councils are aware of cases in which a retailer has a conviction in one area and has premises in another or has multiple premises. The other issue is that the register, as it stands, is to be open for viewing to the public. If information on conviction details is contained in a register, issues arise about the retailer's right to a private life. So what is contained in the register is at issue.
878. **Mr McDevitt:** I would like to take legal advice on that, because, last time I checked, a conviction is a public proceeding in a court of law. I was not aware that, as a citizen, I had protection from society knowing what convictions I had. It is quite the opposite, I believe, as a cursory search through court records would tell me. The question is whether we live in a society that wants to make it difficult for people to access information, or in an open and transparent one. If you have a conviction that relates to your standing as a trader — it is not a parking fine that we are talking about here; this relates to your carrying out your profession — it is in the public interest that people understand that. That is the application in all other professions. It is unthought of that we would not wish to ensure that that information be available to the public.
879. **Mr Collins:** We would have to check that with the departmental solicitors. As the Bill is drafted, the registers are to contain information on premises. They are not to contain information on convictions. We appreciate that it is important that councils share information on convictions, so that councils know, but the intention was not to include details of convictions on registers that are open to the public.
880. **Mr Gardiner:** I am concerned that no specific official in the council is named as the enforcement officer for this Bill. Why is that? My follow-up question is this: what checks are there that councils will enforce it properly?
881. **Mr McMahon:** It is common legal practice to make enforcement a function of the district council. The council will then determine how to discharge that. I am not aware of any example of legislation that specifies a type of officer or post-holder in the council who would discharge the enforcement function. We fully expect that it will fall to environmental health departments in councils, primarily because that is the case in respect of all other tobacco control activity at the moment. We have no reason to expect that that would not be the case.
882. You asked about proper enforcement. Ultimately, as things stand, complaints

- about such things tend to go to the local government ombudsman. If a citizen or anybody else believes that the council is not discharging its functions as per the legislation, they can register a complaint and ask for an investigation.
883. **Mr Gardiner:** From what you are telling me, the Department cannot —
884. **The Chairperson:** Nigel and Sam, can we come back to that? We need to stick with clause 1. That can be a general point at the end.
885. **Mr Gardiner:** OK.
886. **The Chairperson:** We should specifically deal with the legislation as it sits. Are there any other questions on clause 1?
887. The Committee discussed the issue of whether certain people should be prevented from registering as a tobacco retailer. We think that for someone to be allowed to sell tobacco, they must demonstrate that they are a fit person. We are considering whether someone who has a serious conviction for selling illicit tobacco should be prevented from registering as a tobacco retailer. What is the Department's position on that?
888. **Mr Collins:** The question is how we define a serious conviction. We would need some definition of what a serious conviction is in the context of illicit sales. There is also an issue about duration. Should somebody be banned for their lifetime from registering as a tobacco retailer if they have a previous conviction for selling illicit or smuggled tobacco? Is there an issue about offender rehabilitation? We would need to take the views of an organisation such as the Northern Ireland Association for the Care and Resettlement of Offenders (NIACRO) about the rehabilitation of offenders. It likes to make sure that offenders have access to employment. So, should an offender who has served a penalty of some sort, be it a fine or a prison sentence, be denied the opportunity to establish a retail business?
889. **The Chairperson:** Does anybody want to come in on that?
890. **Mr Beggs:** What is the risk to the public and to young people of a person reoffending? There has to be a balance to all this. I accept that, at some point, you have to allow people to move on from past behaviour, but if you have no restriction, you are endangering young people.
891. **Mr Collins:** That is making an assumption that someone who has sold tobacco on which no duty has been paid is a person who would sell tobacco to an underage person. It is an assumption, and we do not have evidence that it is the case.
892. **Mr Beggs:** I am aware from my time on the Public Accounts Committee that those who committed one type of fraud were very likely to also breach some other form of law or to commit another fraud. I understand that it is widely accepted in government that, when someone breaches one law, there is a high risk that they will easily be happy to breach another law for equal profit.
893. **Mr McDevitt:** The definition of a serious conviction is well established in law. Maybe officials could clarify that their understanding of a serious conviction is the same as the one that we could establish if we were to do a Google search right now, like I just have, and come back to us. There is a clear body of convictions that are considered serious beyond question, and the question remains about whether officials are, in principle, agreeable to including a disqualification of someone who is or has been found guilty of a serious conviction.
894. **Mr Collins:** We can certainly put that to the Minister. We would like to have an opportunity to discuss it with some of the offender rehabilitation charities first to get their view.
895. **The Chairperson:** When will you do that, Gerard? Over the summer?
896. **Mr Collins:** Yes. We can do that over the summer and come back on it. As well as that, we could take the Committee's views on the duration for which such a ban should apply. Should it be two years

- after conviction for an illicit-tobacco offence? Should it be five years or 10 years?
897. **The Chairperson:** Before I bring Paula in, I think that it is important to clarify where we stop and where the lines are. You should be presenting options to us. You should be telling us that you have an option that is based on having gone down the road of the Committee's thinking. You say that you want to talk to the likes of NIACRO. I want you to clarify that you will talk to NIACRO over the summer. On the issues that we have raised, I want you to clarify that you will come back to us with more information, answers and proposals on what the Department will do to deal with Committee members' concerns about some of the clauses.
898. **Mr Collins:** That is fine. We will speak to NIACRO. We will give some thought to whether there should be a lifetime or time-bound ban from registering as a tobacco retailer. We will look at HMRC's definition as to the seriousness of an illicit-tobacco offence.
899. **Ms P Bradley:** That is exactly what I was going to suggest. Perhaps we need to look at a timescale for that.
900. I definitely agree with the rehabilitation of offenders. However, there are many professions and jobs out there that you will never be able to work in if you have committed an offence. It could be working with vulnerable adults or children, for example. If you have committed a certain offence, you have no hope of ever working in that profession. We are protecting children through this law as well. So, we have to take it a little bit more seriously. That is why we need to have those things in place. I think that we all feel quite strongly about that. Something needs to be put in place to deal with people who have past offences, especially with regard to illicit tobacco. In my experience, as somebody who lives in the community — as we all do — those people really do not care who they sell it to. They are definitely selling it to children as well as adults. There is no doubt about that.
901. I would be interested to hear what NIACRO has to say. We could maybe look at some sort of time-bound ban to be put on that. I agree that, if someone commits a crime, and that person is then crime-free for so many years, they should be given a chance. However, there are plenty of professions out there where people are not. This is no different.
902. **The Chairperson:** You are aware of the Committee's feelings on that, so will you come back us?
903. **Mr Collins:** Yes.
904. **The Chairperson:** Unless there are any other issues on clause 1, I will move to clause 2.
905. The main issue with clause 2 is the fact that it allows for regulations to be made to allow councils to charge a registration fee. Councils have told us that they support that potential power. Retailers do not support it. Is a fee charged in Scotland or in other places for registration?
906. **Ms Jenny McAlarney (Department of Health, Social Services and Public Safety):** In the Republic of Ireland, there is a €50 charge for registering. Scotland does not charge. However, they have retained a power to be able to charge in the future if they decide to do so. I suppose that our view is that we would like to retain the power. However, that is decided through affirmative resolution by the Assembly. So, the Assembly would, obviously, have a chance to vote on it if we decided to go with something like that.
907. **The Chairperson:** Jenny, is there any thinking on the circumstances in which you see the Department using the powers in clause 2(7) and making a regulation to allow a fee to be charged?
908. **Ms McAlarney:** If the councils were holding the registers, as is intended in the Bill, I would not see that we would, because it would be a very cheap option

- for them and there would not be any costs associated with it. If we were to move to a central registration system, there might be a case for having a charge in that instance.
909. **Ms P Bradley:** I was not here at the beginning of the meeting. I should have declared an interest as a member of a borough council.
910. **The Chairperson:** OK. We will use the opportunity to get others to declare if they need to do so.
911. **Ms Brown:** I declare an interest — *[Inaudible.]*
912. **Mr Beggs:** I declare an interest. My dad is a local councillor.
913. **Mr McCarthy:** I am a member of Ards Borough Council.
914. **Mr Dunne:** I am a council member.
915. **Ms P Bradley:** In Scotland, someone has to be paying for this somewhere. Is the Department in Scotland paying for it?
916. **Ms McAlarney:** Yes. The Department paid the costs of the register.
917. **Ms P Bradley:** OK. I know from working in local council that any added work that has to be done has to be paid for from somewhere, whether it be by ratepayers or whomever. So, someone has to be paying for there to be a register in Scotland. I am neither for nor against a charge, but someone has to pay for it. Councils, or ratepayers in general, cannot just be expected to pick up the tab.
918. **Mr Collins:** As far as I know, in Scotland, there is a set-up charge and an ongoing, annual charge.
919. **Ms McAlarney:** Yes; there is a £5,000 maintenance fee plus the cost of a part-time admin person. I think that £35,000 was the cost of setting up the register.
920. **Ms P Bradley:** And that is from the Department?
921. **Ms McAlarney:** Yes.
922. **The Chairperson:** There is another issue relating to the wording of clause 2(1).
- A range of stakeholders suggested that the word “may” should be changed to “shall” or “must”. Can you explain why you decided to word it in the way that you did?
923. **Mr Collins:** We went back to the Departmental Solicitor’s Office about that and got a legal explanation, which I hope Jenny has to hand.
924. **Ms McAlarney:** I do. The Office of the Legislative Counsel (OLC) gave us this reason for using the word “may”:
- “This may help to illustrate the effect that ‘must’ would have on clause on 2(1)(b). If ‘must’ appeared in clause 2(1) and a person had no further premises to add to the register, a duty to add further premises would apply to them under clause 2(1)(b) regardless of whether he had further premises or not. The intention behind clause 2 is to give a power to apply to be registered, not a duty to apply. If we place a duty on persons who are proposing to carry on a tobacco business to apply to be registered, it would technically have the effect of obliging persons who are thinking of carrying on a tobacco business to apply to be registered. This would beg the question how seriously would you have to be thinking about carrying on a tobacco business before the duty to apply to be registered had effect.”*
925. **The Chairperson:** May we have a copy of that so that we can refer back to it?
926. **Ms McAlarney:** Yes.
927. **The Chairperson:** We will come back to that.
928. **Still on clause 2(1), stakeholders queried why the wording is:**
- “proposes to carry on a tobacco business”.*
929. Why is it not “carries on” a tobacco business? In other words, why does it apply just in the future? Can you explain why the clause is worded in that way?
930. **Ms McAlarney:** This is slightly complicated. The reason that the OLC gave me for having “proposes to” is that we will give existing retailers a set period of time in which to register. However, once the legislation commences, anybody who is considering

- setting up a tobacco business must register before they set up the business rather than set up their business and then, once they are carrying on that business, decide that they, too, will join the register. That is why it has been set out in that way. If you are considering setting up a tobacco business, you should register before the business is set up.
931. **The Chairperson:** May we have a copy of that as well?
932. **Ms McAlarney:** Yes.
933. **Mr Collins:** As regards implementation of the legislation, there will obviously be a period of a few months for existing tobacco retailers to apply; it allows for that.
934. **The Chairperson:** Is the address referred to in clause 2(2)(a) a business or private address?
935. **Ms McAlarney:** It has been left as an address, and it will then be for the Department to decide through regulations. Clause 2(d) states that the application form can:
“be made in such form and manner as may be prescribed”.
936. **Clause 2(e) states that it can:**
“contain such other information as may be prescribed.”
937. The Department will draft regulations setting the form of the application form and asking for an address. It has been left open so that we can decide, through the regulations, whether it is a business or personal address.
938. **The Chairperson:** What names and addresses will be provided by companies like Sainsbury’s or Tesco?
939. **Ms McAlarney:** We will probably go with the Scottish version. They ask for the head office address in the first place and then the address and the name of the manager of each premises.
940. **Mr McDevitt:** That will all be in the regulations?
941. **Ms McAlarney:** Yes.
942. **Mr McDevitt:** So we can come back to that at a future date.
943. **The Chairperson:** Some of the stakeholders who responded to us suggested that, when someone is registering, they should be required to provide details of their tobacco supplier. Has the Department any view on that?
944. **Ms McAlarney:** That will also be for the regulations on the application. In the South of Ireland, they ask for details of suppliers. We would probably not put that on a register that people will see, but we will probably ask to have it for our information and the council’s information.
945. **The Chairperson:** There are no other questions on clause 2.
946. On clause 3, some stakeholders suggested that the period for notifying a change of name or address or notifying that a tobacco business is no longer being carried out at that premises should be changed from three months to 28 days. What is the Department’s view on that?
947. **Ms McAlarney:** If the Committee feels that that is appropriate, we will be happy to consider it and seek the Minister’s agreement to shorten that period.
948. **The Chairperson:** There are no other issues on clause 3.
949. Clause 4(2) states that a premises that is subject to a restricted premises order must be removed from the register. Some stakeholders have 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 an owner of a shop. Is that because someone who has a registered sales order against them can still own a business that sells tobacco as long as they personally are not selling the tobacco or have management functions in relation to the tobacco aspect of the business?
950. **Ms McAlarney:** Yes; that is true. Several restricted sales orders may be against

- staff members of the shop who do not have their name on the register anyway. The register will just ask for details of owners and will obviously not contain the details of all the staff who work in the shop.
951. **The Chairperson:** There are no more questions on clause 4.
952. **Mr McDevitt:** That is something that we might want to return to.
953. **The Chairperson:** Clause 5 allows for people to take copies of the register. Who do you think is most likely to want to obtain copies of the register?
954. **Mr Collins:** Another enforcement agency, for example, might want to have copies. Other businesses might want to have copies to know where competition lies. It could be someone who sees tobacco being sold from a certain premises and has a concern that that premises is not registered. An informed citizen might want to know whether that premises is licensed to sell tobacco. There is whole variety of reasons why people might want to see it.
955. **Mr McDevitt:** What physical form does the register take in Scotland?
956. **Ms McAlarney:** It is a website.
957. **Mr McDevitt:** That is what I thought. It would be a bit bizarre if it were some book somewhere. *[Laughter.]* I presume that you guys are not proposing telling councils that you want them to keep a ledger in a dusty room and lock it away at 5.00 pm every day and that, in fact, it will be online. Is clause 5 really appropriate? When I, as a reasonable person, read clause 5, I think that a lot of this would not apply if the register were online because, by definition, it would always be available to everyone.
958. **Mr Collins:** We are hearing that a lot of small retailers, especially older retailers, do not have access to computers or the internet. In those cases, if someone is interested in viewing the register, there will still be a need to be able to get a hard copy of it printed off.
959. **Mr McDevitt:** I accept that. You would probably do that by going into a public office somewhere and getting some poor official to print off either part of it or the whole thing for you. Let us just say, for argument's sake, that we win the argument on the regional register; I am not asking you to express an opinion. If we are making a law, surely you would just say that there will be a register, that it will be online, that it will be available to everyone, and, that, if you cannot access it online for whatever reason, councils have a duty to make copies available to you.
960. **Ms McAlarney:** When we were drafting this legislation, we were looking at a council-held register. While some councils may put it online, a lot of them will probably just keep an Excel spreadsheet-type thing on their own computers. That clause is there to allow the public to have access to the register and to give them that power if they wish to have it.
961. **Mr McMahan:** It is also a fairly standard clause. As we mentioned earlier, councils already hold a range of registers. In all the legislation that supports those, there will be a fairly standard clause like this that allows a member of the public to go to a council office and inspect the register.
962. **Mr McDevitt:** Nigel, you must accept that, if you are setting up a register in 2013 — and it is public register not a private register — there is an absolute expectation that it will be something that I, for example, could Google right now and ask you questions about in real time. I would feel really disappointed if we were thinking about anything else, because it does not feel like modern Government, never mind law.
963. **Mr McMahan:** I do not think that it prevents that from happening, but if some individual who did not have internet access decided, for whatever reason, that they wanted to go to the council and ask for that information, it seems that the provision supports that or requires the council to make that

- information available in hard copy to them at their premises at the time.
964. **Mr Collins:** I suppose that it goes back to the question again about a central register and how any central register would be maintained and held. A central register that could be held online, with details by council area, might be the appropriate way to go. I know that the Committee is strongly in favour of a central register, and maybe it could be held online.
965. **Mr Dunne:** Would there be an issue of freedom of information in relation to that if it were online? I suppose that depends on what information is held.
966. **Mr Collins:** I suppose that it is more a case of data protection than freedom of information. As Nigel said, a variety of registers are held and are open to public inspection. It might be publicly available information. It depends on the nature of the information that is held.
967. **Mr McMahon:** In some other registers, some information is withheld. For example, in registers around industrial pollution control, any information that is deemed to be commercial in confidence, which may be required in the register from the regulator's point of view, is not made available on the public version of it, but all the other information is available.
968. In the Scottish register for the equivalent of this proposed legislation, as part of the application, they ask for the details of an individual representing the business, but on the public website, you can only get the company details and address details, you cannot get online the details of the individual who made the application.
969. **Ms Brown:** This is more of a comment than a question. The deeper we go into this, the more it seems to be complete common sense to have one central register. I agree wholeheartedly with Conall about the online aspect of it. In this day and age, our local libraries have internet access. It is accessible to everyone, and anyone who does not go down that route at this stage will probably ask their sons, daughters or grandchildren to do it for them. I do not see a barrier to accessing online information.
970. **Mr Beggs:** Do you concur that if the publicly available information were online, it would avoid the additional bureaucracy and costs of freedom of information access requirements because you would just be able to say, "as per the website?" It would cut out that level of bureaucracy and somebody having to think about what does and does not get released and individually accessing that information. So, I can see long-term savings and avoiding that cost to local government if it is simply online. Do you agree with that, or can you see that point of view?
971. **Mr Collins:** I certainly do. If any information that is held online is published, we can simply refer people to the website if a freedom of information request comes in.
972. **The Chairperson:** OK. We will move on to clause 6. As this clause is drafted, it simply states that councils must provide to other councils and the Department, if requested, the information contained in their tobacco register. Many stakeholders are concerned that this clause is not strong enough to ensure that all the relevant information is shared by all the relevant agencies to ensure that the legislation can be properly enforced. Stakeholders want one central information point that brings together the information on the 26 separate registers and holds details of people who are convicted of or given fixed-penalty notices for tobacco offences and people convicted of illicit tobacco offences. It would also detail who is subject to a restricted premises or restricted sales order.
973. Putting aside the issues from clause 1 and whether there would be 26 separate council registers or one central register, does the Department agree that there should be one central information point where all the information that I have listed is kept and available to those who need to see it?

974. **Mr Collins:** We looked at that and discussed it earlier. It is something that we will go away and think about. It is clear that that is something that the Committee is very keen on, and it is something that we would work to see. I am sure that it is feasible. There will be a charge of some description, and the Department will probably have to meet that charge, at least in respect of setting up a central register. There will be technical issues, but it is done in Scotland.
975. As to the information that the register holds in respect of enforcement, fixed-penalty notices, convictions and what not, I would like the opportunity to go back to speak to the solicitors about that to see whether that sort of information could be put on to a public register.
976. **The Chairperson:** Can you also come back to us with information on what organisations would be suitable for collating the information if it is agreed? On the back of the last discussion, it would be helpful if you could try to get as much information as possible for when you come back the next time about what information can be made available, who would be on the register, details about who has been subject to an offence or a fixed-penalty notice and things like that.
977. There are a number of issues in relation to clause 7. As drafted, the Bill states that three offences committed in three years will result in a restricted premises order. You are well aware of the discussions that we have had around that. Given the frequency of test purchasing, we are coming to a view that three offences in five years would be more realistic in respect of securing the restricted premises order and would also act as a better deterrent. The charities agree with that position, as does the Northern Ireland Local Government Association (NILGA). What is the Department's view on that proposal?
978. **Mr Collins:** We think that that is an extremely good idea, and it is something that we will put to the Minister.
979. **The Chairperson:** OK. Thank you. I like this part. *[Laughter.]* Also, there is concern around the length of the restricted premises order. Currently, the Bill states that the maximum penalty for a banning order is one year. Some stakeholders have suggested to us that there should be a minimum period specified of three months. What is the Department's view on that proposal?
980. **Mr Collins:** We took advice from the solicitors, and the response was that there is no problem in setting a minimum period for an order to exist. It is more common for guidance to be issued to courts as to a minimum period rather than be prescriptive, but if we wish to specify a minimum period in the Bill, that can be done.
981. **Mr McDevitt:** This is a very brief observation, and I know that Gerard and colleagues will know this, but low-level judges would be considering that type of banning order, and they have a record of sometimes giving very low penalties. I think that there is a case for a minimum here rather than relying on guidance, even though the minimum may or may not be the 90 days that have been suggested. I think that there is a strong case for a minimum.
982. **Mr Collins:** Again, that is something that we would be happy to put to the Minister.
983. **The Chairperson:** Do you have an idea what period is specified in the Scottish or Irish legislation?
984. **Ms McAlarney:** In Ireland, they have no minimum limit, and the maximum is 90 days, but I was speaking to the chief executive of the Office of Tobacco Control just last week, and she was saying that, because of the small periods that the courts are handing out, they are considering amending the legislation. They are thinking about a minimum period of one month to six weeks.

985. **Mr Beggs:** As members will know, I have been keen to tighten up a lot of aspects of this, but we have to get a balance, and I have a concern that if there were a three-month ban, some smaller shops could close completely. I am not sure that 90 days would be appropriate as a minimum limit.
986. **Mr McDevitt:** There has to be a minimum of some sort.
987. **Mr Beggs:** I still want a minimum.
988. **The Chairperson:** The Department will look at that and come back, so we can look into the time period then. There has also been a suggestion that the maximum should be increased to three years. What is the Department's proposal? Do you have any information on what is specified in the Scottish and Irish legislation?
989. **Ms McAlarney:** I do not think that Ireland is looking at extending the maximum, which is only 90 days. In Scotland, it is two years. In England and Wales, it is one year, which is the same as we have proposed, but we would be happy enough to look at extending it beyond a year.
990. **The Chairperson:** It has been suggested that a premises should have to display a notice stating that they are subject to a restricted premises order. We generally support this view because we think that it would act as a good deterrent and make the public aware that a premises had broken the law. What is the Department's view on this proposal?
991. **Mr Collins:** Again, we would be happy to put that to the Minister. We accept the argument of the deterrent impact of a sign.
992. **Mr Dunne:** Would there be requirement to display a sign?
993. **Mr Collins:** We would put a clause in.
994. **The Chairperson:** We previously discussed whether an offence for illicit tobacco should count towards the three offences. At the evidence session on 15 May, you said that you would look at tabling an amendment to include reference to an offence committed under the Tobacco Products Duty Act 1979 and the Customs and Excise Management Act 1979. In general, the Committee would welcome such an amendment. Is this still the Department's intention? If so, what progress have you made on looking into the issues and drafting a possible amendment?
995. **Mr Collins:** We have drafted a possible amendment. Have we put that to the Minister?
996. **Ms McAlarney:** No, not yet.
997. **Mr Collins:** We will put it to him and seek his approval when we have a package of proposed amendments and changes.
998. **The Chairperson:** That is interesting.
999. We also have some questions around convictions made under the Tobacco Products Duty Act 1979 and the Customs and Excise Management Act 1979. Can you provide us with information on the behaviour that someone would have to be engaged in for HMRC to seek a prosecution under either of these Acts? If someone were caught selling 10 packets of illicit cigarettes, for example, would he or she be prosecuted?
1000. **Mr Collins:** We have not sought that information from HMRC. To be honest, I am not sure whether there have been too many convictions under either of those Acts. We do not have the evidence to make a decision on what type of behaviour would count towards a conviction.
1001. **The Chairperson:** There have been convictions. We have a letter from the DOJ stating that there have been around 12.
1002. **Ms McAlarney:** I went back to our contact in the Department of Justice to ask whether he was aware of the specific nature of those offences. He told me that he did not have the information but that he would go back to HMRC and try to find out for me. I have

- not heard; he has not had time to come back to me.
1003. **The Chairperson:** I appreciate that this is complex, but at Second Stage, the Minister said that he was looking at the issue, and at the evidence session in May, you made it clear that you would look into tabling an amendment. I ask you to look at it again and write to us over the summer telling us what you find out.
1004. We also received correspondence from the DOJ — we will send you a copy — regarding whether a premises or person can be banned from selling tobacco as part of their conviction under those Acts. We would be grateful if you could consider its implications for the proposed amendment to include an offence for illicit tobacco as part of the Bill. We need you to do that over the summer.
1005. **Mr Collins:** I suppose that there is an issue with the Bill. We can specify that councils must share information on enforcement, but I am not sure whether we have the remit to specify that HMRC would have to share or be required to share information on its enforcement activity and convictions with the councils. That may have to be worked up in a protocol of good will.
1006. **The Chairperson:** Gerard, you need to tease that out and find out. The Minister said that he would look at it, and the DOJ has written to us. If there are other issues, we need to know about them before we get to the next stage of the Bill.
1007. **Mr McDevitt:** I understand what Gerard is saying, because HMRC is not a devolved authority. However, if HMRC takes a prosecution against someone in this jurisdiction, the conviction becomes a matter of record in the Courts and Tribunals Service. Therefore, it does not really matter what you are convicted of; it is where you are convicted. If you are convicted in Northern Ireland, the fact of your conviction falls within our jurisdiction, and the detail is available through a devolved authority, which is the Northern Ireland Courts and Tribunals Service.
1008. No one has the power to ask HMRC whom it is investigating; that would be totally inappropriate. However, we are not interested in that information. We are just interested in those who have been convicted.
1009. **Mr Collins:** We will seek a legal view on that.
1010. **The Chairperson:** We will get you that letter from the DOJ.
1011. Some stakeholders suggested that a premises that is subject to a restricted premises order should be required to remove tobacco products from the premises to prevent any breach of the order. That would also make it easier for councils to check that a premises was complying with the order. Has the Department any view on that proposal?
1012. **Mr Collins:** Yes. There is an issue about where the retailer would have to move the tobacco products to. We agree that, when there is a restricted premises order, the tobacco products should be removed from the retail area and perhaps put in a locked storeroom on the premises. However, if a small retailer had to remove stock — it does not take a lot of stock to amount to a large amount of money — and bring it to their private dwelling or home, there could be an issue with their becoming targets for potential break-ins. It would concern us if they had to remove the tobacco products from the shop entirely, and we would perhaps prefer it if they had to remove it from the retail areas. Every shop has a lockable storeroom somewhere.
1013. **The Chairperson:** Would that be under a restricted premises order?
1014. **Mr Collins:** Yes, when there is a restricted premises order, and someone is banned from selling tobacco products.
1015. **The Chairperson:** So if a retailer did not remove the tobacco when a restricted premises order is in place, would that create an offence under clause 10?

1016. **Mr Collins:** As it stands under clause 10, if a retailer sells tobacco when a restricted premises order is in place, that would be a further offence. However, as far as I understand it, having tobacco on the premises would not be an offence.
1017. **Ms McAlarney:** No, not at the minute.
1018. **Mr Collins:** I think that it is a question of balance —
1019. **The Chairperson:** Sorry, Jenny, what do you mean by “not at the minute”? Are you looking at that?
1020. **Ms McAlarney:** We have raised that with the OLC. It came back with a few extra questions for us to consider about the circumstances.
1021. **Mr Collins:** I think that there is a need for balance. It would probably be good practice to have the tobacco removed entirely from the retail area. However, it is about whether it can be kept in a locked storeroom in the shop rather than owners putting it in their own private premises.
1022. **The Chairperson:** Will you keep us updated on the outstanding points that you might get answers to?
1023. A question was asked about clause 7(7), which requires councils to give notice of their application for a restricted premises order to every person who appears to be affected by the application. Could that mean, for example, that councils would have to ensure that they had given notice to every employee in a large supermarket?
1024. **Ms McAlarney:** No. I presume that it would mean people with a management responsibility.
1025. **Mr McMahon:** The persons affected are defined in clause 7(13)(b). It would be the occupier of the premises and any other person who has an estate in the premises.
1026. **The Chairperson:** So in the case of large supermarkets, it would be only management who would get the notice.
1027. **Mr McMahon:** In that scenario, I would image that it would be —
1028. **Mr Collins:** Management and head office.
1029. **Mr McMahon:** — management and head office. If someone rents shop premises, it would be the business operator and the landlord.
1030. **The Chairperson:** There is also a query about clause 7(8), which requires that the three offences have to be by the same offender on the same premises. Will you clarify who the offender is when a fixed penalty notice or conviction is made when tobacco is sold to someone who is under the age of 18? Is the offender the owner of the premises or the individual who made the sale?
1031. **Mr Collins:** It can be either or both. It will be at the discretion of the tobacco control officer.
1032. **The Chairperson:** OK.
1033. **Mr McMahon:** In the majority of cases, it is more likely to be the owner or operator. As Gerard said, it could also be the person who made the sale. However, in existing enforcement activity, councils tend to focus more on operators and the systems that they have in place to prevent underage sales. Some councils will also give a warning or caution to the seller. In some circumstances, when it is fairly obvious that the seller has, for whatever reason, made a deliberate decision to ignore the advice that has been given by the operator, they would perhaps go for the seller. I am thinking of a case that was quoted to me in which a child in the test purchase approached a seller, and the seller asked the child to come back later in the afternoon when the manager would not be there. The officer returned and tried the test purchase again, and the sale was made in the afternoon. The feeling then was that, obviously, you would go for a conviction in that case against the seller as opposed to the manager who was not present.
1034. **The Chairperson:** Do you have a breakdown of those statistics, Nigel?

1035. **Mr McMahon:** We did ask the councils. Unfortunately, I was unable to get statistics for each council, but the general feedback from them was that, in the majority of cases, action would generally be taken against the owner or proprietor rather than the seller. In some cases, however, councils would also warn the individual seller.
1036. **The Chairperson:** Could you get us that information over the summer?
1037. **Mr McMahon:** I can certainly ask the question. The initial response was that it was not held in a way that could be easily provided.
1038. **The Chairperson:** If you could check for us and find out whether it is one or the other or both, it would be interesting for us in our deliberations.
1039. There are a number of issues around clause 8 that are similar to those that we raised on clause 7 on the minimum and maximum period, the idea of including an offence for illicit tobacco and changing the threshold to three offences in five years. Is your position on clause 8 the same as it is on clause 7?
1040. **Mr McMahon:** Yes.
1041. **Mr Collins:** Yes. The same issues apply.
1042. **The Chairperson:** There are other separate issues in clause 8. Can you clarify the purpose of having restricted sales orders?
1043. **Ms McAlarney:** I will give you some examples of the main reasons for restricted sales orders. If you were concerned that serving a restricted premises order on a shop owner for a longer period resulted in him or her simply opening a new premises, you would want to have a sales order to prevent that person from opening a new premises and selling tobacco again.
1044. If you felt that a member of staff had been selling persistently but that the shop owner could not be blamed and you did not want to serve a restricted premises notice on the owner, you could serve an order on the salesperson.
1045. **The Chairperson:** Does the legislation in Scotland or in the rest of Ireland contain provisions for restricted sales orders?
1046. **Ms McAlarney:** I do not think that the legislation in the South of Ireland has those provisions. Scotland has ancillary banning orders, which prevent a business owner from getting a spouse to take on the business instead. So someone who is associated with the owner cannot open a business. It is a similar type of thing, but England and Wales have sales orders and premises orders, which are similar to what we are proposing.
1047. **The Chairperson:** Who is the offender as defined in clause 8(1)?
1048. **Ms McAlarney:** The definition in clause 8(1) is similar to clause 7(1). It would be either the owner or the person who sold the tobacco, or both, depending on who you felt should be to blame. If the culture in the shop was that the manager turned a blind eye and was happy enough to sell to underage customers, it would be the owner. However, if you felt that the manager had done everything possible, trained the staff and warned them not to sell, but the person had done so anyway, it would be the salesperson.
1049. **The Chairperson:** The councils have an understanding that they would be able to seek a restricted sales order as well as a restricted premises order against the same person at the same time if the three offences were committed in the same shop. That would suggest that they see the offenders being the owner of the shop in relation to a restricted premises order and a restricted sales order. Is that the intention of the legislation?
1050. **Ms McAlarney:** The intention of the legislation is that they could seek a restricted sales order and a restricted premises order against the same person for the same three offences on the same premises. As I said, that is to prevent that person from opening up another business and selling somewhere else.

1051. **Mr Collins:** In most cases, we would see the owner being the main person against whom we would seek a restricted sales order. However, for whatever reason, we need flexibility in the Bill so that if an employee flagrantly ignores the training and guidance of the owner or manager of a shop, councils will have the ability to apply for a restricted sales order against an employee, given the circumstances of the case.
1052. **The Chairperson:** They also have the understanding that a restricted sales order is to deal with a situation in which a person owns a number of shops. If tobacco offences are committed across those shops, they envisage bringing a restricted sales order against the owner of the shops. That is the purpose of the legislation.
1053. **Mr Collins:** That would prevent the owner of a shop from selling tobacco in another of their shops in the same area or even in a different council area. That is another aspect of a restricted sales order
1054. **The Chairperson:** If somebody is convicted and is then subject to a restricted sales order, what happens if he or she has three or four shops?
1055. **Mr Collins:** That person cannot sell in any of those shops.
1056. **The Chairperson:** If the person is not the seller, can the shop still operate?
1057. **Mr Collins:** Yes. A restricted premises order applies solely to that shop, and a restricted sales order applies to the person. So if that person works in a number of shops, he or she cannot personally sell tobacco in any of those shops. However, if another of their shops is not subject to a restricted premises order, that shop, apart from that person, can sell tobacco legally.
1058. **The Chairperson:** Does that mean that the owner of the shop is not personally allowed to sell tobacco in any of the shops that he or she owns?
1059. **Mr Collins:** If there is a restricted sales order against them — yes. However, someone else in the shop could sell the tobacco.
1060. **Mr McDevitt:** What about a situation in which the owner is found personally guilty? If the owner of a business that sells tobacco — for argument's sake, let us say that that person has three retail outlets — is found personally guilty of selling tobacco, why should any of his or her businesses be allowed to sell tobacco? That guy or woman is the owner of the business. The point, as I figure it out, of the restricted sales order is to protect owners against the misdemeanours of staff when they have taken all reasonable steps. However, when the owner is guilty, why should his business be protected? He is the person responsible, and he owns the business. He has committed a crime and has a restricted sales order against him personally. Why should his business not be affected?
1061. **Ms McAlarney:** That person may be subject to a restricted premises order because he had sold the tobacco three times in one premises, but he also received a restricted sales order to stop him from selling it and moving on. In that case, he may have worked mostly out of one shop and had two other shops with managers in place. I suppose that you are affecting the businesses and the staff in those businesses and putting their livelihoods at risk. The Bill could include something to say that if you are subject to a restricted premises order, it affects all the premises that you own. It seems quite harsh.
1062. **Mr McDevitt:** An owner has a greater duty than the staff. Although I am sympathetic to your argument about having loads of staff, it would be helpful to find a way to really put a burden on the owner not only to take responsibility for his or her staff, which is important, but to make sure that they are never found breaking the law.
1063. **The Chairperson:** You can appreciate the confusion about where it stops and starts and who it impacts and does not impact. In the context of the

- purpose of the legislation, do you think that restricted sales orders, given the way in which they will operate and their purpose, are necessary to achieve the aim of the legislation, which is to make it harder for young people to access tobacco? That seems to be where the restricted sales order comes in. The point was made that, if someone owns three or four shops but is restricted in only one, it adds more confusion. If I am looking at only three offences in so many years, it seems harder.
1064. **Mr Collins:** Can we have some time to think about that? If we apply a restricted sales order to every premises owned by a multiple owner, that is quite a move away from the initial draft Bill. We need some time to think that one over. It is important that we retain the restricted sales order for employees because it is a deterrent.
1065. **The Chairperson:** I appreciate that. Some witnesses have also suggested that a notice should be displayed stating that someone on the premises is subject to a restricted sales order. What is the Department's view on that proposal? Are you aware of any human rights issues that may be involved?
1066. **Ms McAlarney:** We sought an opinion on that from the Departmental Solicitor's Office (DSO). The solicitor said that there may be potential for a challenge, based on article 8 of the European Convention on Human Rights, which is the right to respect for private life. Even when an individual is not named, in a small shop with only a few employees, there is the potential, effectively, of branding that employee because it would probably be quite obvious to whom in the shop it referred. Article 8 is a qualified right, and it may be subject to limitation on one or more grounds. The question is, therefore, whether this is necessary in the interests of national security, public safety or the economic well-being of the country; for the prevention of disorder or crime; for the protection of health or morals; for the protection of the rights and freedoms of others; and whether the action is proportionate. Finally, the solicitor
- thought that there was a real risk of a challenge over competency.
1067. **Mr McDevitt:** My view is that we should get a more definitive opinion because article 8 is qualified, health is listed and this is public health legislation, first and foremost, if you think about its fundamental intent.
1068. **Ms McAlarney:** I can understand it if the notice states that a shop is subject to a restricted premises order. However, if the notice specifies an individual in the shop, how would it benefit the public?
1069. **The Chairperson:** Perhaps you need to look at the restricted premises issue versus an individual. If the notice were worded correctly, it could serve both.
1070. **Mr Collins:** In all honesty, in most cases, if councils go for a restricted sales order against an owner or part-owner, they would also go for a restricted premises order. So it might be a moot point.
1071. **The Chairperson:** Retailers also suggested a list should be available of those who had been subject to a restricted sales order. Their issue is about pre-employment checks to avoid employing such persons. Are you thinking about that?
1072. **Mr Collins:** That goes back to the information that is held on the central register and whether information on offences can be held on such a register. If that is the case and such information can be held, employers would de facto have access to such information.
1073. **Mr Beggs:** If employers cannot have access to that information, will there be a means by which they can determine whether the person to whom they are considering offering a job is on the register? They might not be able to see all the names, but could they ring up and ask whether Joe Bloggs is on the register and is banned? It would be bad if an employer were to give someone a job and was unaware that he or she had a banning order.
1074. **Mr Collins:** I would like the opportunity to bring that up with the solicitor. We

- would have to give greater consideration to lists of people with offences and employers' access to them and get legal advice.
1075. **The Chairperson:** No issues were raised with the Committee on clause 9. Have you anything that you want to add?
1076. **Mr Collins:** No.
1077. **The Chairperson:** Clause 10 relates to the level of fines associated with offences. The fine for not registering is a fixed penalty notice of £200 or a maximum fine of £5,000. However, in Scotland, the maximum fine is £20,000, and there is the possibility of a six-month prison sentence. Why did the Department decide not to follow Scotland's example?
1078. **Ms McAlarney:** We looked at fines in legislation for similar offences and found that £5,000 was equivalent. We thought that a £20,000 fine was quite severe for the level of offence that is, for not registering. We discussed it with the Department of Justice. There was an issue with the maximum fine in a court of summary jurisdiction, whereas it would be £5,000 unless there were exceptional circumstances. We felt that £5,000 was more proportionate.
1079. **The Chairperson:** The fine for not notifying a change to the register is a fixed penalty notice of £50, which can be discounted to £30. In Scotland, the fixed penalty notice is £200. Do you not think that a fine of £30 is so low that people will not heed the requirement to notify a change of name or address to the council?
1080. **Ms McAlarney:** You are referring to the fixed penalty notice. Those are the amounts that we are looking at, but they are not set in stone. They will be set out in the regulations, so we will consider them in more detail then. However, I thought that most of our fixed penalty notices were similar to those in Scotland.
1081. **The Chairperson:** Will you provide a comparison with Scotland? Did you say that Scotland was similar?
1082. **Ms McAlarney:** I thought that we had based most of our fixed penalty notices on a level similar to Scotland's.
1083. **The Chairperson:** Will you come back to us with the details?
1084. **Ms McAlarney:** Yes.
1085. **The Chairperson:** We move on to clause 11. No issues have been raised by the Committee. Has the Department any issues to raise?
1086. **Mr Collins:** No, we have no issues under clause 11.
1087. **The Chairperson:** We move on to clause 12. The retailers queried why premises used only as a private dwelling house would be out of bounds to council officers under clause 12(1). Will you explain why councils are not permitted to access premises used only as a private dwelling house? Does that allow them access to a premises if the owner of a shop lives above it?
1088. **Mr Collins:** The feedback from the solicitors is that removing the words:
“other than premises used only as a private dwelling”
1089. from the clause would leave the legislation open to a human rights challenge. Under human rights law, entering a dwelling requires a court warrant; hence the exception of dwellings from the automatic right of entry provisions. There is a further issue: if someone is using a private dwelling to sell — to retail — tobacco, whether that is duty-paid tobacco or not, it is questionable whether that is still a private dwelling or has become a retail premises. In theory, if a tobacco control officer was aware of someone selling tobacco from their living room, they could go in and carry out a test purchase. If that person was not registered under the order, they could be fined under the Bill.
1090. **Mr Beggs:** I can see the difficulty with the sale of illicit tobacco, which is more likely to be sold from private houses, and it is unlikely that a stranger to an area would be given access to that. It

- is more likely that people familiar with an area would be the purchasers. As such, it would be very difficult to get a conviction against someone selling illicit tobacco without access to search the property. Why do you not simply build in a provision so that authorised officers could search a property for evidence of the sale of tobacco with an appropriate warrant? As with other legislation, why not put in a provision whereby they could get a court order, the signature of a justice of the peace or whatever other process was needed so that they could gain access to a private property to stop the sale of illicit tobacco from there?
1091. **Mr Collins:** I do not know what the provisions are under the Tobacco Products Duty Act or whether HMRC has the ability to —
1092. **Mr Beggs:** I am thinking of provisions in the Dangerous Wild Animals Act. Having been on other Committees in the past few years, I know that there is a process whereby a private property can be accessed after going through a system of approval. Where there was reasonable concern, you could convince an appropriate officer that there was a likelihood of illegal tobacco being sold from a private house. You may have intelligence or have watched people going in and out of a house. Would that not be more likely to bring the sales to an end and stop the sale of tobacco to young people?
1093. **Ms McAlarney:** If it was just illicit tobacco sales, that would be an issue for the police or HMRC, not environmental health officers. I cannot see a situation in which an environmental health officer would seek a warrant to go into a house to do a bust on illicit tobacco trade.
1094. **Ms P Bradley:** Not without the police being present anyway.
1095. **Ms McAlarney:** Yes.
1096. **Ms P Bradley:** In that case, it would be the police who went in.
1097. **Mr Beggs:** It could be with police accompaniment, but there is simply not sufficient action by HMRC on this problem, so can we use local intelligence from local people and then have local police solve it?
1098. **Mr Collins:** The issue for environmental health officers would not be whether the tobacco was illicit but that someone was trading as a tobacco retailer without being registered under the order. However, I imagine that environmental health officers may have concerns about seeking a warrant to go into a house in which an illicit trade was taking place.
1099. It was the Dangerous Dogs Act that sprang to my mind. That is slightly different, in that keeping a dangerous dog does not usually involve organised crime.
1100. **Mr Beggs:** If environmental health officers have a genuine concern, we could empower them to go in with the support of the local police to deal with it. Otherwise, that trade will be hidden and sales will continue.
1101. **The Chairperson:** You can gather more detail on that, Gerard, and get back to us over the summer because there is a concern about that. Maybe you could look at legislation in other Departments.
1102. **Mr Collins:** We need to look at examples of other legislation and the powers of council officers.
1103. **The Chairperson:** We are nearly finished, so I ask people to remain focused on clause 12(2).
1104. **Ms P Bradley:** Quite often, the people who sell illicit tobacco are involved in organised crime. We cannot put a council officer in the dangerous position of going into a house where organised crime may be involved.
1105. **The Chairperson:** We can learn the lessons of other legislation. We are trying to stop young people from accessing tobacco, so we need to look at tobacco sold in other places.
1106. Queries were raised about whether clause 12(2) would prevent councils from being able to undertake enforcement. Will you explain the

- purpose of the clause and whether it exists in other similar legislation?
1107. **Mr Collins:** The legal advice is that this is a common provision in powers-of-entry clauses. It gives a statutory base to a person's right to refuse to answer a question or provide an item to an authorised officer if that person would be entitled to refuse to answer the question or provide the item in court. It preserves the right against self-incrimination and also covers, for example, documents subject to legal privilege.
1108. **The Chairperson:** Can we access the information that you have?
1109. **Mr Collins:** We will e-mail it to the Clerk of the Committee.
1110. **The Chairperson:** Retailers suggested that clause 13 be used to create a fixed penalty notice for an offence under the Tobacco Products Duty Act 1979. Given that that is HMRC legislation, am I right in assuming that it would not be appropriate to use this Bill to deal with penalties for illicit tobacco offences?
1111. **Ms McAlarney:** Sorry, what did the retailers want?
1112. **The Chairperson:** They said that the legislation could be used to create a fixed penalty notice for an offence under the Tobacco Products Duty Act 1979. However, if we are saying that that is an issue for HMRC, and it is HMRC legislation, it would not be appropriate to use this Bill to deal with penalties for illicit tobacco offences.
1113. **Mr Collins:** This Bill is not about illicit tobacco. Someone fined or convicted under this Bill for selling to someone underage is a different issue from the HMRC legislation, which covers the sale of illicit tobacco.
1114. **The Chairperson:** The point was raised as part of our consultation, so it is important that we raise it with you.
1115. No issues were raised with the Committee about clause 14. Do you have any issues to raise?
1116. **Mr Collins:** No, we have nothing further.
1117. **The Chairperson:** Councils raised queries about clause 15(4) and the length of time that someone has to make a representation against a fixed penalty notice. Why does clause 15(4) not specify a period within which any representation must be made? Does the clause allow for someone who has already paid a fixed penalty notice to subsequently make a representation to try to have it withdrawn?
1118. **Ms McAlarney:** We discussed this with the OLC. Again, this is a standard clause that appears in any legislation that deals with fixed penalty notices.
1119. I think that the councils were concerned that somebody would pay a fixed penalty notice and, down the line, when facing a banning order, they would say that they should not have paid and intended to appeal. The departmental solicitor said that, if someone accepts and pays a fixed penalty notice, they accept that they have committed that offence and, therefore, discharge any right of appeal. If someone did not pay within 28 days, it would go to the courts, and they would have a chance to put their case for appeal then. The departmental solicitor said that the appeal must be made within 28 days; paying before the 28 days is up means no right of appeal.
1120. **Mr Beggs:** I would like you to clarify that: are you agreeing that you will include in the Bill that the penalty notice should be paid within 28 days?
1121. **Ms McAlarney:** Sorry?
1122. **Mr Beggs:** Did you agree that the penalty notice should be paid —
1123. **Ms McAlarney:** It says elsewhere in the Bill that, if a fixed penalty notice is not paid within 28 days, it will be automatically referred to the court.
1124. **Mr Collins:** We are sticking with the 28 days.
1125. **Mr Beggs:** Thank you.
1126. **The Chairperson:** Under clause 16, the fine for obstructing an authorised officer

- is “not exceeding level 3”. What is a level 3 fine?
1127. **Ms McAlarney:** It is £1,000.
1128. **The Chairperson:** The councils believe that a level 5 fine would be more appropriate, which, I understand, is a maximum of £5,000.
1129. **Ms McAlarney:** Level 3 is the standard fine for this type of offence. The obstruction of an authorised officer is a pretty standard offence. We have it at level 3 in the Smoking (Northern Ireland) Order 2006, and our solicitor said that it was also level 3 in other legislation. She said that, if it were changed to level 5, someone convicted of obstructing an officer under this Bill would get a level 5 fine, whereas someone else convicted of obstructing an officer under the Smoking (Northern Ireland) Order 2006 would get a level 3 fine. There is no difference in the offences, but someone would be penalised differently just because it was different legislation. The solicitor said that it would be a potential human rights issue.
1130. **Mr Beggs:** Might there be a need to increase the fines in other provisions?
[Laughter.]
1131. **Mr Collins:** That would be a lot of work.
1132. **Mr Beggs:** I am being serious. Just because the fine is set at a certain level in other legislation does not mean that it is right. We want to give a very clear message. Such obstruction could stop the gathering of essential information and prevent someone being found guilty.
1133. **Ms McAlarney:** Nigel, you have a council background. Do you have a view on that?
1134. **The Chairperson:** Why not give it some thought and come back to us?
1135. **Mr Collins:** There is probably an awful lot of legislation with obstruction offences, some of it beyond the Health Department. The more usual way would be that, as amendments are made to the other legislation, thought would be given to the level of offences rather than having a blanket approach and changing all legislation on that point.
1136. **Mr McDevitt:** Chair, that is the argument for doing it here and getting into the habit of increasing the penalty. You always run the risk that someone may challenge a conviction, but they will not strike down the law. The courts will say, “until the laws are amended”, which would be an incentive to amend anyway.
1137. **Ms McAlarney:** If the Committee is really —
1138. **The Chairperson:** Be radical.
1139. **Ms McAlarney:** We can put it to the Minister.
1140. **The Chairperson:** Roy, they will put it to the Minister.
1141. **Mr Beggs:** The issue is not just that an individual may be breaking the smoking order; it is that young people will be accessing smoking and becoming addicted to it. That is why level 3 is not a sufficient fine for those who obstruct the gathering of evidence that could prevent such access.
1142. **The Chairperson:** No issues have been raised with the Committee about clause 17. Do you have anything that you want to raise?
1143. **Mr Collins:** No.
1144. **Ms McAlarney:** No, I have nothing.
1145. **The Chairperson:** On clause 18, the councils and others have the view that the penalty currently available to the courts for a breach of article 3 of the Health and Personal Social Services Order 1978, which is about selling tobacco to under-18s, is too low. It is currently a level 4 fine, which is a sum not exceeding £2,500. You propose to introduce a fixed penalty of £200, discounted to £150 if paid early. The councils and charities suggest that this level of fine is too low to act as a deterrent against selling tobacco to children.

1146. **Ms McAlarney:** Were they talking about the level of fine or the level of the fixed penalty notice?
1147. **The Chairperson:** They said that level 4 does not exceed £2,500. You propose to introduce a fixed penalty notice of £200, which will be discounted to £150 if paid early. They suggest that that is too low to act as a deterrent against selling tobacco to children, and that is what the legislation is about in the first place.
1148. **Mr Collins:** The fixed penalty notice is primarily a pathway to conviction, as well as being a deterrent in its own right. In most cases, the fines for fixed penalty notices are fairly low. The more important issue is probably the level of fine on conviction.
1149. **The Chairperson:** The councils and charities suggest that it is too low, so I ask you to take it to the Minister and come back to us.
1150. **Ms McAlarney:** Yes.
1151. **Mr Collins:** OK.
1152. **The Chairperson:** The only issue that I want to raise about clauses 19 to 26 is on clause 24(3). It allows for any regulations made under this legislation to contain other provisions as appear to the Department to be “necessary or expedient.” What is meant by that? Why is the power necessary?
1153. **Ms McAlarney:** That is a pretty standard clause in any provision for the making of regulations or orders. We have set out the regulation-making powers in the Bill, so it is not that we will be able to make any regulations other than those that we have identified. As you know, some of the regulations will be passed by negative resolution, but the majority will be passed by affirmative resolution and debated by the Assembly. It just means that, if we were making regulations, we could decide what they should include. We would then put those forward for approval by the Assembly under the normal procedure.
1154. **Mr Collins:** Again, the legal advice — it is important not to look at the final six or seven words, which appear to give the Department any powers that it cares to take on board — *[Laughter.]*
1155. **The Chairperson:** Was that the legal advice, Gerard?
1156. **Mr Collins:** The regulations will be confined to the Act. Any regulations have to go through a process. We were advised by the departmental solicitor that this is a long-established provision in legislation to facilitate the making of effective regulations and orders. What they are saying is that it is nothing to be worried about.
1157. **The Chairperson:** Right.
1158. **Mr McDevitt:** Chair, this may be a standard provision, but I think —
1159. **The Chairperson:** It does not make it right.
1160. **Mr McDevitt:** It gives the Department the power to do practically whatever it wants.
1161. **The Chairperson:** It will still need to come in front of the Committee.
1162. **Mr McDevitt:** Yes, but we went over this not too long ago with the Sunbeds Act and others. I ask the Department to question whether it really needs that general provision. Is it absolutely necessary?
1163. **Ms McAlarney:** Do you mean that we should take out the entire provision or parts of it?
1164. **Mr McDevitt:** I do not think that clause 24(3) is necessary. You give yourselves the powers to make regulations throughout the Bill. In clause 24(1) and 24(2), you qualify those powers by recording which regulations will be made under affirmative resolution, which is good. However, if you needed to make a substantial change to the Act in future, you should do so by way of amendment.
1165. This is a really antiquated provision, and I think that it goes back to the days of direct rule when they did not have the

- power to amend. In fact, I think that we received advice at some stage to that effect. They did not have access to a Parliament to make amendments all the time.
1166. I ask that you question whether we really need this provision in a devolved Assembly. If you were going to make a substantial change, you would come back to the Assembly with an amendment.
1167. **Mr Collins:** OK.
1168. **Ms McAlarney:** We will ask the question.
1169. **The Chairperson:** A couple of other issues came up. The first is the fixed penalty notices for the sale of tobacco from vending machines. The councils and others suggested that the Bill be amended to allow for a fixed penalty notice to be issued for an offence under article 4A of the Children and Young Persons (Protection from Tobacco) Order 1991. That legislation allows the Department to make regulations on the sale of tobacco from vending machines, and such regulations were made in 2012. What is the Department's view on that suggestion?
1170. **Ms McAlarney:** We see no reason why we could not. We will ask the Minister.
1171. **The Chairperson:** *[Inaudible.]*
1172. **Ms McAlarney:** Yes, we will do that as well, but it seems reasonable.
1173. **The Chairperson:** Retailers and manufacturers, as well as the cancer charities, propose that the Bill create an offence for an adult to purchase tobacco on behalf of someone under the age of 18. That has been introduced in Scotland. What is the Department's view?
1174. **Mr Collins:** A clause on proxy purchasing could be included, but I remind the Committee that the enforcement of a provision on proxy purchasing by tobacco control officers would be very, very difficult. The officers would need to observe children giving money to an adult and the adult going into a shop.
- They would need to stop that adult and seek his or her identity.
1175. **The Chairperson:** Is there any big issue with doing it?
1176. **Mr Collins:** Technically, there is no big issue with including it, but enforcement would be very difficult.
1177. **Mr Beggs:** Do you agree that, with such a measure, you would be more likely to stop the practice of proxy purchasing than if you did nothing about it? Some adults, perhaps, would not make such purchases if they knew it was illegal. At present —
1178. **Mr Collins:** There is that potential. Also, it would allow for shops to display signs telling customers that anyone who proxy purchases may be liable to a fine, so there is a deterrent merit in such an inclusion.
1179. **The Chairperson:** That ends the evidence session at this stage of the legislation. On some issues, you need to get details over the summer and bring them back to us after the recess. Thank you very much for attending.
1180. **Mr Collins:** Thank you, Chair. Thank you, members.

11 September 2013

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	<i>Department of Health, Social Services and Public Safety</i>
Ms Jenny McAlarney	<i>Department of Health, Social Services and Public Safety</i>
Mr Nigel McMahon	<i>Department of Health, Social Services and Public Safety</i>

1181. 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.

1182. 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.

1183. 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.

1184. 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.

1185. 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.

1186. 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.
- 1187. 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.
- 1188. 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.
- 1189. 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.
- 1190. 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?
- 1191. Ms McAlarney:** It was £5,000. It was €20,000 in the South for maintenance.
- 1192. 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.
- 1193. 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?
- 1194. 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 —
- 1195. 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.
- 1196. The Deputy Chairperson:** If I lived in Enniskillen, I would just put in “Fermanagh”, and that would give me —
- 1197. Ms McAlarney:** Yes.
- 1198. 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 —
- 1199. Mr Collins:** That is right. There would also be the type of premises, the address and the name of the registered owner.
- 1200. 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?
1201. **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.
1202. **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.
1203. **The Deputy Chairperson:** On that basis, the overall cost will be quite low.
1204. **Ms McAlarney:** Yes, it should be.
1205. **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.
1206. **Ms McAlarney:** The Scottish version is pretty basic, and it cost £35,000 to set up.
1207. **The Deputy Chairperson:** Yes, but that is for a much bigger part of the country than here. We have only 1.8 million people.
1208. **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.
1209. **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.
1210. **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?
1211. **Mr Collins:** At the minute, we do not propose that the register would hold that information.
1212. **The Deputy Chairperson:** How would a member of the public obtain that information if it is not on the register?
1213. **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.
1214. **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?
1215. **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.
1216. **The Deputy Chairperson:** So the registration authority will have all that information, but it will not be on the website?
1217. **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.
1218. **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?
1219. **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.
1220. **The Deputy Chairperson:** What happens if they do not?
1221. **Mr Collins:** There is no penalty as such.
1222. **Ms McAlarney:** There is a statutory duty.
1223. **Mr Collins:** There is an expectation that the statutory authority will comply with the legislation.
1224. **The Deputy Chairperson:** Do members have any questions on this aspect? We are broadly in agreement with what you are doing.
1225. **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.
1226. **Mr Collins:** As you will see from the changes that have been made, I think that clause 22 — interpretation — mentions an “authorised officer” —
1227. **Mr Gardiner:** Who is the authorised officer? They have to be named.
1228. **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.
1229. **Mr Gardiner:** So the public would know who that authorised officer would be.
1230. **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 —
1231. **Mr Gardiner:** Would it be known publicly?
1232. **Mr McMahon:** Our assumption is that it will be environmental health staff as they currently enforce all other tobacco control legislation.
1233. **Mr Gardiner:** So we will have a named officer. Will that come through the Department?
1234. **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.
1235. **Mr Gardiner:** Would you not ask for that?
1236. **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.
1237. **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.
1238. **Mr Collins:** Members of the public can contact the council, and the council would be required to tell them who is responsible.
1239. **The Deputy Chairperson:** I think, Sam, that the Department is saying that it cannot put in legislation who that person is.
1240. **Mr Gardiner:** I appreciate that, but from the council's point of view —
1241. **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 —
1242. **Mr Gardiner:** We would need to know.
1243. **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.
1244. **Mr Gardiner:** I hope that that is how it is dealt with.
1245. **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.
1246. **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.
1247. 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.
1248. **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.
1249. **Ms Brown:** So it may be displayed.
1250. **Ms McAlarney:** Yes.
1251. **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.
1252. **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.
1253. **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.
1254. 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.
1255. **Mr Dunne:** Who will be responsible for funding the registration authority? Will each council have to make a contribution towards it?
1256. **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.
1257. **Mr Dunne:** Will councils be expected to hold their own register as well?
1258. **Mr Collins:** No, not under the way in which the legislation has been revised.
1259. **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.
1260. **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.
1261. **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.
1262. **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.
1263. **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?

1264. **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.
1265. **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.
1266. **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.
1267. **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?
1268. **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.
1269. **The Deputy Chairperson:** Can a retailer not be convicted of selling?
1270. **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.
1271. **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.
1272. **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.
1273. **The Deputy Chairperson:** Do members have any other questions on that clause?
1274. **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.
1275. 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.
1276. **Mr Dunne:** How are councils going to share information when they do not have a register of it?
1277. **Mr Collins:** Councils will have access to the central register for their area.
1278. **Mr Dunne:** So, does that mean that the sharing is not an issue, because everybody will have access?
1279. **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.
1280. **Mr Dunne:** It is important that prompt updates are given to the central registration board.
1281. **Mr Collins:** Absolutely. Again, that adds to the cost, but it is important that the centralised registry is as up to date as possible.
1282. **The Deputy Chairperson:** Are members generally content with the Department's proposed amendments to clauses 1 and 16?
- Members indicated assent.*
1283. **The Deputy Chairperson:** Again, this is not the Committee's formal view; I am just trying to assess its feelings.
1284. 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.
1285. 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?
1286. **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.
1287. 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.
1288. **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.
1289. **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.
1290. Do any of you folks have any questions? Gordon or Mickey, do you have any questions?
1291. **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?
1292. **Mr Collins:** Yes, but they just cannot register as tobacco retailers. They can be retailers, but they cannot sell tobacco.
1293. **Mr Brady:** So, it is specific to tobacco. It is a rhetorical question, I suppose.
1294. **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.
1295. **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.”
1296. 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?

1297. **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.
1298. **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.
1299. **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.
1300. **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.
1301. **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 —
1302. **Ms McAlarney:** Do you mean for the purposes of removing somebody from the register?
1303. **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.
1304. **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.
1305. 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?
1306. **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.
1307. **The Deputy Chairperson:** You included it in clause 7.
1308. **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 —
1309. **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.
1310. 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.
1311. **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.*
1312. **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.
1313. 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?
1314. **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.
1315. **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?
1316. **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.
1317. **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?
1318. **Ms McAlarney:** I am not sure that we would necessarily consult on it. Would we?
1319. **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?
1320. **Mr Collins:** The Committee certainly could, if we were bringing the regulations through for Committee comment and approval.
1321. **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 —
1322. **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.
1323. **Mr Collins:** It is better to have the power if the situation arises where there is substantial cost.
1324. **The Deputy Chairperson:** Would it require primary legislation to amend it to include charging?
1325. **Ms McAlarney:** If we did not include it now, yes.
1326. **The Deputy Chairperson:** We know what that involves.
1327. **Mr Brady:** It is an affirmative resolution that goes before the Assembly.
1328. **Mr Collins:** That is right.
1329. **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.
1330. **Mr Collins:** Absolutely, yes. That is the process.
1331. **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.
1332. **The Deputy Chairperson:** The Committee would go through the normal process, but the Chair would only be echoing the views of the Committee.
1333. **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.
1334. **Ms McAlarney:** Yes, you would be able to state your views.
1335. **Mr Collins:** The fact that it is an affirmative resolution means that there is balance.
1336. **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.
1337. 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.
1338. 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.
1339. **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.
1340. **The Deputy Chairperson:** I wish that life were as easy as that one.
1341. 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."*
1342. Why are they not removed from the register?
1343. **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.
1344. **The Deputy Chairperson:** So, does that mean that it will be highly unlikely that that will arise?
1345. **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.
1346. **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?

1347. **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.

1348. **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.

1349. **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.

1350. **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.

1351. **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?

1352. **Mr Collins:** Apologies, Chair. I thought that it was turned off. It is actually not working generally.

1353. **The Deputy Chairperson:** At least you do not have an orchestra ringtone as some members do.

1354. 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".

1355. 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.

1356. **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.

1357. **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.

1358. **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.

1359. **The Deputy Chairperson:** Is everyone happy with that?

Members indicated assent.

1360. **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.

1361. **Mr Gardiner:** The officials are doing a good job.

1362. **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.

1363. **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.

1364. **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.

1365. **The Deputy Chairperson:** That is good news.

1366. 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.

1367. **The Deputy Chairperson:** I think that that is logical and a very good move.

1368. 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.

1369. **Ms McAlarney:** No. We said that draft regulations would specify the dimensions and wording of the notice.

1370. **Mr Collins:** And the size of the font.

1371. **Ms McAlarney:** So, people would not just be able to put up a —

1372. **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.

1373. **Ms McAlarney:** Yes.

1374. **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.

1375. **The Deputy Chairperson:** Right. Are members content?

Members indicated assent.

1376. **Ms Brown:** That is common sense.

1377. **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?

1378. **Ms McAlarney:** I am not sure whether it is maybe a similar offence and on the same level that applies in Scotland.

1379. **The Deputy Chairperson:** What is the maximum under level 3?

1380. **Ms McAlarney:** Level 3 has a maximum of £1,000.

1381. **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?

1382. **Mr McMahan:** It could be the same offence the next day if the notice is still not up —

1383. **The Deputy Chairperson:** So, the £200 fine does not negate the need to put the banner up?

1384. **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.

1385. **The Deputy Chairperson:** OK. Are members content with that section?

Members indicated assent.

1386. **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.

1387. **Mr Dunne:** Does that take it off the premises?

1388. **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.

1389. **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.
1390. **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.
1391. **Mr Dunne:** What about the risk of unauthorised sales continuing?
1392. **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.
1393. **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.
1394. **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.
1395. **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.
1396. **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.
1397. **The Deputy Chairperson:** They could maybe drop a packet into the groceries at the end of the process.
1398. **Ms McAlarney:** You have to get them through the retail area somehow. You would have to go out.
1399. **The Deputy Chairperson:** That is useful to know.
1400. **Mr McMahan:** 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.
1401. **Mr Wells:** That is helpful, unlike the original question.
1402. 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?
1403. **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.

1404. **The Deputy Chairperson:** What is the maximum fine for a level 5 offence?
1405. **Ms McAlarney:** £5,000.
1406. **The Deputy Chairperson:** Are there any questions on that issue?
1407. **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 —
1408. **Mr Beggs:** That is up to the local councils.
1409. **Mr Dunne:** — when environmental health officers generally do not work? There is still that risk.
1410. **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.
1411. **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.
1412. **Mr Dunne:** OK. Thanks, Chair.
1413. **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.

1414. 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 offenses in five years. Are there any questions on that? Are we happy enough to agree to it in general?

Members indicated assent.

1415. **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.

1416. **The Deputy Chairperson:** We are making very good progress.
1417. 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?
1418. **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.
1419. **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.
1420. **Mr Collins:** It would —
1421. **Ms McAlarney:** I do not think that Tesco would take that.
1422. **Mr Collins:** — and the numbers of staff involved would be huge.
1423. **The Deputy Chairperson:** Do members, chiefly those who suggested this, have any questions on the Department's stance on this issue?
1424. **Mr Beggs:** I did not suggest it; I took a contrary view — the Department's view.
1425. **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?
1426. **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.
1427. **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.
1428. **The Deputy Chairperson:** Yes, but that would not stop other staff —
1429. **Mr Collins:** No, but other staff have not breached the legislation, so it would be disproportionate.
1430. **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.
1431. **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.*
1432. **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?
1433. **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.

1434. **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?
1435. **Mr Beggs:** I am content.
1436. **Mr Gardiner:** I am inclined to agree with what is already in the pipeline for it.

Members indicated assent.

1437. **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?
1438. **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.

1439. **The Deputy Chairperson:** Would it be legal for the employer to put a question to that effect on any application form?
1440. **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.
1441. **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.
1442. **The Deputy Chairperson:** That may make life a lot simpler than going to a register.
1443. **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.
1444. **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.

1445. **Mr Beggs:** I assume that that would be the case. It would be a much simpler way of managing the process.
1446. **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.
1447. **The Deputy Chairperson:** An employer could argue that even a past restriction is relevant to someone's application to sell tobacco.
1448. **Mr Collins:** I expect that a past or spent conviction would certainly colour an employer's judgement.
1449. **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.

1450. **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?
1451. **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.

1452. **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.

1453. **The Deputy Chairperson:** I think that that is an easy one.
1454. 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.
1455. **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.
1456. **The Deputy Chairperson:** Yes, that makes sense. Can you just talk us through the second bit?
1457. **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.

1458. **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.

1459. **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.

1460. **Mr Gardiner:** That is cooperation.
1461. **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?

1462. **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.

1463. **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.

1464. Are members content with the Department's proposed amendment?

Members indicated assent.

1465. **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?

1466. **Mr Beggs:** It is very welcome here.

1467. **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?

1468. **Mr Dunne:** Can I just clarify whether the hit is taken by the staff member or by the owner?
1469. **Ms McAlarney:** In that case, it would be the person who was purchasing the cigarettes.
1470. **Mr Collins:** On behalf of the young person.
1471. **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)?
1472. **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.
1473. **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.

1474. **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.

1475. **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.
1476. **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?
1477. **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.
1478. **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.
1479. **The Deputy Chairperson:** As will other double-jobbers in the room. Let them confess — Pam and Alderman Dunne.
1480. **Mr Dunne:** Absolutely and proud of it.
1481. **The Deputy Chairperson:** They will be recanting in the next few months.
1482. **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.
1483. **The Deputy Chairperson:** I can see a press release coming on. *[Laughter.]* Thank you very much.

18 September 2013

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*

1484. **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.

1485. 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.

1486. 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.

1487. 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.

1488. 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.

1489. 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.

1490. **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.

1491. 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.

1492. **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.

1493. **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.

1494. **The Chairperson:** OK. Do members have any comments on that?

1495. **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.

1496. **Mr Beggs:** Having highlighted the issue, I am content with the way in which you have progressed it.

1497. **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?

1498. **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.

1499. **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.

1500. **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.

1501. **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.

1502. **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.

1503. **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.

1504. **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.

1505. **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.

1506. **The Chairperson:** I ask members to switch off mobile phones because they are interfering with the recording system.

1507. **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.

1508. **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.

1509. **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.

1510. 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.

1511. Are members content with the levels of fines that are set out in clause 10?

Members indicated assent.

1512. **The Chairperson:** Are members content to move to the next clause?

Members indicated assent.

1513. **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.

1514. **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.

1515. **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.

1516. **The Chairperson:** No issues were raised with regard to clauses 14 and 15. Are members content to move on?

Members indicated assent.

1517. **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.

1518. **The Chairperson:** There were no issues with clause 17. Are members content?

Members indicated assent.

1519. **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.

1520. **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.

1521. **The Chairperson:** The Department is proposing technical amendments to clauses 22 and 23. Are members content?

Members indicated assent.

1522. **The Chairperson:** There are no proposed amendments to clauses 24 to 26. Are members content?

Members indicated assent.

1523. **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.

25 September 2013

Members present for all or part of the proceedings:

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

1524. **The Chairperson:** I refer Members to the paper from the Committee Clerk, which provides a summary of the Committee's position to date on all the clauses. I refer Members to a letter from the Minister about a revised amendment at clause 4. We have an updated black and red copy of the Bill, which is in hard copy for Members. I will hand over to the Committee Clerk to brief the Committee.

1525. **The Committee Clerk:** Thank you, Chair. On the table is the letter from the Minister with the revised red and black copy of the Bill. Members will recall that, at its meeting on 11 September, the Committee asked whether a retailer that was on the register and was subsequently convicted of an illicit tobacco offence resulting in a custodial sentence, whether suspended or not, would be automatically then removed from the register. The Department agreed to consider the issue and to report back to the Committee on 18 September. So, last week, on 18 September, the Department advised that it was content to draft an amendment on that issue. It has now provided the wording of the amendment, which will be clause 4(2)(b). The Department agreed to the Committee's suggested amendment and has provided the wording of that amendment.

1526. **The Chairperson:** Are members generally content with the Department's proposal to amend clause 4 in that way?

1527. **Mr Beggs:** May I have some more time to study this, please?

1528. **The Chairperson:** Certainly.

1529. **Are members content?**

Members indicated assent.

1530. **The Chairperson:** I remind members that this is the formal clause-by-clause consideration of the Bill, so it is a vital and essential part of the process and of our duties. It is also the final opportunity for the Committee to propose amendments to the Bill. I want to make sure that we are clear on that.

1531. As a result, I will formally put the Question after each clause. The Committee is required to vote that it is content with the clause; content with the clause subject to the Department's amendment; is not content and wishes to amend the clause; or that it is not content and wishes to oppose the clause. I say that just so that members are clear on that. I ask members to keep the black and red copy of the Bill in front of them as we go through the clauses.

Clause 1 (Register of tobacco retailers)

1532. **The Chairperson:** This clause provides for the creation of a register of tobacco retailers. The Department is proposing an amendment to allow for a single body, the registration authority, to maintain the register. The Committee indicated that it was generally content with the clause and the proposed amendment.

1533. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 2 (Application for registration)

1534. **The Chairperson:** The clause sets out the arrangements for registration. The Department is proposing an amendment

so that a person who has been convicted of an illicit tobacco offence resulting in a custodial sentence, suspended or not, shall not be allowed to register as a tobacco retailer for five years from the date of the conviction. The Committee was generally content with the clause and the proposed amendment.

1535. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 3 (Duty to notify certain changes)

1536. **The Chairperson:** The clause deals with the duty to notify changes to the register. The Department proposed an amendment to change the notification period from three months to 28 days. The Committee indicated that it was generally content with the clause and the proposed amendment.

1537. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 4 (Changes to and removal from the Register)

1538. **The Chairperson:** The Department has proposed an amendment that will allow for a retailer who was on the register and was subsequently convicted of an illicit tobacco offence resulting in a custodial sentence, suspended or not, to be removed from the register. The Committee indicated that it was content with the clause and the proposed amendment.

1539. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 5 (Inspection of the Register)

1540. **The Chairperson:** The Department proposes to remove clause 5, given that the amendment to clause 1 will mean that the public can access the register from the registration authority. The Committee indicated that it was generally content. Is the Committee content to oppose clause 5 as a

consequence of the departmental amendment to clause 1?

1541. Question, That the Committee is content to oppose the Question that the clause stand part, put and agreed to.

Clause 6 (Access by Department and councils to the Register)

1542. **The Chairperson:** The Department proposes to remove clause 6, given that it has proposed an amendment to clause 16 to allow for information on convictions, fixed penalty notices, restricted sales and restricted premises orders to be shared between councils, the registration authority and the Department. Again, the Committee indicated that it was generally content with that.

1543. Question, That the Committee is content to oppose the Question that the clause stand part, put and agreed to.

Clause 7 (Restricted premises orders)

1544. **The Chairperson:** The Department has proposed an amendment that will mean that 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; and illicit tobacco offences will be included as relevant tobacco offences for restricted premises and restricted sales orders. Again, the Committee indicated that it was generally content with that.

1545. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 8 (Restricted sale orders)

1546. **The Chairperson:** The Department has proposed an amendment to clause 8 that will mean that three offences in five years will result in a restricted sales order and that the minimum period of a restricted sales order will be 28 days, and the maximum will be three years. Again, the Committee indicated that it was generally content with the clause and the proposed amendment.

1547. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 9 (Appeal against the making of an order under section 7 or 8)

1548. **The Chairperson:** The Department has proposed an amendment to clause 9 to require premises subject to a restricted premises order to display a sign and to require premises subject to a restricted premises order to remove tobacco from the retail area. The Committee indicated that it was content with the clause and the amendment.

1549. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 10 (Offences)

1550. **The Chairperson:** The Department has proposed an amendment to clause 10 to create an offence for failing to display a notice if subject to a restricted premises order and to create an offence for failing to remove tobacco products from the retail area if subject to a restricted premises order. Again, the Committee indicated that it was content with the clause and the proposed amendment.

1551. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 11 (Enforcement by councils)

1552. **The Chairperson:** The Department proposes to remove clause 11 because it is no longer necessary because of the amendments to clauses 12 to 16. Again, members indicated that they were content with that.

1553. Question, That the Committee is content to oppose the Question that the clause stand part, put and agreed to.

Clause 12 (Powers of entry)

1554. **The Chairperson:** The Department has proposed an amendment to consolidate in one place in the Bill all the enforcement provisions on

powers of entry, fixed penalty notices and obstruction of officers. Again, the Committee indicated that it was generally content with that.

1555. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 13 (Fixed penalties for certain offences)

1556. **The Chairperson:** The Department has proposed an amendment to the clause to allow for fixed penalty notices to be issued for sales from vending machines selling unpackaged cigarettes and for failure to display a warning notice. Again, the Committee indicated that it was generally content with the clause and the proposed amendment.

1557. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 14 (Use of fixed penalty receipts)

1558. **The Chairperson:** The Department has not proposed any amendments. The Committee indicated that it was generally content with the clause.

1559. Question, That the Committee is content with the clause, put and agreed to.

Clause 15 (Withdrawal of fixed penalty notices)

1560. **The Chairperson:** The Department has not proposed any amendments. The Committee indicated that it was generally content with the clause.

1561. Question, That the Committee is content with the clause, put and agreed to.

Clause 16 (Obstruction, etc. of authorised officers)

1562. **The Chairperson:** The Department has proposed an amendment to the clause to increase the fine for obstructing an officer from level 3, which is £1,000, to level 5, which is £5,000. The amendment also requires every council to make information on fixed penalty notices, convictions, restricted premises orders and restricted sales orders available to every other council, the registration authority and the

Department. Again, members indicated that they were generally content with that. Is the Committee content with clause 16, subject to the proposed departmental amendment?

1563. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 17 (Offences by bodies corporate)

1564. **The Chairperson:** The Department does not propose any amendments, and, again, the Committee has indicated that it is content with the clause.

1565. Question, That the Committee is content with the clause, put and agreed to.

Clause 18 (Amendment of the Order of 1978)

1566. **The Chairperson:** The Department proposes an amendment to clause 18 to increase the fine for selling to under-18s from a level 4 fine of £2,500 to a level 5 fine of £5,000. The amendment also creates an offence of proxy purchasing. Again, the Committee indicated that it was generally content. Is the Committee content with clause 18, subject to the proposed departmental amendment?

1567. **Mr Beggs:** Just for clarification, we are largely removing a lot of what was originally in clause 18. Will you just clarify where the amendment, as explained, occurs? Is that just reflecting changing the fine from level 4 to level 5? It is all right — I see it now.

1568. **The Chairperson:** Are you OK? Does that clarify it for you?

1569. **Mr Beggs:** It is OK.

1570. **The Chairperson:** OK. Thank you.

1571. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 19 (Statutory charges)

1572. **The Chairperson:** The Department does not propose any amendments to the clause. The Committee again indicated that it was generally content.

1573. Question, That the Committee is content with the clause, put and agreed to.

Clause 20 (Vehicles, vessels, etc.)

1574. **The Chairperson:** The Department is not proposing any amendments, and again members indicated that they were content with the clause

1575. Question, That the Committee is content with the clause, put and agreed to.

Clause 21 (Service of notices in electronic form)

1576. **The Chairperson:** The Department is not proposing any amendments. I remind members that they were generally content.

1577. Question, That the Committee is content with the clause, put and agreed to.

Clause 22 (Interpretation)

1578. **The Chairperson:** The Department proposes a technical amendment to the clause. I remind members that the Committee indicated that it was generally content with the clause and the proposed amendment.

1579. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 23 (Transitional provision)

1580. **The Chairperson:** The Department again proposes a technical amendment to the clause. The Committee indicated that it was generally content with the clause and the proposed amendment.

1581. Question, That the Committee is content with the clause, subject to the proposed amendment, put and agreed to.

Clause 24 (Regulations and orders)

1582. **The Chairperson:** The Department does not propose any amendments. I remind members that the Committee was generally content with the clause.

1583. Question, That the Committee is content with the clause, put and agreed to.

Clause 25 (Commencement)

1584. **The Chairperson:** The Department is not proposing any amendments, and I remind members that they were generally content with the clause.
1585. Question, That the Committee is content with the clause, put and agreed to.

Clause 26 (Short title)

1586. **The Chairperson:** The Department is not proposing any amendments to the clause. I remind members that the Committee indicated that it was generally content with the clause.
1587. Question, That the Committee is content with the clause, put and agreed to.

Long Title

1588. **The Chairperson:** The Department proposes an amendment to the long title to reflect the increased scope of the Bill as a result of the various proposed amendments.
1589. Question, That the Committee is content with the long title, subject to the proposed amendment, put and agreed to.
1590. **The Chairperson:** Thank you, members, for your cooperation.



Northern Ireland
Assembly

Appendix 3

Written Submissions

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Limavady Borough Council

Test Purchasing whereby Local Authorities use a young person to attempt to recreate the scenario of such a person trying to buy restricted products is an important enforcement tool in assessing compliance of such legislation. Test Purchasing has been used successfully throughout orthern Ireland and is generally accepted by the Courts as a valid means of assessing compliance. However the exercises have been criticised and have received unfavourable media coverage. Some criticisms attempt to portray the exercise as “entrapment” which is obviously not an acceptable approach. Others have raised concerns about the safety and welfare of the young person participating. Such concerns have led some Local Authorities to be unnecessarily reluctant to carry out Test Purchase Exercises. This has led to inconsistent enforcement across Northern Ireland. Any Local Authority with a well written enforcement policy and working procedures should be able to defend any criticism and proceed with such exercises. However the acceptability of test purchasing remains vague.

In order to help Local Authorities carry out such exercises in a strong consistent manner it would be useful if Test Purchase Exercises were recognised in the legislation as a valid enforcement power. Articles 11 and 12 of the Bill contain powers to enforce the legislation. It would be useful if such powers contained a wording that indicates that Test Purchase Exercises may be carried out by a Local Authority in the enforcement of these provisions.

Northern Ireland Independent Retail Trade Association

NIIRTA (the Northern Ireland Independent Retail Trade Association), supported by ACS (the Association of Convenience Stores)

The Northern Ireland Independent Retail Association (NIIRTA) represents over 1400 independent retailers and wholesalers in Northern Ireland. The majority of which sell tobacco. In this submission NIIRTA is supported by ACS (the Association of Convenience Stores) who represent over 33,500 local shops selling tobacco across the United Kingdom.

NIIRTA supports the objectives of the Tobacco Retailers Bill to prevent the sale of tobacco to underage smokers. We believe that enforcement strategies that detect and penalise individuals and businesses that do not comply with the law on underage tobacco sales are an important part of preventing the take up of smoking by young people in Northern Ireland. Tackling underage sales by Northern Irish retailers should only be one part of a strategy that must also educate young people about the harm of taking up smoking and close down the many other routes by which underage people are introduced to smoking such as parents, peers and the illegal trade.

Tobacco Registration and the consequent ability to prohibit a retailer from being able to legally sell tobacco, is a significant sanction. Tobacco contributes on average 19.9% to the turnover of a general convenience store and can account for as much as 80% turnover for a newsagent.¹ A convenience retailer or newsagent prohibited from selling tobacco will no longer have a viable business. We believe that this sanction is appropriate in the most extreme cases but that the enforcement must be transparent, consistent and fair.

We believe that the Bill can be improved in two areas:

1. **Cost of Tobacco Registration** – We welcome the Ministers assurances about having no plans to impose costs for registration on retailers. However, we remain concerned that the provision to levy fees from retailers remains in the Bill and leaves uncertainty about potential cost burdens in the future.
2. **Extending Scope of the Bill to penalise those engaged in selling illegal tobacco products** – We also urge the Assembly to use the Tobacco Retailers Bill to increase the sanctions and powers available to detect and deter individuals and businesses engaged in the illegal tobacco trade. We believe that the real opportunity afforded by Tobacco Registration and “negative licensing” is to drive up enforcement activity against the individual sellers profiting from the non- UK duty paid or counterfeit product. NIIRTA notes the Chair of the Health committee’s agreement in this regard.

Our proposed amendments

1. **Cost of Registration**

Delete 2 (7): “Regulations may provide for the charging of fees in connection with making an application under subsection (1)”

NIIRTA proposes an amendment to delete this subsection, as this would result in financial burden for retailers. NIIRTA is aware that the Executive and the Health Minister have stated that they do not wish to implement a charge in the immediate-term, but we are concerned that with this provision included in the Bill, a charge would be introduced at a later date.

1 ACS Local Shop Report 2012

NIIRTA also notes that there is no charge for retailers in Scotland to be put on the Scottish tobacco register

2. Extending the Scheme to Include Sanctions for those Engaged in the Illicit Trade

Powers of entry

Delete “other than premises used only as a private dwelling house” from 12. (1) (a), 12. (4) (a) and 6A. (1) (a)

The Bill excludes enforcement officers from having the right to enter premises ‘used exclusively as private dwelling houses’; this would seem unnecessary to exclude, because there are plenty of examples of people running quite large tobacco retailing businesses (mainly in the illegal trade) from their homes. NIIRTA proposes amendments to omit this exclusion from the Bill.

Selling Illicit Tobacco as a Tobacco Offence

Insert: “() an offence committed under section 8H(4) of the Tobacco Products Duty Act 1979 on any premises (which are accordingly “the premises in relation to which the offence is committed”);” at 14.

Insert: “or under section 8H(4) of the Tobacco Products Duty Act 1979” after “Article 3 or 4” at 6A.(1)(a) and 6A.(3)

Insert: “() Where an authorised officer of a council has reason to believe that a person has committed an offence under section 8H(4) of the Tobacco Products Duty Act 1979 in the district of that council, the officer may give that person a fixed penalty notice in respect of that offence;” at 6B(1)

The amendments we propose would significantly improve the legislation and play a transformative role in cracking down on this unscrupulous and dangerous market that feeds on the poorest and most vulnerable consumers.

In light of this, NIIRTA will propose amendments to enforce penalties on illicit traders when in breach of section 8H(4) of the Tobacco Products Duty Act 1979: *“A court by before which a person is convicted of an offence under subsection (1) above (‘a manager of premises commits an offence if he suffers the premises to be used for the sale of unmarked products’) may make an order prohibiting the use of the premises in question for the sale of tobacco products during a period specified in the order”.*

NIIRTA also proposes an amendment to delete the exclusion of enforcement officers having the right to enter private dwelling houses, as many illicit traders operate from their homes.

Northern Ireland Judicial Appointments Commission

Consultation on Tobacco Retailers Bill

Details of the above consultation have been forwarded to me for comment. We have no comments to make on the proposals.

Southern Health and Social Care Trust

Smoking continues to be one of the main contributors to health inequalities, with 1 in 3 people smoking within areas of deprivation.

The SHSCT welcomes the Tobacco Retailers Bill to increase powers of enforcement to deal with Tobacco related offences such as selling of tobacco to underage young people, and so contribute to prevention of young people starting to smoke. The Tobacco Retailers Bill will lead to more rigorous enforcement of the minimum-age-of-sale of Tobacco and so reduce the number of young people accessing cigarettes under eighteen years of age.

The Trust welcomes the enhanced powers outlined in the Tobacco Retailers Bill which will require all tobacco retailers in Northern Ireland to be registered with their local district council and increased powers for Council to enforce fixed penalty notices for selling tobacco to under-18s or impose a ban on sales when repeated tobacco offences have been committed.

The Bill will increase the deterrent to retailers of selling tobacco to under-18s through stricter sanctions and so help to reduce the number of young people accessing cigarettes and becoming life long smokers

Cancer Research UK

Background

One of our key priorities is to reduce the number of people getting cancer. We know that smoking causes one in four cancer deaths¹ and that although there has been a decline in smoking prevalence in recent years, action is still needed to reduce the number of young people taking up smoking.

We support measures to help prevent children from taking up smoking and to encourage young smokers to quit. We know that 8% of 11-16 year olds in Northern Ireland are regular smokers.² Having even one cigarette as a child increases the risk of being an adult smoker and therefore the greater the risk of developing lung cancer, heart disease and a raft of other chronic conditions.³

We welcome the introduction of the Tobacco Retailers Bill and urge the Committee to support the Bill.

A retailers' registration scheme

Currently no licence or registration is required to sell tobacco, although licences are required to sell other age-restricted products such as alcohol and fireworks. Since tobacco is a dangerous and addictive product, it is important that there are appropriate controls on where and how it can be sold. As such, Cancer Research UK supports proposals for a registration scheme.

A registration scheme (working alongside a negative licensing scheme) would strengthen current controls on underage sales, as immediate action could be taken against those selling tobacco to under-18s. It would also help ensure compliance with measures regarding tobacco displays, and would ensure that a comprehensive record of all tobacco retailers was kept, which would make monitoring and enforcement easier for Environmental Health and Trading Standards Officers.

Policies aiming to restrict youth access to tobacco products can only be effective if they are rigorously enforced. The proposed registration system would allow greater enforcement of under-age sales through fixed penalty notices, without recourse to the court system. Fixed penalty notices would enable the law to be enforced much more efficiently and cost effectively. However adequate resources and training will be required for Environmental Health Officers and others involved in implementation. Prohibition orders could also prove to be a useful deterrent for retailers, as well as an effective method of preventing those committing offences from continuing to sell tobacco.

Educational campaign

We believe that a comprehensive educational campaign will be required to advise retailers of their new responsibilities and highlight the benefits to them of the new scheme.

1 Doll R, Peto R. The Causes of Cancer. *J Natl Cancer Inst* 1981; 66:1191-308.

2 <http://www.northernireland.gov.uk/index/media-centre/news-departments/news-dhssps/news-releases-dhssps-september-2012/news-dhssps-110912-displaying-tobacco-prices.htm>

3 Fidler, J. A., Wardle, J., Brodersen, N. H., Jarvis, M. J., West, R. (2006) Vulnerability to smoking after trying a single cigarette can lie dormant for three years or more. *Tobacco Control*. June: 15 (3): 205-9.

Enforcement

We would agree with the statement in the Regulatory Impact Assessment that “a licensing system itself is not sufficient to ensure compliance therefore a comprehensive monitoring system would also have to be established”.⁴ A monitoring and evaluation system should be established so that it will be possible to identify to what extent the scheme has had an impact on reducing under age sales.

Retailer sanctions

Negative licensing would allow retailers to continue to sell tobacco without the need to hold a licence, though they would be subject to a banning order for repeated offences with the period of suspension being made at the discretion of the courts. Currently, courts appear reluctant to take significant action against retailers that flout the under-age law. A negative licensing system would rely on similar enforcement procedures.

It is imperative that effective sanctions against retailers who break the law are introduced, which offer a real incentive to enforce the age of purchase. We believe that the threat of a licence being revoked or a prohibition order offers a strong incentive to retailers. It also offers recognition to the vast majority of retailers who wish to act within the law.

Experience from Scotland

In 2011, the Scottish Government established the Scottish Tobacco Retailer Register⁵, which made it illegal for anyone who is not registered to sell tobacco products. Over 11,000 retailers have registered and it is already proving a useful tool in enabling enforcement agencies to target activity. In the recently published *Tobacco Control Strategy - Creating a Tobacco Free Generation*⁶, the Scottish Government committed to undertake a review of the Scottish Tobacco Retailer Register in 2015 in order to assess its effectiveness and to help them to consider further steps to regulate the supply of cigarettes.

4 <http://www.dhsspsni.gov.uk/2009-retailer-tobacco-sanctions-ria.pdf>

5 <http://www.tobaccoregisterscotland.org/>

6 <http://www.scotland.gov.uk/Publications/2013/03/3766>

The Royal College of Physicians

The Royal College of Physicians (RCP) plays a leading role in the delivery of high quality patient care by setting standards of medical practice and promoting clinical excellence. We provide physicians in the United Kingdom and overseas with education, training and support throughout their careers. As an independent body representing over 28,000 Fellows and Members worldwide, we advise and work with government, the public, patients and other professions to improve health and healthcare.

The RCP is grateful for the opportunity to respond to the above call for evidence. We welcome the proposed Bill and believe that licensing tobacco retailers is potentially a highly effective means to enable local authorities to enforce tobacco sales laws. In particular, we believe that it will help prevent sales to children and probably also discourage those retailers who sell illicit tobacco 'under the counter'.

Our interpretation of the restricted premises and restricted sale orders (Sections 7 and 8) is that these orders will last only for one year, be used only at the third offence within three years for businesses or individuals; and that for restricted premises, the council must 'after making reasonable enquiries, give notice of the application to every person appearing to it to be a person affected by the application'. If our interpretation is correct we would question whether it is necessary to specify a maximum, rather than a minimum period; whether three offences in three years is too high a threshold to deter offences; and whether the notice requirement invites challenges from larger businesses in which all individuals affected may be very difficult to identify. However, the principle of this proposal is a potentially vital new step in effective tobacco policy, and we hope that the rest of the UK follows this example.

Imperial Tobacco Group

Introduction – Company background

Imperial Tobacco Group PLC (“ITG”) is a FTSE top 25 company, the world’s fourth largest international- and second largest European – tobacco company. ITG manufactures and sells a range of cigarette and other tobacco products. ITG has sales in over 160 countries worldwide and is the world leader in the premium cigar, fine-cut (roll-your-own) tobacco and rolling papers sectors.

Imperial Tobacco UK (“ITUK”, and, together with ITG, “Imperial Tobacco”) is the Bristol-based trading operation of ITG which distributes Imperial Tobacco’s products to the UK market. ITUK holds approximately 43% market share in Northern Ireland and is the market leader in the UK, holding 45% market share. ITUK’s leading UK cigarette brands include Lambert & Butler, JPS, Richmond, Embassy and Regal. ITUK also distributes tobacco products on behalf of Philip Morris Ltd (“PMI”).

Imperial Tobacco has its headquarters in Bristol with manufacturing and distribution facilities in Nottingham. Imperial Tobacco directly employs over 1,600 people in the UK and last year collected over £6 billion for the UK Exchequer in duties and other taxes. Imperial Tobacco has around 26,000 shareholders with 53% of issued shares held in the UK. Over 34,000 individuals are members of the company pension fund, and it is estimated that the tobacco industry indirectly supports the livelihoods of over 66,000 people elsewhere in the economy.

Imperial Tobacco welcomes the opportunity to comment on the draft Northern Ireland Assembly’s Tobacco Retailers Bill.

We do not want children to smoke and we support effective measures to ensure tobacco products do not get into the hands of children, either through family and friends (known as ‘proxy purchasing’), from retailers who are breaking the law, or from criminals who sell illicit tobacco.

Imperial Tobacco supports a tobacco retail registration scheme in Northern Ireland – provided it will not create a financial or an additional burden on already struggling retailers, particularly the smaller retailers which number over 1,400 in total. In addition, we would propose the following measures:

1) Strengthening retailer awareness and education programmes

Imperial Tobacco support retailer programmes designed to discourage tobacco sales to children such as our support for the ‘No ID, No Sale’ retailer awareness campaign (<http://noidnosale.com/>) and the CitizenCard proof-of-age card scheme. Imperial Tobacco is a principal supporter of CitizenCard, the UK’s leading PASS-accredited proof-of-age scheme with 2.3 million cards issues since its launch.

CitizenCard is available to residents in Northern Ireland which has helped prevent under-age sales. The Government should give greater support to proof-of-age schemes, which have contributed to a decrease in youth smoking prevalence (11-15 year-old regular smokers) from 13% in 1996 to the lowest ever figure of 5% in 2010 (latest figure available).

Imperial Tobacco and the other tobacco manufacturers initiated the ‘No Id No Sale’ campaign (“NINS”) operated by CitizenCard, which promotes age verification at point of sale and assists retailers in checking ages. Over 100,000 retailers are involved which has created a culture in which young people routinely expect to be asked to prove their age, and in which retailers accept only the correct ID.

We would encourage the Northern Ireland Assembly to promote participation in these schemes. Imperial Tobacco and CitizenCard would be happy to meet with officials to discuss how their use and take-up could be encouraged further to prevent under-age sales.

2) **Increased enforcement**

Imperial Tobacco supports reasonable penalties for retailers who knowingly break the law by selling tobacco to children. In addition, we would like to ensure increased enforcement, in the form of penalties and prosecutions, to tackle the illicit trade in Northern Ireland.

A recent Empty Pack Survey carried out jointly by us, and the other UK tobacco companies (British American Tobacco UK Ltd, Gallaher Ltd (a member of the Japan Tobacco International group) & PMI) showed that 18% of cigarettes and 43% of hand rolling tobacco in Northern Ireland was either illicit or cross-border shopped in 2012, creating an estimated £80 million loss in retail sales in Northern Ireland – equivalent to £27,000 in lost turnover for each one of the 1,400 small shops operating in the country. In addition, counterfeit UK brands and illicit whites¹ account for 94% of total large HMRC seizures (split between the two categories is 50/50).

As an industry, we work in partnership with HM Revenue & Customs and other enforcement bodies to prevent the illicit trade. The illicit tobacco market undermines considerable Government and industry efforts by making it easier for children and adults to access illegal tobacco products. Illicit and counterfeit products usually undermine and circumvent legislation on ingredients, smoke emissions and reduced fire risk cigarettes and may not carry mandated English language health warnings.

In addition, illicit traders do not care who they sell to and frequently target children. Surveys have shown that 50% of tobacco bought by 14-15 year olds is illegal.² Governments need to ask themselves whether they want tobacco products to be sold by a responsible, legitimate business or by organised crime gangs who have no regard for any regulation about sales to children.

3) **Alternative Solution – Proxy purchasing legislation**

Under current legislation it is already illegal in Northern Ireland to sell tobacco products to anyone under the age of 18. Imperial Tobacco would support reasonable action to combat proxy purchasing e.g. adults who purchase on behalf of children. We would therefore propose legislation which makes it an offence for an adult to purchase tobacco on behalf of a person under the age of eighteen which would bring tobacco in line with alcohol.

Scotland has introduced a ban on proxy purchase of tobacco products in the Tobacco and Primary Medical Services (Scotland) Bill, which was passed by the Scottish Parliament on 27 January 2010, and we would suggest that the Northern Ireland Assembly also considers including this provision within their Bill.

In summary, increasing education and retailer registration programmes to prevent children being able to purchase tobacco products; together with preventing access via the illicit trade; strengthened enforcement against both retailers; and, those attempting to purchase tobacco for others, are the most effective methods of preventing children purchasing tobacco.

Imperial Tobacco welcomes the opportunity for further dialogue and policy makers in Northern Ireland on all these issues to tackle youth smoking rates in Northern Ireland.

1 Illicit whites, also known as 'cheap whites', are cigarettes manufactured for the sole purpose of being smuggled into and sold illegally in another market.

2 NEMS market research surveys 2009 and 2011 for the North of England Tackling Illicit Tobacco for Better Health Programme.

Tobacco Manufacturers Association

Thank you for inviting the Tobacco Manufacturers' Association (TMA) to comment on the draft Northern Ireland Assembly's Tobacco Retailers Bill. The TMA is the trade association for tobacco companies that operate in the UK. Its three member companies are British American Tobacco UK Ltd, Gallaher Ltd (a member of the Japan Tobacco International group) and Imperial Tobacco Ltd.

The TMA believes that smoking is a matter of informed adult choice. Children should not smoke and should be discouraged from doing so. Under current legislation it is already illegal in Northern Ireland to sell tobacco products to anyone under the age of 18.

The TMA believes that children should have no access to tobacco products, and that practical access-based interventions are an appropriate way to reduce youth smoking. Children who gain access to tobacco often do so in one of three ways –via family and friends (often referred to as 'proxy purchasing') via an unscrupulous criminal who sells illicit tobacco, or via a retailer who breaks the law. A Tobacco Retailers Registration scheme would only apply to one of these channels and the TMA suggests that the committee also gives full consideration the following options, to tackle under-age smoking.

- **Proxy purchasing legislation** – the TMA would support the introduction of an offence for adults who knowingly buy or attempt to buy a tobacco product or cigarette papers on behalf of a person under the age of 18. It is illegal to proxy purchase alcohol in the UK on behalf of a young person under 18, but not – with the exception of Scotland - illegal to proxy purchase tobacco. The TMA was encouraged by the inclusion of this provision, which prohibits the proxy purchase of tobacco products in the Tobacco and Primary Medical Services (Scotland) Bill, which was passed by the Scottish Parliament on 27 January 2010, and suggests that the Northern Ireland Assembly also considers including this provision within their Bill.
- **Further measures to tackle the illicit trade in tobacco in Northern Ireland.** The Empty Pack Survey survey carried out jointly by all tobacco manufacturers showed that 18% of cigarettes and 43% of hand rolling tobacco in Northern Ireland was either illicit or cross-border shopped in 2012, creating an estimated £80 million loss in retail sales in Northern Ireland - equivalent to £27,000 in lost turnover for each one of the 1,300 small shops operating in the country. As well as depriving the Northern Ireland economy of revenue, illicit traders do not care who they sell to and frequently target children. A report carried out by the anti-smoking organisation FRESH in the North East of England found that 14 and 15 year olds were twice as likely to buy illicit tobacco as adults. The TMA and its member companies work in partnership with HM Revenue & Customs and other enforcement bodies to tackle the illicit trade in tobacco and would welcome further dialogue with policymakers on this issue.
- **Further promotion of the “Real Deal” campaign** to stop street markets and car boot sales etc. selling illicit products including tobacco.
- **Increased participation in proof-of-age schemes** - retailers face difficulties in assessing age without the use of ID cards. In this regard, the TMA is a principal supporter of CitizenCard, the UK's leading PASS-accredited proof-of-age scheme with over two million cards issued since its launch. The TMA initiated the 'No ID No Sale' campaign (NINS) operated by CitizenCard, which promotes age verification at point of sale. The NINS campaign has engaged more than 100,000 retailers nationwide and assisted in creating a culture in which young people routinely expect to be asked to prove their age, and in which retailers accept only the correct ID. We would encourage the Northern Ireland Assembly to promote participation in these schemes. The TMA and Citizencard would be happy to meet with officials to discuss how their use and take-up could be encouraged further.

The TMA welcomes the opportunity for further dialogue with officials and policy makers in Northern Ireland on all these issues to tackle youth smoking rates in Northern Ireland.

Tobacco Retailers Alliance

I am writing in response to an approach made to the Tobacco Retailers' Alliance by the Northern Ireland Assembly's Committee for Health, Social Services and Public Safety relating to the above Bill.

The Tobacco Retailers' Alliance (TRA) is a coalition of 26,000 independent retailers, all of whom sell tobacco products. Since 1983, we have represented the rights of legitimate retailers to sell tobacco products in a legal and responsible way. We believe smoking is a matter of informed adult choice and that those under the age of 18 should not smoke.

Referring specifically to proposals in the Tobacco Retailers' Bill:

- **Tobacco Register:** we do not believe that the introduction of a tobacco register would reduce the rates of young people taking up smoking. Instead, it would add to the already sizeable burden of red tape that independent retailers already have to deal with. Governments across the UK have expressed a commitment to reducing the regulatory burden on small businesses.
- **Potential punishments:** With regard to the potential punishments referred to in the Bill, we would argue that they should be fair and reflect the crime. Tobacco accounts for around a third of turnover for most of our members, so banning the sale of tobacco for a year under the potential proposals, would have a devastating effect on the shop and could lead to its closure.

We believe there are alternative options which should be considered which would better achieve the aims of the bill, but not at the detriment of the activities and livelihoods of our members.

- **Better enforcement of the current minimum age legislation:** this would result in fewer episodes of retailers selling to the underage and indeed fewer underage attempting to buy. The TRA is fully committed to campaigns such as No ID No Sale (NINS), which help retailers when presented with someone underage attempting to buy age-restricted products such as tobacco and alcohol.
- **Greater support for anti-illicit trade activity:** We believe that greater support of those organisations combatting the illicit trade in tobacco – such as HMRC - would provide great benefits. Tobacco smuggling is rife across the UK (and particularly bad in Northern Ireland) and smugglers do not care about the age of those to whom they sell, meaning those under the legal age of 18 can readily access a supply of tobacco with no questions asked. The fact that the smuggler's price will probably be half of that charged in a shop doubles the appeal – and not just for those under 18. It is worth remembering that the profits from the illicit trade in tobacco fund further criminal activity including prostitution, drug and people trafficking.
- **A negative licensing scheme:** We support a “negative licensing scheme” which would provide sufficient structure to deal with the few retailers that do sell to the underage, without the burden of further legislation.
- **A ban on proxy purchasing:** We also would advocate the introduction of legislation which bans proxy purchasing – where an adult buys underage products to give to those under the legal age. It is already banned in Scotland and so Northern Ireland should follow suit, banning a major method through which the underage obtain their supply of tobacco.

If you require any further information from the Tobacco Retailers' Alliance, please do not hesitate to get in touch with us at PO Box 61705, London SW1H 0XS or 0800 008 282.

Japan Tobacco International

Thank you for your letter, dated 30 April 2013, inviting Japan Tobacco International (JTI) to make a written submission to your Committee, pursuant to the Committee's consideration of the Tobacco Retailers Bill (Northern Ireland) 2013.

JTI welcomes the opportunity to respond, and applauds the committee for engaging thoroughly and constructively with relevant stakeholders on this important piece of legislation.

I enclose herewith our response, addressing the Bill in order of its sections, along with JTI's response of March 2010 to the "Proposals to Strengthen Sanctions against Retailers for Underage Sales of Tobacco Products" consultation, and the accompanying Annexes, for the convenience of the Committee.

I hope the Committee finds our submission to be of interest, and I look forward to following this legislation through its remaining stages in the Assembly.

Japan Tobacco International (JTI) is part of the Japan Tobacco Group of Companies, a leading international tobacco product manufacturer.

JTI manufactures product for the UK and other markets at its site in Lisnaffillan, Northern Ireland, where it employs more than 900 people. JTI has its UK headquarters in Weybridge, Surrey and has a long-standing, significant presence in the UK market. Its UK cigarette brand portfolio includes Benson & Hedges, Silk Cut, Winston, Camel, Mayfair, Sterling, Sovereign and more, as well as a number of other tobacco products including cigars (such as Hamlet), roll-your-own tobacco (such as Amber Leaf) and pipe tobacco (such as Condor).

Gallaher Limited is the registered trading company of JTI in the UK.

JTI is happy for this response to be made public.

Introduction

As tobacco products carry risks to health, appropriate and proportionate regulation of the tobacco sector is both necessary and right. JTI approaches tobacco regulation on the basis of rigorous examination of the arguments and scientifically-sound analysis of the evidence.

In accordance with internationally-accepted Better Regulation principles supported by both the UK and the European Commission (which in essence require regulation to be transparent, accountable, proportionate, consistent and targeted at cases where action is needed), JTI contributes significantly and constructively to the debate regarding tobacco control measures and puts forward, in circumstances where we believe proposed regulations to be excessive, less restrictive, more targeted and proportionate solutions.

JTI agrees that minors should not smoke, and should not be able to buy tobacco products.

We do not engage in any activities whatsoever designed to encourage minors to become smokers. Smoking is, and should be, an adult choice. This is central to our Code of Conduct, operational policies and the way JTI does business.

We believe that more can be done to eliminate smoking by minors, but have a number of concerns with the introduction of the Retailer Register outlined in the Bill. No reliable evidence is put forward by the DHSSPS to suggest that the Register would achieve the legitimate public health objectives of reducing youth smoking or supporting smoking cessation and, in addition, there could be an unnecessary and disproportionate impact on retailers. In the event that such a scheme was to be introduced, JTI is of the opinion that registration should place as light a burden as possible, both administrative and financial, on legitimate retailers who obey the law. Many small and independent retailers in particular depend upon sales of tobacco products to sustain their businesses in a difficult economic climate; and these retailers are already preparing to comply with forthcoming tobacco display ban legislative changes.

There already exists a high level of public awareness regarding the health risks associated with smoking. Nevertheless JTI supports public health authorities' efforts to continue to inform the public about those risks and to reinforce awareness among young people on issues such as exercising responsible decision-making and how to resist peer pressure or other factors which may lead to underage smoking. We remain, however, opposed to any campaign that seeks to 'denormalise' legal products and to restrict the freedom of millions of adult smokers.

JTI has set out below its views on the Bill, in the order of its clauses:

Register of Tobacco Retailers

Sections 1 – 6

As we made clear in our March 2010 response to the "Proposals to Strengthen Sanctions Against Retailers for Underage Sales of Tobacco Products" consultation, JTI agrees with the key policy rationale underlying this Bill; namely to make it more difficult for those under the age of 18 to access tobacco products. It is our position that minors should not smoke, and should not be able to buy tobacco products. Smoking is, and should be, an adult choice.

As such, JTI supports the principle that retailers who knowingly sell tobacco products to children and young people should lose the right to sell those products, and believes that this is an appropriate and proportionate means of achieving the legitimate objective of reducing the ability of children and young people to obtain tobacco products.

However, JTI is concerned that the Retailer Register outlined in the Bill may not have any positive impact on the objective of reducing underage smoking, and may impose

disproportionate costs, on both retailers and councils, which outweigh any expected benefits. It is inevitable that a registration scheme will increase the bureaucratic burden on retailers, and that such a burden will fall disproportionately hard upon small and independent shops such as newsagents and convenience stores.

In this regard, section 2(7) of the Bill is of particular concern to JTI, and should be removed altogether from the text. JTI cannot support the charging of registration fees which will, again, disproportionately impact small and independent retailers – many of whom are already struggling in the present economic climate.

For this reason, in its March 2010 response JTI advocated a negative licensing scheme; in line with that introduced in England and Wales on 1 April 2009. A negative licensing scheme has the potential to limit young people's access to tobacco, as it provides a clear deterrent to retailers considering selling to those who are under-age, without imposing the additional administrative costs on retailers of a Retailer Register.

Persistent Commission of Tobacco Offences

Sections 7 – 9

The regime of Restricted Premises Orders and Restricted Sale Orders contained in sections 7, 8 and 9 of the Bill, including the maximum life span of such orders, the conditions under which the orders may be served and the application of the orders, broadly mirror the negative licensing scheme introduced in England and Wales on 1 April 2009.

Whilst JTI supports these proposals, and welcomes the consistency that this creates across England, Wales and Northern Ireland, it is important to note that such a proven and effective regime can be implemented without increasing the burden on retailers.

JTI welcomes in particular the reinforcing of penalties for selling tobacco products to minors contained in this Bill. However, we are concerned that, whilst new offences carrying fines of up to £5,000 have been created for failures or errors in the registration process, the Bill does nothing to combat the illegal trade in illicit tobacco. JTI agrees with Ms Ramsay, the Chairperson of the Committee for Health, Social Services and Public Safety, who said during the Second Reading debate on 23 April, that the Bill should aim to include all types of illegal tobacco sale – including the sale of illicit tobacco – as relevant offences when a court is considering making a Restricted Premises Order or Restricted Sale Order.

The current text of the Bill would do nothing to further discourage a tobacco retailer, who is correctly registered with his or her local council, from selling smuggled or counterfeit

tobacco. That is a missed opportunity. Our up-to-date information shows that Non-UK Duty Paid (NUKDP) tobacco consumption, of which smuggling is one element, is on the rise across the UK and Northern Ireland. For example, NUKDP cigarette consumption in Northern Ireland has increased from 16% in 2011 to 18% in 2012¹ and HMRC's own upper estimates show that the illicit tobacco trade in the UK resulted in lost tax revenues of up to £2.9 billion in 2010/11. We encourage the Committee to examine carefully the options for amending the Bill to create a more effective deterrent to the harmful illicit trade.

Offences

Section 10

JTI would recommend the deletion of subsections 10(1) to 10(3) and subsections 10(7)(a) and (b).

Enforcement Powers, etc.

Sections 11 – 17

JTI would recommend the deletion of sections 13, 14 and 15.

Supplementary

Sections 18 – 20

JTI has no comment to make regarding these sections.

General

Sections 21 – 26

JTI has no comment to make regarding these sections.

Conclusions

JTI understands the aim of this Bill; to make it more difficult for those under 18 years of age to access tobacco products. We strongly believe that smoking is, and should be, an adult choice. As such, we welcome the introduction of tougher penalties for those caught selling tobacco products to children. We are, however, concerned that an opportunity to better tackle the illicit trade is being missed.

JTI also still has serious concerns regarding the Retailers Register, specifically the burden it may place on retailers, many of whom are already struggling to cope with the current tough economic climate. For the same reason JTI cannot support the inclusion of subsection 2(7) in the Bill.

JTI has also repeatedly called upon the UK Government to criminalise the purchase or attempted purchase of tobacco products by minors, as well as so called proxy-purchasing by adults. Proxy purchasing in particular provides a significant avenue of access to tobacco by minors. We encourage the Committee to take this opportunity to give this suggestion serious consideration.

**CONSULTATION PAPER AND
QUESTIONNAIRE**

**PROPOSALS TO STRENGTHEN SANCTIONS AGAINST
RETAILERS FOR UNDERAGE SALES OF TOBACCO
PRODUCTS**

INTRODUCTION

Purpose

1. The purpose of this consultation paper is to seek views on the Department of Health, Social Services and Public Safety's proposals for strengthening sanctions against retailers who sell tobacco products to children and young people under 18 years of age. The aim is to reduce smoking prevalence amongst children and young people by reducing the availability of tobacco products to this group.

Background

2. Smoking is the single greatest cause of preventable illness and premature death in Northern Ireland, killing around 2,300 people each year. In addition, a strong relationship exists between smoking and inequalities, with more people dying of smoking related illnesses in disadvantaged areas of Northern Ireland than in more affluent areas.
3. The Department published a Tobacco Action Plan in 2003 with three key objectives. They were; to help smokers quit, to protect non-smokers from tobacco smoke and to prevent people from starting to smoke. While the Tobacco Action Plan was aimed at the population as a whole, three target groups were identified - adults smokers living in areas of social/economic need, pregnant women who smoke, and children and young people. A working group has been established to revise the Action Plan, setting out the Department's vision for tobacco control for a further five year period. It is envisaged that focus will remain on the three target groups identified in the existing plan.
4. The Smoking (Northern Ireland) Order 2006 (the Order), the main provisions of which came into operation on 30 April 2007, introduced measures to protect the public and employees from exposure to second hand smoke. This represents a major step forward in helping to create a climate whereby non-smoking will become the norm in society.
5. Preventing children from adopting the smoking habit is key to achieving the long-term aim of a tobacco-free society. Recent evidence shows that in Northern Ireland 77% of adult smokers took up the habit in their teens and that almost 9% of our children aged 11 to 16 years are regular smokers. A 2006 study carried out in England found that for 78% of children, shops were a usual source of cigarettes. In order to help reduce youth smoking, the Department introduced the Children and Young Persons (Sale of Tobacco etc) Regulations (Northern Ireland) 2008. This legislation came into effect on 1st September 2008 and increased the minimum age of sale for purchasing tobacco products from 16 to 18.

-
6. The Department recognises, however, that more needs to be done to prevent children and young people from starting to smoke, and is therefore proposing to consult on measures aimed at strengthening sanctions against retailers for underage sale of tobacco products. These measures would require primary legislation to be passed by the Northern Ireland Assembly before they could be enforced.

Options for strengthening sanctions against retailers

7. Six options were considered for strengthening sanctions against retailers who persistently flout the law with regards to underage sales of tobacco products. Each option is fully explored in the accompanying Regulatory Impact Assessment (RIA) attached as **Appendix 2**. The RIA also examines the potential impacts on businesses and seeks to quantify the possible health impact of the various options. In summary the six options are:
- (a) Do nothing
Maintain the status quo with no changes.
 - (b) Registration of tobacco retailers
A requirement for all businesses that sell tobacco products to register with a specified agency.
 - (c) Accreditation
Also known as a non-mandatory licence – involves a voluntary scheme with no compulsion for businesses to join.
 - (d) A negative licensing system
Not technically a licensing scheme but the creation of an additional penalty for infringement of the law on underage sales, where the right to sell tobacco could be suspended or withdrawn.
 - (e) A positive licensing system
To be administered by either the NI Courts Service or by District Councils. Retailers would be obliged to apply for a licence before legally selling tobacco products. Compliance with tobacco control legislation would be linked with the right to sell tobacco products.
 - (f) Combining a registration scheme with a negative licensing system
This option would provide Environmental Health Officers with a full list of retailers selling tobacco products and would also introduce an additional penalty for retailers who regularly break the law on underage sales.

Department's recommended option

8. The Department's preferred policy option is that which combines a registration scheme with a negative licensing system. The four key characteristics of this option are set out below.
 - (i) Where a retailer commits **3 offences within a 2 year period** in relation to underage sales, the local district council may apply to the NI Courts Service for a prohibition order to be served on the retailer, preventing them from selling tobacco products.
 - (ii) The prohibition order may apply to the **premises** or to a **named person** in the business or **both**.
 - (iii) The prohibition order would last for a **period of up to 12 months**, to be determined by the Court.
 - (iv) A new offence of selling tobacco products under a prohibition order would be created and would be associated with a large fine and a possible custodial sentence

9. The Department is also recommending, in conjunction with this option, the introduction of a **Fixed Penalty Notice (FPN) Scheme** for retailers caught selling to underage children. This would involve Environmental Health Officers being able to apply a financial penalty for an offence relating to underage sales, without having to go through the courts.

Consultation - How to Respond

10. **The consultation will run from 14 December 2009 to 12 March 2010.** The Questionnaire seeks your views on the options outlined in the RIA which could be implemented to meet the policy objective of reducing smoking prevalence amongst children and young people.

11. In order to facilitate analysis it is important that respondents use the Questionnaire. Completed Questionnaires **must be received by the Department by 5.00pm on Friday 12 March 2010** Responses can be submitted via the online response form using the following link:
<http://www.dhsspsni.gov.uk/tobacco-retailer-sanctions-2009.htm>

12. Alternatively response questionnaires can be downloaded and e-mailed to:
<mailto:publichealth@dhsspsni.gov.uk> or posted to
DHSSPS
Investing for Health Unit
Health Improvement Policy Branch (Tobacco Control)
Room C4.22
Castle Buildings
Belfast
BT4 3SQ
Tel: 028 90520533 or 028 90523190

13. Before you submit your response please read **APPENDIX 1** at the end of the Questionnaire, about the **Freedom of Information Act 2000** and the confidentiality of responses to public consultation exercises.

Alternative formats

14. If you require the consultation document in an alternative format (such as in large print, in braille, on audio cassette, easy read or computer disc) and/or in another language, please contact Amy Stevenson on 028 90520533 or text phone 02890527668 to discuss your requirements.

Human Rights and Equality Implications

15. Section 75 of the Northern Ireland Act 1998 requires Departments in carrying out their functions relating to Northern Ireland to have due regard to the need to promote equality of opportunity:
- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
 - between men and women generally;
 - between person with a disability and persons without; and
 - between persons with dependants and persons without.
16. In addition, without prejudice to the above obligation, Departments should also, in carrying out their functions relating to Northern Ireland, have due regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group. Departments also have a statutory duty to ensure that their decisions and actions are compatible with the European Convention on Human Rights and to act in accordance with these rights.
17. The Department has carried out a preliminary screening of the proposals and as part of this screening process has concluded at this stage that an Equality Impact Assessment is not necessary, however, the Department also welcomes your views on this aspect of the proposals.

QUESTIONNAIRE

(Please tick a box)

I am responding: as an individual on behalf of an organisation

Name: Robert Bisailon

Job Title: UK/Americas/OTP Manufacturing VP

Organisation: Japan Tobacco International (JTI)

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Q1. Do you agree with the summary and recommendation reached by the Department (paragraphs 135 & 136 of the RIA) that a registration system combined with a negative licensing scheme (option 6) should be introduced in conjunction with a fixed penalty notice scheme? Have you any comments?

Yes No

JTI supports Option 4 (the introduction of a negative licensing scheme), but cannot support a proposal to introduce a register of retailers as outlined in Option 6 because:

- there is no evidence to suggest that it would have any positive impact on the objective of reducing under-age smoking;
- it would be disproportionate, imposing costs that outweigh any expected benefits; and
- it would be contrary to Better Regulation principles.

A negative licensing scheme has the potential to limit young people's access to tobacco as it provides a clearer deterrent to retailers considering selling to those who are under-age than the current regime.

JTI has provided a more detailed response to this question in Annex 1 to this response.

Q2. If in agreement with the summary and recommendation reached in the RIA, do you have any views on the proposed maximum length of time for the prohibition order (1 year), the conditions under which a prohibition order may be served (3 offences within a 2 year period) or the application of the prohibition order (may apply to an individual, the premises or both)? [see paragraph 8 of introduction to this questionnaire for details]

As noted in the response to Question 1, JTI does not support the summary and recommendation reached in the RIA (Option 6) but does support the introduction of negative licensing (as is proposed under Option 4).

JTI supports the principle that retailers who knowingly sell tobacco products to children and young people should lose the right to sell those products, and believes that this is an appropriate and proportionate means of achieving the legitimate objective of reducing the ability of children and young people to obtain tobacco products.

JTI notes that the maximum length of time – up to 12 months - for prohibition, conditions under which the order may be served and application of the prohibition order, mirror the negative licensing scheme introduced in England and Wales on 1 April 2009. JTI supports these proposals and welcomes the consistency that this will create across England, Wales and Northern Ireland.

Q3. If not in agreement with the summary and recommendation reached in the RIA which of the other options do you feel should be introduced? Have you any other suggestions or views?

As outlined in the response to Question 1, JTI supports the introduction of a negative licensing scheme as set out under Option 4 but cannot support a registration scheme.

JTI sets out below, and in more detail in Annex 2 to this response, various alternative solutions that are a more effective and proportionate means of preventing underage sales of tobacco, including:

- criminalising proxy purchasing and the youth purchase of tobacco products;
- further addressing the illicit trade in tobacco products;
- more effective resources and training in respect of test purchasing of tobacco products;
- reinforcing retail access prevention measures, including the CitizenCard and ‘No ID No Sale’ proof-of-age schemes;
- more targeted public information campaigns in Northern Ireland; and
- giving recent regulatory initiatives a chance to work, for example the rise in minimum purchase age to 18 in Northern Ireland in September 2008.

Q4. Do you agree with the decision (paragraph 128 of RIA) that the measures outlined do not require a full equality impact assessment? If you disagree, please explain why?

Yes No

Q5. Is there any other qualitative or quantitative information which you consider should have been taken into account in compiling the RIA?

Yes No

If yes, please provide details.

JTI notes that the DHSSPS has failed to provide any evidence in respect of youth smoking statistics in Northern Ireland. In the absence of any such data for Northern Ireland, and contrary to Better Regulation principles, the RIA does not analyse how any of the identified regulatory interventions would address its stated objectives, and whether it would result in a difference from the current regulatory regime.

Further, JTI believes that reference should have been made in the RIA to the high levels of illicit trade in Northern Ireland. A registration scheme as proposed under Option 6 will increase red tape for retailers and therefore could undermine the viability of their businesses. At the same time, the RIA pointedly fails to address underage access to illicit tobacco products.
JTI has provided a more detailed response to this question in Annex 3 of its response.

Q6. Are you aware of any other equality implications likely to arise from the proposals in the RIA?

**Q7. Do you have any views on the assessment of health impacts/benefits?
If so, please provide details.**

Please see Annex 4.

Q8. Are there any other health impacts that you consider should have been addressed? If yes, please provide details.

Yes

No

Q9. Do you consider that there are any other issues which need to be taken into account in the assessment of the impact on business? If yes, please provide details.

Yes

No

In addition to JTI's concerns as outlined in response to Questions 1, 5 and 10, JTI notes that both the Consultation Document and RIA fail to address the issue of an appropriate transitional period for retailers to comply with new measures should subsequent legislation be introduced. Sales of tobacco products are an important revenue stream for a large number of retailers across a range of different retail businesses in Northern Ireland. JTI fully supports, and urges the DHSSPS to give careful consideration to the concerns raised by retailers to date,

JTI has provided a more detailed response to this question in Annex 5 of its response.

Q10. Do you agree with the summary tables outlining the ongoing costs and benefits (paragraphs 109 to 117 of RIA)? If not, please provide details.

Yes No

JTI is of the view that the summary tables outlining the ongoing costs and benefits are overly simplistic and highly speculative. Further, JTI notes the DHSSPS's own admission that it cannot estimate the costs associated with setting up an administration database and therefore cannot estimate the overall costs of implementing a registration scheme.

JTI has provided a more detailed response to this question in Annex 6 of its response.

Q11. Do you agree that the measures will not have a disproportionate impact on retailers/businesses? If you disagree, please provide details of disproportionate impact.

Yes No

As outlined in the response to Question 1, a registration scheme would have a disproportionate impact on retailers/businesses because:

- there is no evidence to suggest that it would have any positive impact on the objective of reducing under-age smoking;
- it would be disproportionate, imposing costs that outweigh any expected benefits; and
- it would be contrary to Better Regulation principles.

Adding to the costs of small community-based retailers, at a time when they already face significant economic pressures, could result in the closure of a number of shops.

Q12. Is there any other material evidence which you consider should have been taken into account in assessing the impact on retailers/business? If yes, please provide details.

Yes No

Please see the answers provided to Questions 5 and 10 and Annexes 3 and 6.

Q13. Do you agree that the proposals will not have a disproportionate adverse impact on rural business? If you disagree, please give your reasons.

Yes No

Q14. Do you have any general comments on the overall approach that was taken in completing the RIA?

Yes No

Please see the answers provided to Questions 5, 7 and 10, and Annexes 3, 4 and 6.

Q15. Are the options which are set out in the RIA likely to have an adverse impact on any group of people in terms of the nine equality dimensions?

Yes No

If you answered yes, please state which group(s) and the reasons why:

Q16. Are you aware of any indication or evidence – qualitative or quantitative – that the recommendation in the RIA may have an adverse impact on equality of opportunity or good relations?

Yes No

If you answered “yes”, please state the reasons why and suggest how this might be mitigated:

Q17. Do proposals afford an opportunity to promote equality of opportunity and/or good relations?

Yes No

If you answered “yes”, please outline:

Q18. Are there any aspects of the proposals in the RIA where potential human rights violations may occur?

Yes No

If you answered “yes”, please outline:

Further Comments

Q19. Do you have any further comments on the RIA?

Yes No

If ‘yes’, please give comments:

Please see the answers provided to Questions 5, 7 and 10, and Annexes 3, 4 and 6.

APPENDIX 1

FREEDOM OF INFORMATION ACT 2000 – CONFIDENTIALITY OF CONSULTATIONS

The Department will publish a summary of responses following completion of the consultation process. Your response, and all other responses to the consultation, may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. **Before** you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

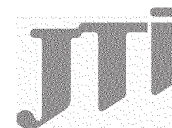
The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation.

However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity should be made public or be treated as confidential. If you do not wish information about your identity to be made public please include an explanation in your response.

This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Secretary of State for Constitutional Affairs' Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For further information about confidentiality of responses please contact the Information Commissioner's Office (or see web site at: <http://www.informationcommissioner.gov.uk/>).



Annexes to JTI's Response to the Consultation on Proposals to Strengthen Sanctions against Retailers for Underage Sales of Tobacco Products

10 March 2010

Japan Tobacco International is a subsidiary of Japan Tobacco Inc., the world's third largest global tobacco company. It produces three of the top five worldwide cigarette brands: Winston, Mild Seven and Camel, and is headquartered in Geneva, Switzerland.

Since April 2007, Gallaher Limited, the UK-based tobacco products manufacturer, has also formed part of the Japan Tobacco Group. In its response to the consultation on proposals to strengthen sanctions against retailers for underage sales of tobacco products, "JTI" is used to refer collectively to Japan Tobacco International and Gallaher Limited.

JTI manufactures product for the UK and other markets at its site in Northern Ireland (Lisnafillan), where it employs over 900 people. JTI has its UK headquarters in Weybridge, Surrey and has a long-standing, significant presence in the UK market. Its UK cigarette brand portfolio includes Benson & Hedges, Silk Cut, Winston, Camel, Mayfair, Sovereign and More, as well as a number of other tobacco products including cigars (such as Hamlet), roll-your-own tobacco and pipe tobacco.

1. ANNEX 1: DETAILED RESPONSE TO QUESTION 1 “DO YOU AGREE WITH THE SUMMARY AND RECOMMENDATION REACHED BY THE DEPARTMENT (PARAGRAPHS 135 AND 136 OF THE RIA) THAT A REGISTRATION SCHEME COMBINED WITH A NEGATIVE LICENSING SCHEME (OPTION 6) SHOULD BE INTRODUCED IN CONJUNCTION WITH A FIXED PENALTY NOTICE SCHEME? HAVE YOU ANY COMMENTS?”

JTI SUPPORTS OPTION 4 (THE INTRODUCTION OF A NEGATIVE LICENSING SCHEME)

1.1 JTI agrees with the key policy rationale underlying the Department of Health, Social Services and Public Safety’s (the *DHSSPS*) Consultation on Proposals to strengthen sanctions against retailers for under-age sales of tobacco products (the *Consultation Document*): “children and young people” should not smoke, and should not be able to buy tobacco products.

1.2 JTI is supportive of the introduction of a negative licensing scheme in Northern Ireland. Retailers who knowingly sell tobacco products to children and young people should lose the right to sell those products. This would be an appropriate and proportionate means of achieving the legitimate objective of reducing the ability of children and young people to obtain tobacco products.

1.3 A negative licensing scheme has the potential to limit young people’s access to tobacco as it may provide a clearer deterrent to retailers considering selling to those who are under-age than the current threat of a fine, which JTI understands is rarely used in practice. UK wide figures show that in almost 80% of cases a written or verbal warning is used and when fines are imposed they tend to be relatively small – the average fine being just £350, compared to a maximum fine of £2,500 that could be levied.¹

1.4 To accompany the Consultation Document, the DHSSPS has published a Partial Regulatory Impact Assessment (the *RIA*) which states at paragraph 43 that “*Initially there would have to be an education/information campaign to make the retailers aware of the stricter sanctions if they are found to be in contravention of the law.*” JTI is committed to communicating with retailers about any new negative licensing scheme so as to reinforce its importance in terms of preventing the access of young people to tobacco products and from a retailer compliance perspective.

1.5 The Criminal Justice and Immigration Act 2008 introduced a negative licensing scheme in England and Wales, which came into force on 1 April 2009. JTI has been communicating the changes to retailers via its website www.tobaccoretailing.com, which provides advice on the changes and an online training programme, which educates retailers and their staff on the laws covering the sale of tobacco and promotes best practice in the field of preventing underage sales.

1.6 In communicating the changes in England and Wales, JTI’s strategy also focused on providing information to retailers via key trade magazines that are circulated to tobacco buyers on a regular basis. Such actions help to ensure that around 40,000 retailers received relevant information about the new scheme. JTI would propose extending this activity to Northern Ireland on the introduction of a similar negative licensing scheme as is in effect in England and Wales.

¹ Paragraph 23 of the UK Department of Health Consultation on under-age sale of tobacco: http://www.dh.gov.uk/en/Consultations/Closedconsultations/DH_4139361.

REGISTER OF RETAILERS

1.7 JTI is unable to support a registration system because:

- there is no evidence to suggest that it would have any positive impact on the objective of reducing under-age smoking;
- it would be disproportionate, imposing costs that outweigh any expected benefits; and
- it would be contrary to Better Regulation principles in the absence of an evidential basis which justifies proceeding with such a measure.

1.8 Moreover, JTI notes that the public policy justifications provided by the DHSSPS for the registration option are limited:

- (a) *“The main benefit of compelling retailers to register is the provision of a comprehensive list of establishments which sell tobacco. This would assist Environmental Health Officers with identifying retailers and would assist with enforcement activity. It is also possible that through the fact they have to register, retailers would be made more aware of their legal responsibility and they would be less likely to sell tobacco to children and young people”* (paragraph 85 of the RIA); and
- (b) *“The comprehensive list of retailers would provide health authorities with a database of tobacco sellers, which could also assist with the targeting of educational campaigns”* (paragraph 86 of the RIA).

No evidential basis for the registration scheme

1.9 In discussing the benefits of a negative licensing system at paragraph 89 of the RIA, the DHSSPS notes that *“the greatest benefit of a negative licensing scheme would be the reduction in smoking in children and young people leading to a long-term reduction in smoking prevalence”*. This would suggest that the DHSSPS considers the introduction of negative licensing system to be an effective standalone means of reducing smoking in children and young people.

1.10 However, JTI is concerned by the statement at paragraph 84 of the RIA that *“registration may bring with it a small reduction in the number of underage smokers. It is possible that the fact retailers have to register makes them more aware of their legal responsibilities not to sell tobacco to underage children and young people which subsequently translates into reduction in the numbers from this group smoking. It is very difficult to try to quantify the possible level of this reduction”*. Contrary to Better Regulation principles, no evidential basis is provided to support the proposition that a registration scheme will further achieve the DHSSPS’s objective to reduce smoking prevalence amongst children and young people. Indeed, the DHSSPS itself appears unconvinced that a registration scheme would be more effective in achieving the public policy objective than negative licensing alone.

1.11 The registration scheme creates an obligation on retailers towards registering with District Councils. It is unclear that this would play any positive role in respect of preventing the illicit purchase of tobacco products by those under the legal age limit.

1.12 The suggestion that a registration scheme would allow better enforcement, and so create incentives to age-limit compliance, is fundamentally flawed. This suggestion would only be relevant if enforcement bodies are currently unaware of the identity of legal tobacco retailers. No evidence is provided that this is the case. Indeed, the DHSSPS concedes at paragraph 118 of the RIA that “*there is a risk that the registration scheme would have little impact on compliance.*”

The Registration Scheme will have serious adverse consequences

1.13 In addition to being an ineffective means of preventing youth smoking, a registration scheme is not necessary in order to convey information to tobacco retailers. Given the existing steps taken by enforcement authorities, JTI (as outlined above in paragraph 1.6) and other manufacturers to inform retailers about youth smoking prevention and regulatory changes, evidence has not been provided to demonstrate the costs involved in establishing the registration scheme are justified by this assumed benefit.

1.14 However, it is inevitable that the registration scheme will increase the bureaucratic burden on retailers. It could impose a particularly significant burden on small shops such as newsagents and convenience stores.

1.15 In addition to the administrative burden of complying with the registration requirements, significant additional costs would also be incurred in the event of administrative errors, either on the part of the retailer or by the District Councils. Such errors would be inevitable, and would require additional administration to correct. They could even result in a retailer being convicted of the offence of ‘selling tobacco products without registering’.

1.16 For this reason, JTI supports legislative and regulatory measures on tobacco control which meet internationally accepted principles of Better Regulation. These principles require that any regulation should be clear and transparent, accountable, proportionate, consistent, and targeted only at cases where action is needed. These five principles of good regulation were identified by the Better Regulation Task Force (an independent group established in 1997 to advise the UK Government) against which the appropriateness and effectiveness of any type of regulation should be tested. A registration scheme would contravene the Better Regulation principle of proportionality.

1.17 Adding to the costs of small community-based retailers, particularly at a time when they already face significant economic pressures, could result in the closure of a number of shops. This would be particularly harmful in the case of remote rural areas, where there may be no alternative to small retailers and where such shops often play a vital role in the life of the community. In light of this, JTI cannot support the assertion in paragraph 106 of the RIA that “*It is not thought that having to register will be a significant burden on the retailer*”.

1.18 JTI is concerned by the high incidence of illicit trade of tobacco products in Northern Ireland. Requiring those selling tobacco to register with the District Councils would not create an additional potential barrier to illicit trade, but simply adds another offence to the list of those already committed by people involved in the sale of

counterfeit or contraband tobacco. JTI is aware of no evidence that the new offence of selling tobacco without being registered to do so would prove any more of a disincentive to counterfeiters and smugglers than the existing offences that illicit trade entails at present. In particular, there would be nothing to prevent a dishonest retailer from registering with the District Councils, and yet selling illicit tobacco anyway.

1.19 The illicit trade in tobacco products would, in fact, be likely to benefit from any scheme which increased the costs (either in financial terms or in administrative terms) of supplying, and therefore purchasing, tobacco to existing adult smokers through legal channels. This is a significant risk entailed in the introduction of a registration or positive licensing scheme.

Drawbacks of registration generally

1.20 Registration and positive licensing are not new ideas. Some governments already use licensing to register, authorise or certify those engaged in the manufacture, distribution or sale of tobacco products. Nevertheless, unscrupulous operators – whether licensed, registered or otherwise – often manufacture, distribute and sell tobacco products outside of normal channels, contrary to the law. Whilst licensing and/or registration can be an important tool for regulating different types of economic activities, they certainly do not guarantee uniform compliance with all laws.

1.21 In addition, a registration or positive licensing process that artificially limits legal competition or complicates industry operations may compromise important principles of free trade identified by the World Trade Organization, the European Union and other international organizations: predictability, transparency, non-discrimination, free circulation of goods, and fair competition.

Additional regulatory burden on Northern Ireland retailers

1.22 Finally, JTI is concerned that the introduction of a registration scheme would not be consistent with measures currently in place in the rest of the United Kingdom in respect of the retail of tobacco products. As discussed above, since 1 April 2009, tobacco retailers in England and Wales are subject to a negative licensing scheme. The introduction of a registration scheme in Northern Ireland would create unnecessary dissonance between three parts of the UK, in the absence of any proven benefit, which can only be unhelpful to retailers, the UK-wide regulatory bodies and those assessing the effectiveness of tobacco control regulation in achieving youth smoking prevention goals.

1.23 JTI understands that the Tobacco and Primary Services (Scotland) Act 2010 contains provision to introduce a system which combines a registration scheme with a negative licensing scheme in respect of tobacco retailing. However, given that the Act has not yet taken effect, it is too early to conduct an assessment of the success of this measure.

1.24 On the basis that a number of jurisdictions have successfully implemented a negative licensing scheme for tobacco retailers, and given the lack of evidence provided in the Consultation Document that a registration scheme would better achieve the stated public policy objectives than negative licensing alone, JTI believes it would be premature and inappropriate for the DHSSPS to introduce a combined system as is proposed in Option 6 without first undertaking an assessment of a negative licensing scheme in practice.

2. ANNEX 2: DETAILED RESPONSE TO QUESTION 3: “IF NOT IN AGREEMENT WITH THE SUMMARY AND RECOMMENDATION REACHED IN THE RIA WHICH OF THE OTHER OPTIONS DO YOU FEEL SHOULD BE INTRODUCED? HAVE YOU ANY OTHER SUGGESTIONS OR VIEWS?”

2.1 As outlined in response to Question 1 above, JTI supports the introduction of a negative licensing scheme as set out under Option 4 of the Consultation Document and RIA, but cannot support a registration scheme.

2.2 Reducing smoking amongst children and young people is understood to be the primary objective of the proposals outlined in the Consultation. JTI agrees with this objective and supports the DHSSPS in seeking to achieve it. As stated above, children and young people should not smoke, and should not have access to tobacco products. This is one of JTI’s core beliefs. It is central to JTI’s Code of Conduct, marketing standards, operational policies and the way JTI does business.

2.3 Clearly it is for the Northern Ireland Executive to determine how best to communicate to children and young people important messages about smoking. However, JTI sees itself as being able to play a role in contributing to effective means of preventing the access by children and young people to tobacco products.

2.4 JTI sets out below various alternative solutions that are a more effective and proportionate means of preventing underage sales of tobacco. JTI urges the DHSSPS to consider the evidence in favour of implementing these solutions as alternatives to the introduction of a combined registration and negative licensing scheme.

Criminalising the proxy purchase of tobacco

2.5 JTI notes that, since 1996, it has been an offence in Northern Ireland for a person to proxy purchase, or attempt to proxy purchase, alcohol for a person under 18 years of age.² There can be no reason in principle why tobacco should not be subject to the same approach (subject to the limits of the Northern Ireland Executive’s legislative competence).

2.6 Indeed, JTI is encouraged by the inclusion of a provision which prohibits the proxy purchase of tobacco products in the Tobacco and Primary Medical Services (Scotland) Bill, which was passed by the Scottish Parliament on 27 January 2010.

2.7 As discussed in further detail in response to Question 5, the DHSSPS has presented no data in respect of underage smoking and tobacco purchases in Northern Ireland. However, JTI is aware of a UK-wide NHS survey conducted in 2006 which found that 63% of 11 to 15 year old “*pupils who smoked*” had been given cigarettes.³ Of these, 57% were given them by friends, 12% by siblings and 7% by their parents. Breaking down the figures to those young people classified as regular smokers, 40% regularly bought cigarettes from older people. This suggests that proxy purchasing is an issue that needs to be addressed as part of any under-age prevention programme. In

² Licensing (Northern Ireland) Order 1996, s.60(3).

³ Fuller E. (2007). “*Smoking, Drinking and Drug Use Among Young People in England 2006*. NHS Information Centre, Leeds”: <http://www.ic.nhs.uk/webfiles/publications/smokedrinkdrug06/Smoking%20Drinking%20and%20Drug%20Use%20among%20Young%20People%20in%20England%20in%202006%20%20full%20report.pdf>.

addition, another survey found that only 4.7% of 12 to 17 year olds who had smoked at least 1 cigarette but less than 100, purchase cigarettes from shops, with the majority obtaining them from friends or family.⁴

2.8 Providing sufficient resources and training to those charged with enforcing the law, such as local councils, would significantly address concerns that the offence of proxy purchasing would be too difficult to enforce. It is also to be noted that such concerns did not prevent an offence of proxy purchasing of alcohol from being created in Northern Ireland in 1996.⁵

Criminalising the under-age purchase of tobacco

2.9 The UK Government has, to date, declined to support legislation that would make it an offence for under-18s to purchase tobacco on the basis that the creation of such an offence would not be in line with its efforts to keep young people outside the criminal justice system.

2.10 Concerns about criminalising young people are entirely legitimate. However, such concerns should, in JTI's view, be weighed carefully against its importance in tackling youth smoking.

2.11 Action in this area would bring the law on tobacco purchase into line with the law on alcohol, with both proxy purchasing of alcohol and the purchase of alcohol by under 18s already being illegal in Northern Ireland,⁶ Scotland⁷ and England and Wales.⁸

2.12 The burden of preventing youths from getting access to tobacco products should not rest on retailers alone. A proxy purchase offence would help deliver the message that the responsibility for tackling youth smoking also lies with those adults who buy tobacco for young people. At the same time, criminalising the under-age purchase of tobacco would encourage young people to take responsibility for their own actions.

Stronger efforts to tackle illicit trade

2.13 HM Revenue and Customs' latest estimates (2007/8) show that up to 17% of cigarettes and 54% of handrolling tobacco in the UK is smuggled.⁹ JTI's regional analysis suggests that Non UK Duty Paid (*NUKDP*) consumption in Northern Ireland does not differ significantly from the national average.¹⁰

2.14 A deterrent is necessary for those individual retailers knowingly selling illicit trade products to consumers. JTI is further concerned that where such sales are identified, there has been a tendency for the authorities to seize the product from the shop without taking further enforcement action. To be an effective deterrent to other

⁴ Emery S. et al. 1999. "How adolescents get their cigarettes: implications for policies on access and price", *J.Nat. Cancer Inst.* 91(2), 184-186.

⁵ Licensing (Northern Ireland) Order 1996., s 60 (3).

⁶ Licensing (Northern Ireland) Order 1996.

⁷ Licensing (Scotland) Act 1976, s.68.

⁸ Section 149 of the Licensing Act 2003.

⁹ Measuring Tax Gaps 2009, HM Revenue and Customs, March 2010 (Revised)

¹⁰ JTI Pack-Swap survey 2009

retailers, prosecutions are appropriate in such cases, accompanied by publicity which makes clear that such enforcement is the norm even where a relatively small volume of illicit trade is involved.

2.15 It is commonly acknowledged that sellers of illicit tobacco rarely consider the age of those they sell to and so it is vital that the DHSSPS and other departments work to tackle this serious problem.

More effective resources and training in respect of test purchasing of tobacco products

2.16 In December 2008, the Northern Ireland Secretary of State issued a comprehensive guidance document (the *Guidelines*) in respect of the test purchasing of alcohol in Northern Ireland, seeking to set out the principles to be adopted by the Police Service of Northern Ireland (*PSNI*) when carrying out test purchase of alcohol operations involving young people. As the Guidelines note “*test purchasing – both in terms of alcohol and indeed other products such as cigarettes and solvents - forms a valuable part of enforcement policies designed to protect young people from age-restricted products and ensure compliance with the law*”.

2.17 JTI understands that test purchasing of tobacco products is currently a matter dealt with by the Department of Enterprise in co-operation with various local councils in Northern Ireland. However, JTI further understands that there are limited structures and mechanisms in place which provides over-arching guidance in this area, as there is with respect to the test purchasing of alcohol.

2.18 Given that the sale of tobacco to those under 18 years of age is an issue of national concern, JTI believes that the Northern Ireland Executive should consider the introduction of similar guidance in respect of the test purchasing of cigarettes, which could ultimately provide the relevant body, such as the PSNI or the District Councils, with greater resources and training on a consistent basis throughout Northern Ireland.

2.19 JTI further notes the DHSSPS’s own concerns over a registration scheme at paragraph 118 of the RIA which states that “*there is a risk that the registration scheme would have little impact on compliance. If the Councils do not use the information to bolster their enforcement activity then there is little or no point in maintaining a register*”. JTI believes that resources in introducing an unproven registration system could be better spent developing a more effective means of enforcing the current regime as has been put in place in respect of alcohol.

Reinforcing retail access prevention measures

2.20 Retail access prevention programmes have proven to be an effective way of limiting young people’s access to cigarettes. 90% of retailers surveyed after the introduction of CitizenCard, the government-approved proof-of-age scheme, believed there to have been a reduction in under-age sales, and 95% were more confident in asking for ID as a result of the campaign.¹¹ JTI contributes financially to this programme and over 1.9 million CitizenCards have now been issued.

2.21 CitizenCard also operate the ‘No ID No Sale’ campaign which was launched in January 2004 to promote and publicise all government-approved proof-of-age schemes.

¹¹ Gallaher Group plc, Corporate Responsibility Review 2004, page 23.

More than 225,000 'No ID No Sale' information packs, which include age display posters and guidance on how to respond when faced with customers who are unable to provide proof of age, have been distributed to retailers. Young people can expect to be asked to prove their age, and retailers should accept only the correct ID. JTI suggests that the Northern Ireland Executive takes steps to support such efforts to further build upon this success.

2.22 The 'No ID No Sale' campaign also aims to help retailers record attempted under-age purchases in a refusals register. Every time a retailer refuses to serve someone with an age-restricted product it is suggested that a brief description of the incident and the attempted purchaser is recorded in a register.

2.23 JTI recommends that HM Government and the Northern Ireland Executive work with the retail community so that attempted under-age purchases are recorded in a manner which enables the relevant body dealing with test purchases (such as the District Councils or PSNI) to collect data so as to better identify the areas where they should be focusing their attention. To support such efforts, JTI commissioned third party analysis to identify where JTI can further improve the 'No ID No Sale' scheme. This research resulted in the production of improved and updated 'No ID No Sale' packs.

2.24 As part of our long term commitment to providing retailers with youth access prevention materials, JTI now has the 'No ID No Sale' logo displayed on all its gantry headers. In order to assist retailers with the minimum sale age change from 16 to 18 years of age, which took effect in Northern Ireland on 1 September 2008, JTI replaced 1,500 gantry headers in retail outlets across Northern Ireland to reflect this change. With regards to those retail outlets where JTI does not have direct control over the gantry, our sales force will continue to visit those retailers to promote the use of the 'No ID No Sale' materials and the practice of maintaining a refusals register.

More targeted public information campaigns in Northern Ireland

2.25 JTI believes that protecting children and young people from smoking should be supported by renewed government led public information campaigns, explaining the changes that have recently been made to tobacco control laws and the effect of such measures. JTI acknowledges that extensive public information campaigns have been carried out in the UK successfully.

2.26 This is particularly important in light of concerns that recent changes in UK tobacco regulation, such as the increased minimum age of sale for tobacco, have not been effectively communicated to retailers or the public at large. A May 2008 survey found that only 56% of the public in England know the minimum age for the sale of tobacco is 18 years.¹²

Giving recent regulatory initiatives a chance to work

2.27 The age in which tobacco could be purchased in Northern Ireland changed from 16 to 18 on 1 September 2008.¹³ It is important that this measure is given a chance to

¹² Populus, Tobacco Alliance Results Summary, May 2008 (<http://www.populuslimited.com/tobacco-alliancesmoking-survey-180508.html>).

¹³ The Children and Young Persons (Sale of Tobacco etc.) Regulations (Northern Ireland) 2008.

work before another layer of red tape – in the form of a registration scheme – is introduced.

2.28 JTI has proposed alternative regulatory solutions in paragraphs 2.5 to 2.26 above, which avoid many of the serious unintended consequences to retailers, particularly during an economic downturn.

3. ANNEX 3: DETAILED RESPONSE TO QUESTION 5: “IS THERE ANY OTHER QUALITATIVE OR QUANTITATIVE INFORMATION WHICH YOU CONSIDER SHOULD HAVE BEEN TAKEN INTO ACCOUNT IN COMPILING THE RIA”

Underage smoking statistics for Northern Ireland

3.1 JTI notes that paragraph 4 of the RIA states that “*The Young Peoples Behaviour and Attitudes Survey 2007 (YPBAS) shows 8.8% of children aged 11 – 16 are regular smokers. YPBAS reports 19.7% of young people it surveyed were under 11 years old when they had their first cigarette. Although there are no specific figures for Northern Ireland, studies conducted in England indicate that for just over half (57%¹⁴) of children who smoke, their usual source of cigarettes is shops.*”

3.2 Further, paragraph 8 of the RIA states that “*Evidence from England and Scotland shows that shops are the primary source for most under-age children and young people to buy tobacco, and there is no reason to assume that a similar level of purchasing is not present in Northern Ireland*”.

3.3 It is a basic facet of Better Regulation that, in any assessment of a baseline scenario and of the potential impact of specific regulatory proposals, the policymaker must undertake an objective and evidence-based critical analysis of all relevant issues. The DHSSPS’s failure to adequately explain the baseline scenario of underage smoking and tobacco purchases in Northern Ireland renders meaningless the exercise of assessing the effectiveness of the existing regulation. In the absence of such data in Northern Ireland, the RIA does not analyse how any of the identified regulatory interventions would address the (not clearly identified) problems and policy objectives, and whether it would result in a difference from the baseline scenario.

3.4 It may also be useful to refer the DHSSPS to the Code of Practice on Consultation published by the Department of Business Enterprise and Regulatory Reform of HM Government (the *Code*). The Code embodies the principles of Better Regulation stating that it should help “*improve the transparency, responsiveness and accessibility*” of consultations, and that “*effective consultation brings to light valuable information which the Government can use to design effective solutions*”.

3.5 Moreover, the Code further states that “*it is important the consultation takes place when the Government is ready to put sufficient information into the public domain to enable an effective and informed dialogue on the issues being consulted on*”.

3.6 JTI is therefore of the view that, in failing to consider present evidence applicable to Northern Ireland, the Consultation Document and RIA not only fall far short of some of the basic Better Regulation principles, but also of the guidelines of effective consultation as set out in the Code. Put simply, the evidence being put forward

¹⁴ Smoking, Drinking and Drug Use Among Young People in England Survey 2004.

by the DHSSPS (which is made up of English and Scottish samples) cannot be used to project the baseline scenario in Northern Ireland.

Illicit trade in Northern Ireland

3.7 As discussed in more detail in Annex 2 above, according to a recent survey, illicit trade is a serious problem in Northern Ireland which needs to be addressed.

3.8 JTI believes that reference should have been made in the RIA to these high levels of illicit trade in Northern Ireland. A registration scheme as proposed under Option 6 will increase red tape for retailers and therefore could undermine the viability of their businesses. At the same time, the RIA pointedly fails to address underage access to illicit tobacco products.

3.9 As discussed in Annex 1, requiring those selling tobacco to register with the District Councils would not create an additional potential barrier to illicit trade, but simply adds another offence to the list of those already committed by people involved in the sale of counterfeit or contraband tobacco. JTI is aware of no evidence that the new offence of selling tobacco without being registered to do so would prove any more of a disincentive to counterfeiters and smugglers than the existing offences that illicit trade entails at present. In particular, there would be nothing to prevent a dishonest retailer from registering with the District Councils, and yet selling illicit tobacco anyway.

3.10 The illicit trade in tobacco products would, in fact, be likely to benefit from any scheme which increased the costs (either in financial terms or in administrative terms) of supplying, and therefore purchasing, tobacco to existing adult smokers through legal channels. This is the most significant risk entailed in the introduction of a registration or positive licensing scheme

3.11 In light of concerns over the high incidence of illicit trade which already exists in Northern Ireland, JTI would also like to raise concerns in respect of the introduction of future regulation in Northern Ireland which would prohibit the display of tobacco products in retail outlets. These proposals were introduced by the UK Department of Health with the objective of reducing smoking in those under 18 years of age. JTI is unaware of any credible evidence to support this proposition and is concerned that evidence indicates that it would, in all likelihood, lead to a series of negative and undesirable consequences, including that contraband and counterfeit tobacco products could become easier to make, distribute and sell. A display ban will impact on illicit trade in three specific ways:

- (a) it may blur the public's perception of the difference between legal and illicit tobacco products given the existing trend for illicit products to be sold 'under the counter' by certain retailers.¹⁵ Consumers' resistance to purchasing illegal tobacco products is likely to be diminished;
- (b) illicit tobacco products are not only sold by street vendors and at markets but are also sold by a small minority of unscrupulous retailers. Unscrupulous retailers could more easily blend illicit tobacco products into the supply chain. This is not the case, currently, where products are displayed in a gantry and consumers will

¹⁵ See www.burnleycitizen.co.uk/news/burnley/3595376.Nine_million_cigarettes_bound_for_East_Lancashire_seize_d/.

likely find suspicious a retailer who ignores the products on the gantry and instead reaches under the counter to sell illicit products; and

- (c) storage of tobacco products ‘under the counter’ is also likely to pose further challenges to the enforcement activities undertaken against such traders. For example, where products are to be stored out of sight, it will not always be evident to officers conducting their enforcement activities – or indeed JTI’s own sales force representatives – whether certain retailers are using two ‘under the counter’ compartments (one of legal products and a hidden, second one containing illicit products) and therefore it will be more difficult to determine whether illicit products are being supplied to adult smokers. Further, an inspector will not be able to scan visually a gantry on entry into a retail outlet, in order to identify any illicit product.

4. ANNEX 4: DETAILED RESPONSE TO QUESTION 7: “DO YOU HAVE ANY VIEWS ON THE ASSESSMENT OF HEALTH IMPACTS/BENEFITS? IF SO, PLEASE PROVIDE DETAILS.”

Lack of evidence

4.1 The Consultation Document and RIA state that the DHSSPS recommends the introduction of a negative licensing system combined with a registration scheme (Option 6).

4.2 At paragraph 95 of the RIA, the DHSSPS states clearly that “*the greatest benefit of a negative licensing scheme would be the reduction in smoking in children and young people leading to a long-term reduction in smoking prevalence. Also, as discussed above, it is the expectation of a reduction in the tobacco consumption in children by about 9%*”.

4.3 However, the DHSSPS fails to make a persuasive case that a registration system would have any additional positive impact on reducing underage tobacco consumption. It states at paragraph 84 of the RIA that “*Registration may bring with it a small reduction in the number of underage smokers. It is possible that the fact retailers have to register makes them more aware of their legal responsibilities not to sell tobacco to underage children and young people which subsequently translates into a reduction in the numbers from this group smoking. It is very difficult to try to quantify the possible level of this reduction. Therefore we have not placed a figure on the possible health savings for this option. An assumption is made that there would be a small positive impact relative to the Do Nothing.*” Contrary to Better Regulation principles, no evidential basis has been provided to support the proposition that a registration scheme will further support the DHSSPS’s objective to reduce smoking prevalence amongst children and young people. Indeed, the DHSSPS itself appears unconvinced that a registration scheme would be more effective in achieving the public policy objective than negative licensing alone.

4.4 As outlined in more detail in response to Question 1 above, the suggestion that a registration scheme will allow better enforcement, and so create incentives to age-limit compliance, is fundamentally flawed. This suggestion would only be relevant if enforcement bodies are currently unaware of the identity of legal tobacco retailers. No evidence is provided that this is the case. As is stated in paragraph 118 of the RIA, “*There is a risk that the registration scheme would have little impact on compliance.*”

5. ANNEX 5: DETAILED RESPONSE TO QUESTION 9: “DO YOU CONSIDER THAT THERE ARE ANY OTHER ISSUES WHICH NEED TO BE TAKEN INTO ACCOUNT IN THE ASSESSMENT OF THE IMPACT ON BUSINESS? IF YES, PLEASE PROVIDE DETAILS”.

5.1 As noted in response to Question 5, JTI is concerned that no baseline scenario in respect of youth smoking statistics in Northern Ireland has been developed. Instead, in the absence of any evidence of relevance to Northern Ireland, the DHSSPS asserts that, on the basis of English and Scottish evidence in respect of youth purchasing habits, there is “*no reason to assume that a similar level of purchasing is not present in Northern Ireland*”. The failure to properly conduct a baseline scenario falls short of the internationally accepted principles of Better Regulation and UK Code of Practice on Consultation.

5.2 Further, as discussed in response to Questions 1 and 10, the introduction of a registration scheme will inevitably give rise to a significant increase in the red tape for retailers and increase the costs of administrating the retailer database.

5.3 In addition to these concerns, JTI notes that both the Consultation Document and RIA fail to address the issue of an appropriate transitional period for retailers to comply with new measures should subsequent legislation be introduced. Sales of tobacco products are an important revenue stream for a large number of retailers across a range of different retail businesses in Northern Ireland, including small community-based retailers. JTI supports fully, and urges the DHSSPS to give careful consideration to, the concerns raised to date by retailers in respect of recently proposed tobacco control measures, particularly given that, according to a recent survey, the recession affected businesses in Northern Ireland harder than in the rest of the UK.¹⁶ The importance of retailers having time to comply with new regulation is paramount to survival of these businesses.

5.4 JTI’s concern to ensure that the Better Regulation requirements of implementing appropriate transitional regimes accompany new compliance burdens is not limited to the issues addressed in the current consultation. JTI shares retailers concerns in respect of previous indications made by the Health Minister that a display ban made under section 21 of the Health Act 2009 (the *Health Act*), and any regulations made pursuant to it, will be effective in Northern Ireland “*as early as possible and am hopeful that this will happen by 2010*”. This is a year earlier than is being proposed in England and Wales for large retailers and three years earlier than is being proposed in England and Wales for other shops. Given that draft regulations have not been published to date, or subject to subsequent consultation, it is highly unlikely that such a timeframe would allow for effective retailer compliance with such a measure in 2010.

5.5 JTI has submitted to the DHSSPS on 5 September 2008 a detailed evidence-based response outlining its concerns in respect of a display ban to the UK Department of Health’s Consultation on the Future of Tobacco Control. A copy of the response is available at: http://www.jti.com/cr_home/industry_regulation. Further, JTI intends to outline its concerns on the introduction of a display ban in Northern Ireland to the DHSSPS in response to the consultation expected in respect of any draft Northern Ireland Regulations made under the Health Act.

¹⁶ Ulster Bank Northern Ireland Purchasing Managers Index, produced by Markit Economics, 9 March 2009.

Annexes to JTI’s Response to the Consultation on Proposals to Strengthen Sanctions against Retailers for Underage Sales of Tobacco Products (10 March 2010)

6. ANNEX 6: DETAILED RESPONSE TO QUESTION 10: “DO YOU AGREE WITH THE SUMMARY TABLES OUTLINING THE COSTS AND BENEFITS (PARAGRAPHS 109 TO 117 OF THE RIA)? IF NOT, PLEASE PROVIDE DETAILS”.

Assessing the costs of the registration scheme

6.1 In paragraph 39 of the RIA, it states that *“The cost to the District Councils or DHSSPS would be that of setting up and administering a simple database. It has not been possible to accurately estimate the cost of setting up the database as this will vary from council to council.”*

6.2 JTI notes that the DHSSPS has admitted that it cannot estimate the costs associated with the setting up of an administration database and therefore cannot estimate the overall costs of implementing a registration scheme.

6.3 In addition, the RIA’s simplistic assessment of the costs of a registration scheme means that some costs have not been accounted for. For example, as outlined in our response to Question 1, in addition to the administrative burden of complying with the registration requirements, significant additional costs would also be incurred in the event of administrative errors, either on the part of the retailer or by the District Councils. Such errors would be inevitable, and would require additional administration to correct.

6.4 Furthermore, the RIA outlines in paragraph 35 that *“Registration for retailers could be a relatively simple operation. This could involve a central registration of retailers administered by DHSSPS or such retailers could be asked to register with their local District Council. The range of information a business could be asked to supply will impact on the cost of this option. Also, the more information that is required, the nearer this option would move to that of a positive licensing scheme. For the purposes of this analysis it is assumed that only the most basic information is to be requested and that only a basic database will be required to store it.”*

6.5 The RIA makes the *assumption* that *“only the most basic information is to be requested”* but there is no guarantee that this will be the case and it is possible that further information will be requested. As discussed in response to Question 1, the introduction of a registration scheme will inevitably give rise to a significant increase in the red tape for retailers and increase the costs of administrating the retailer database.

JTI

10 March 2010

Cancer Focus Northern Ireland

Cancer Focus Northern Ireland is a local charity that helps to save lives and enhance the quality of life of everyone affected by cancer through care services, research, prevention, public campaigns and advocacy.

Cancer Focus Northern Ireland welcomes the introduction of the bill and the further powers given to councils and the courts to deal with the sale of tobacco to persons under the age of 18. Over the last number of years test purchase exercises have ensured that retailers are complying with their duties. The percentage of premises who have sold cigarettes during test purchase exercises has reduced to 13% at the end of March 2012. While Cancer Focus welcomes this improvement, further work is required to bring this down further and therefore ensure that tobacco products are difficult for those under 18 to attain. It is hoped that the additional powers contained in the Tobacco Retailers Bill will assist in this regard.

It is our view that the penalty currently available to the courts in relation to a breach of Article 3 of the Health and Personal Social Services NI Order 1978, Level 4 (£2500) is not sufficient to act as a deterrent and that the current Bill should include a provision to increase that penalty. This would send out a strong message in terms of the unacceptability of retailers selling tobacco to persons under the age of 18. It is anticipated that the changes being brought about by the Tobacco Retailers Bill particularly the introduction of fixed penalty provisions will speed up the enforcement process and should enable greater resource to be directed at undertaking test purchases. There is also a need for the level of the fixed penalty to be sufficient to ensure that retailers take the issue seriously and ensure that they have appropriate systems, procedures and training in place.

Clause 1

We believe it is appropriate that the register of retailers is maintained by councils. Councils currently maintain a number of registers and have the systems to be able to establish these at a reasonable cost.

Clause 2

The wording in clause 2(1) does not seem appropriate in that it states that “A person **may** apply to the council—” Other legislation that district councils enforce which has a registration requirement uses the word “shall or must” we feel that these terms are more appropriate given that it is an offence not to register and that the use of the word “may” sends a message that the registration is discretionary.

Line 2 of clause 2(1) currently reads

“which the person proposes to carry on a tobacco business”

Cancer Focus feels that the following wording would be better,

“which the person carries on or proposes to carry on a tobacco business”.

Clause 2(2)(a) requires an applicant to provide their name and address. Cancer Focus are unclear whether this is a business address or a private address or either.

Cancer Focus also feels that it may be beneficial for the person seeking registration to be required to provide details of their tobacco suppliers.

Clause 3

In clause 3(2) a registered person is given 3 months to provide details of certain changes in their registration.

This period seems very long and Cancer Focus feel that 28 days would be more appropriate.

Clause 4

Clause 4(2) requires a council to remove premises subject to a restricted premises order from the register yet no similar duty appears in relation to removing a person from the register who is subject to a restricted sales order. We are unclear as to why this is the case and would recommend a proactive duty on councils to advise every other council and the Department when a restricted sales order is granted and the details of that order.

Clause 5

See comments on clause 2 (2) (a)

Clause 6

Cancer Focus believes that an additional requirement should be placed on enforcement agencies to share information in relation to fixed penalty notices or convictions which are considered as relevant offenses for the purposes of the restricted sales order. This requirement will ensure that relevant information is proactively shared between enforcement agencies and that the powers within the Act are fully utilised.

Clause 7 and Clause 8

Clause 7 enables a court of summary jurisdiction on application by the council in whose area the premises is located to place an order on premises restricting the sale of tobacco for a maximum period of 1 year. For an Order to be granted the court must be satisfied that the offender has committed 3 offences one of which has been in that premises. It is important to consider this clause along with clause 8 (restricted sales order) which enables a court to prohibit a person from selling tobacco or being involved in the management of a premises in so far as the functions relate to tobacco. These requirements and period of the order are the same as for a restricted premises order.

If a council seeks a restricted premises and restricted sales order and the court decides to grant these then the restricted premises order will remove the premise in which the offence leading to the application for an order took place from the register in that council area only. The restricted sales order would have effect of removing that person from the register, yet there is no indication that the council making the application needs to inform other councils, if the order is granted, and that that person should be removed from the register in all councils where they have premises registered. This is the same point as raised under clause 4 (2).

The length of an Order is a matter for the court which hears the application. Cancer Focus believes however that a period longer than a year may be appropriate in some cases and therefore feels that the maximum period stated should be extended to 3 years.

Cancer Focus also feels that the premises subject to a restricted premises order should be required to display a notice in a prominent position indicating that an order has been made restricting the sale of tobacco from the premises.

Furthermore it is the view of Cancer Focus that to prevent the inadvertent or deliberate breach of a restricted premises order and to aid enforcement, the offender should be required to remove tobacco from the premises for the period over which the restricted premises order applies.

Clause 10

Cancer Focus believes that if a new requirement is introduced requiring the removal of tobacco from a premises where a restricted premises order applies, then there should be a corresponding offence created under clause 10 and a fixed penalty for said offence under clause 13.

Clause 15

Clause 15 (4) requires that a council considers any representation in relation to the service of a fixed penalty notice. We would seek greater clarity that the representation must be made in advance of the fixed penalty notice expiring (i.e. within 28 days). This is to prevent the scenario whereby someone has paid a fixed penalty and subsequently decides to make representation. If this is not included then it may make the process of seeking a restricted premises order or restricted sales order more difficult.

Clause 16

Obstructing an authorised officer in the course of their duties is a serious offence and Cancer Focus believes that a level 5 penalty would be more appropriate.

Clause 18

Cancer Focus feel that the insertion of a fixed penalty provision for an offence under article 4A of the children and young persons(Protection from Tobacco) (NI) Order 1991 would be beneficial, given that this is a relevant tobacco offence for the purpose of a restricted premises/sales order.

Ballymena Borough Council

Ballymena Borough Council welcomes the opportunity to consider the Tobacco Retailers Bill and would make the following comments.

In general welcome the introduction of the Bill and the further powers given to

councils and the courts to deal with the sale of tobacco to persons under the age of 18 are welcomed. Over the last number of years Ballymena Borough Council has allocated resources to carrying out test purchase exercises to ensure that retailers are complying with their duties in relation to the sale of tobacco products to children. The percentage of premises who have sold cigarettes during test purchase exercise in 2012 was 17% i.e. an 83% compliance rate. Although there is a relatively good level of compliance there is room for improvement. In order to ensure that tobacco products are difficult for those under 18 to attain further work is required. It is hoped that the additional powers contained in the Tobacco Retailers Bill will assist in this regard.

It is Council's view that the penalty currently available to the courts in relation to a breach of Article 3 of the Health and Personal Social Services NI Order 1978, Level 4 (£2500) is not sufficient and that the current Bill should include a provision to increase the penalty. This would send out a strong message in terms of the unacceptability of retailers selling tobacco to persons under the age of 18. There is also a need for the level of the fixed penalty to be sufficient to ensure that retailers take the issue seriously and ensure they have appropriate systems, procedures and training in place.

Ballymena Borough Council estimate that there are approximately 90 premises selling tobacco products in the borough. A number of these premises, approximately 20% are visited each year as part of test purchase exercises. In addition premises are routinely visited or provided with information on their responsibilities in relation to the sale of tobacco products. As indicated above this level of activity is having an impact. It is anticipated that the changes being brought about by the Tobacco Retailers Bill particularly the introduction of fixed penalty provisions will speed up the enforcement process and should enable greater resource to be directed at undertaking test purchases.

Clause 1

We believe that as the body charged with responsibility for enforcement of legislation in

relation to underage sales it is appropriate that the register is maintained by councils. Councils currently maintain a number of registers and have the systems to be able to establish these at a reasonable cost. A central register either hosted by a council on behalf of all, or by a central agency would appear to offer some advantages in terms of a single point of contact. However we feel that the advantages are outweighed by other administrative challenges in keeping the register up to date and ensuring that enforcement agencies have the correct and up to date information.

Clause 2

The wording in clause 2(1) does not seem appropriate in that it states that "A person may apply to the council — " Other legislation that district councils enforce which has a registration requirement uses the word "shall or must" we feel that these terms are more appropriate given that it is an offence not to register and that the use of the word "may" sends a message that the registration is discretionary.

Line 2 of clause 2(1) currently reads

"which the person proposes to carry on a tobacco business"

Council feel that the following wording would be better,

“which the person carries on or proposes to carry on a tobacco business”.

Clause 2(2) (a) requires an applicant to provide their name and address. CEHOG are unclear whether this is a business address or a private address or indeed either. It is important for this issue to be clear as clause 5 makes the register available for inspection and enables people to take copies. We believe that where a person has provided a private address this information should not be available.

Council also feel that it may be beneficial for the person seeking registration to be required to provide details of their tobacco suppliers.

Clause 3

In clause 3(2) a registered person is given 3 months to provide details of certain changes in their registration.

This period seems very long perhaps 28 days would be more appropriate.

Clause 4

Clause 4(2) requires a council to remove premises subject to a restricted premises order from the register yet no similar duty appears in relation to removing a person from the register who is subject to a restricted sales order. We are unclear as to why this is the case and would recommend a proactive duty on councils to advise every other council and the Department when a restricted sales order is granted and the details of that order.

Clause 5

See comments on clause 2 (2) (a)

Clause 6

Council believes that an additional requirement should be placed on enforcement agencies to share information in relation to fixed penalty notices or convictions which are considered as relevant offences for the purposes of the restricted sales order. This requirement will ensure that relevant information is proactively shared between enforcement agencies and that the powers within the Act are fully utilised.

Clause 7 and Clause 8

Clause 7 enables a court of summary jurisdiction on application by the council in whose area the premises is located to place an order on premises restricting the sale of tobacco for a maximum period of 1 year. For an Order to be granted the court must be satisfied that the offender has committed 3 offences one of which has been in that premises. It is important to consider this clause along with clause 8 (restricted sales order) which enables a court to prohibit a person from selling tobacco or being involved in the management of a premises in so far as the functions relate to tobacco. The requirements and period of the order are the same as for a restricted premises order.

If a council seeks a restricted premises and restricted sales order and the court decide to grant these then the restricted premises order will remove the premises in which the offence leading to the application for an order took place from the register in that council area only. The restricted sales order would have affect on removing that person from the register yet there is no indication that the council making the application needs to inform other councils if the order is granted and that that person should be removed from the register in all councils where they have premises registered. This is the same point as raised under clause 4 (2).

The length of an Order is a matter for the court which hears the application however we believe that a period longer than a year may be appropriate in some cases and therefore feel that the maximum period stated should be extended to 3 years.

Council also feel that the premises subject to a restricted premises order should be required to display a notice in a prominent position indicating that an order has been made restricting the sale of tobacco from the premises.

Furthermore it is the view of Council that to prevent the inadvertent or deliberate breach of a restricted premises order and to aid enforcement, the offender should be required to remove tobacco from the premises for the period over which the restricted premises order applies.

Clause 10

Ballymena Borough Council believes that if a new requirement is introduced requiring the removal of tobacco from a premises where a restricted premises order applies then there should be a corresponding offence created under clause 10 and a fixed penalty for said offence under clause 13.

Clause 15

Clause 15 (4) requires that a council considers any representation in relation to the service of a fixed penalty notice. We would seek greater clarity that the representation must be made in advance of the fixed penalty notice expiring (i.e. within 28 days). This is to prevent the scenario whereby someone has paid a fixed penalty and subsequently decides to make representation. If this is not included then it may make the process of seeking a restricted premises order or restricted sales order more difficult.

Clause 16

Obstructing an authorised officer in the course of their duties is a serious offence and it is felt that a level 5 penalty would be more appropriate.

Clause 18

We feel that the insertion of a fixed penalty provision for an offence under article 4A of the children and young persons (protection from tobacco) (NI) Order 1991 would be beneficial, given that this is a relevant tobacco offence for the purpose of a restricted premises/sales order.

National Federation of Retail Newsagents

NFRN Submission to the Committee for Health, Social Services and Public Safety of the Northern Ireland Assembly regarding the Tobacco Retailers Bill.

Introduction

The National Federation of Retail Newsagents (NFRN) would like to thank you and the Committee for the invitation to make a written submission on the matter of the Tobacco Retailers Bill.

The NFRN is one of Europe's largest trade associations, representing over sixteen thousand independent newsagents and convenience stores across the UK, Channel Islands and the Republic of Ireland.

General Remarks

The NFRN does not object to the principle of a register of tobacco retailers. As responsible retailers, the NFRN's members welcome measures that bring fair and proportional regulation to the sector. Members remain concerned, however, that regulation introduced with the best of intention can easily become extremely burdensome to retailers going about their lawful business of selling a legal product.

The NFRN believes that the Tobacco Retailers Bill can provide the framework for ensuring that the laws and regulations relating to the sale of tobacco products are enforced but that care is needed to ensure that implementation of the proposed legislation does not impose an unnecessary burden on independent retailers.

The NFRN also has concerns about some of the specific clauses of the Bill.

Clause 2, sub clause 7

While the NFRN notes Edwin Poots' MLA, Minister for Health, Social Services and Public Safety, statement to the Assembly that no fee will be charged for registration, we remain concerned that provision remains in the Bill for the setting of a fee by regulation at any time in the future.

While we accept that there may be no intention to introduce a registration fee at the current time, the provisions included in the Bill will not prevent the introduction of a fee at any point in the future nor will they prevent such a fee being set at a level that is punitive to independent retailers who are already struggling in the current economic climate.

While the NFRN believe that registration should be and remain free, any provision in the Bill for the future introduction of a fee should require the fee to be levied at a level that has regard to the cost of processing and maintaining the register and that it should not be allowed to become a fund raising exercise for local authorities.

Clauses 7 and 8

The NFRN fully concurs that enforcement action should be taken against those retailers who persistently breach the law in regard to the sale of tobacco products. There remains, however, the concern that enforcement officers may fail to differentiate between an offence committed due to either ignorance of the law or a wilful disregard for it on the one hand and an honest mistake on the other. The NFRN hopes that the sensible use of the fixed penalty notices, together with the "three strikes" provisions, can ensure that honest mistakes do not end up having a disproportionate effect on otherwise compliant retailers.

Clauses 10 and 11

The NFRN is concerned that the Northern Ireland Executive has not taken the opportunity to include provisions in the Bill relating to the sale of illicit, either smuggled or counterfeit, tobacco products. While we appreciate that issues relating to taxation and duty remain powers reserved to the United Kingdom government, this is not the case with tackling counterfeit products, which bring not only a financial loss to the government but also considerable risks to public health. The Bill could have included provision to reinforce the duty of local authorities and trading standards officials to work with HM Revenue and Customs, the lead agency in the fight against smuggling. While Dr Mitchell, from the Department of Health, Social Services and Public Safety, in her evidence to the Committee, stated that she “envisaged” this being addressed in the guidance issued to officials and that the processes for those officials working with HMRC would be “highlighted”, this appears to the NFRN to be an inadequate response to an issue that is of serious concern to all legitimate retailers. The recent seizures of cigarettes at ports and other locations across Northern Ireland and the UK serve to show the scale of the very real problem being faced by independent retailers.

Conclusions

While broadly accepting the proposals contained within the Bill, the NFRN is concerned that safeguards are put in place to ensure that the legislation and attendant regulations do not become a burden, financial or otherwise, to legitimate independent retailers.

The NFRN would be delighted to provide further assistance should the Committee find it helpful.

ASH (NI)

ASH (NI) welcomes the introduction of the bill and the further powers given to councils and the courts to deal with the sale of tobacco to persons under the age of 18. Over the last number of years test purchase exercises have ensured that retailers are complying with their duties. The percentage of premises who have sold cigarettes during test purchase exercises has reduced to 13% at the end of March 2012. While ASH (NI) welcomes this improvement, further work is required to bring this down further and therefore ensure that tobacco products are difficult for those under 18 to attain. It is hoped that the additional powers contained in the Tobacco Retailers Bill will assist in this regard.

It is our view that the penalty currently available to the courts in relation to a breach of Article 3 of the Health and Personal Social Services NI Order 1978, Level 4 (£2500) is not sufficient to act as a deterrent and that the current Bill should include a provision to increase that penalty. This would send out a strong message in terms of the unacceptability of retailers selling tobacco to persons under the age of 18. It is anticipated that the changes being brought about by the Tobacco Retailers Bill particularly the introduction of fixed penalty provisions will speed up the enforcement process and should enable greater resource to be directed at undertaking test purchases. There is also a need for the level of the fixed penalty to be sufficient to ensure that retailers take the issue seriously and ensure that they have appropriate systems, procedures and training in place.

Clause 1

We believe it is appropriate that the register of retailers is maintained by councils. Councils currently maintain a number of registers and have the systems to be able to establish these at a reasonable cost.

Clause 2

The wording in clause 2(1) does not seem appropriate in that it states that “A person **may** apply to the council—” Other legislation that district councils enforce which has a registration requirement uses the word “shall or must” we feel that these terms are more appropriate given that it is an offence not to register and that the use of the word “may” sends a message that the registration is discretionary.

Line 2 of clause 2(1) currently reads

“which the person proposes to carry on a tobacco business”

ASH (NI) feels that the following wording would be better,

“which the person carries on or proposes to carry on a tobacco business”.

Clause 2(2)(a) requires an applicant to provide their name and address. ASH (NI) are unclear whether this is a business address or a private address or either.

ASH (NI) also feels that it may be beneficial for the person seeking registration to be required to provide details of their tobacco suppliers.

Clause 3

In clause 3(2) a registered person is given 3 months to provide details of certain changes in their registration.

This period seems very long and ASH (NI) feel that 28 days would be more appropriate.

Clause 4

Clause 4(2) requires a council to remove premises subject to a restricted premises order from the register yet no similar duty appears in relation to removing a person from the register who is subject to a restricted sales order. We are unclear as to why this is the case and would recommend a proactive duty on councils to advise every other council and the Department when a restricted sales order is granted and the details of that order.

Clause 5

See comments on clause 2 (2) (a)

Clause 6

ASH (NI) believes that an additional requirement should be placed on enforcement agencies to share information in relation to fixed penalty notices or convictions which are considered as relevant offenses for the purposes of the restricted sales order. This requirement will ensure that relevant information is proactively shared between enforcement agencies and that the powers within the Act are fully utilised.

Clause 7 and Clause 8

Clause 7 enables a court of summary jurisdiction on application by the council in whose area the premises is located to place an order on premises restricting the sale of tobacco for a maximum period of 1 year. For an Order to be granted the court must be satisfied that the offender has committed 3 offences one of which has been in that premises. It is important to consider this clause along with clause 8 (restricted sales order) which enables a court to prohibit a person from selling tobacco or being involved in the management of a premises in so far as the functions relate to tobacco. These requirements and period of the order are the same as for a restricted premises order.

If a council seeks a restricted premises and restricted sales order and the court decides to grant these then the restricted premises order will remove the premise in which the offence leading to the application for an order took place from the register in that council area only. The restricted sales order would have affect of removing that person from the register, yet there is no indication that the council making the application needs to inform other councils, if the order is granted, and that that person should be removed from the register in all councils where they have premises registered. This is the same point as raised under clause 4 (2).

The length of an Order is a matter for the court which hears the application. ASH (NI) believes however that a period longer than a year may be appropriate in some cases and therefore feels that the maximum period stated should be extended to 3 years.

ASH (NI) also feels that the premises subject to a restricted premises order should be required to display a notice in a prominent position indicating that an order has been made restricting the sale of tobacco from the premises.

Furthermore it is the view of ASH (NI) that to prevent the inadvertent or deliberate breach of a restricted premises order and to aid enforcement, the offender should be required to remove tobacco from the premises for the period over which the restricted premises order applies.

Clause 10

ASH (NI) believes that if a new requirement is introduced requiring the removal of tobacco from a premises where a restricted premises order applies, then there should be a corresponding offence created under clause 10 and a fixed penalty for said offence under clause 13.

Clause 15

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ASH (NI) feel that the insertion of a fixed penalty provision for an offence under article 4A of the children and young persons (protection from Tobacco) (NI) Order 1991 would be beneficial, given that this is a relevant tobacco offence for the purpose of a restricted premises/sales order.

Royal College of Nursing

Introduction

- 1 The Royal College of Nursing [RCN] thanks the Northern Ireland Assembly Committee for Health, Social Services and Public Safety for the opportunity to comment upon the wording of the Tobacco Retailers Bill, which is currently the subject of the Committee's scrutiny during the Committee stage of the Bill. The RCN hopes that the comments below will be of value to the Committee in its consideration of the draft legislation.
- 2 The RCN welcomed the tobacco control strategy for Northern Ireland published for consultation by the DHSSPS in January 2011 and from which this draft legislation derives. To tackle smoking, specific resources need to be focused on vulnerable populations to reduce health inequalities, provide public health education, improve access to services, tackle social deprivation, prevent ill health and promote healthy lifestyles. Nurses play a leading role in improving public health outcomes through, for example the provision of nurse-led smoking cessation services. Investment in these services and their associated staffing is essential if the objectives of the draft legislation and the broader tobacco control strategy are to be secured.
- 3 The RCN endorses the purpose of the Bill, as defined in paragraph 4 of the Explanatory and Financial Memorandum, as an integral part of a wider tobacco control strategy for Northern Ireland and as a specific series of measures to help discourage access to tobacco on the part of children and young people. As requested, we have referenced both the draft legislation and the Official Report of the Assembly debate accompanying the Second Stage of the Bill on 23 April 2013. Our comments upon the issues raised by Committee members and other Assembly members during this debate are noted below, in accordance with the structure of the draft legislation. Where no specific comment is offered in relation to the wording of a specific clause, it may reasonably be inferred that the RCN endorses the current wording in general terms

Clause 1: Register of tobacco retailers

- 4 The RCN acknowledges the concerns raised during the Assembly debate over the term "tobacco business" and the need to ensure that the legislative authority deriving from the Bill extends to all premises that sell tobacco products. However, we note the Minister's clarification that the term "tobacco business" is defined under Interpretation (clause 22) as "a business involving the sale of tobacco or cigarette papers by retail". The RCN also notes and welcomes the Minister's stated intention "... to discuss that with our legal advisers to ensure that there are no loopholes" and we trust that this process will ensure the necessary clarification.

Clause 7: Restricted premises orders and Clause 8: Restricted sale orders

- 5 The RCN notes the concerns expressed during the Assembly debate by the Chair of the Committee and by other Committee members in relation to the availability (particularly to children and young people) of illicit tobacco. The RCN shares those concerns.
- 6 However, we also note the Minister's statement that: "Our legal advice is that [tobacco excise duty] evasion is an excepted matter" and that, consequently: "It is not a matter for this House, but it is still a matter of public concern and, therefore, a matter that Members should not ignore". Given that this is an excepted matter, the RCN believes that the Minister's commitment "... to take up the issue with the Northern Ireland Office, HMRC and our own Department of Justice" is an appropriate and proportionate response. We assume that the outcomes of these discussions would be reported to the Committee and to the Assembly.

Clause 11: Enforcement by Councils

- 7 The RCN notes and endorses the observations made by Committee members that enforcement would be enhanced by specific compliance training for district Council environmental health officers and a more comprehensive public education campaign to support retailers. We note and welcome the Minister's assurance about an awareness campaign to be led by the Public Health Agency with the assistance of district council environmental health officers.

Concluding comments

- 8 The RCN notes and endorses the concerns raised by Committee Members during the Assembly debate accompanying the Second Stage of the Bill on 23 April 2013. The RCN also notes and welcomes the assurances provided by the Minister in relation to these concerns.
- 9 For further information about the work of the RCN in support of nurses and patient services in Northern Ireland, please contact Dr John Knape, Head of Communications, Policy and Marketing for the RCN in Northern Ireland, at john.knape@rcn.org.uk or by telephone on 028 90 384 600.

Northern Ireland Chest, Heart and Stroke

Northern Ireland Chest Heart and Stroke welcomes the introduction of the Tobacco Retailers Bill and wishes to raise the following points with the Committee.

1. **The Number of offences leading to sanctions.**

The Bill as drafted currently envisages that where a retailer commits **3 offences within a 3 year period** in relation to underage sales, the local district council may apply to the NI Courts Service for a prohibition order to be served on the retailer, preventing them from selling tobacco products.

The original proposal mirrored the Scottish legislation of 3 offences within a TWO year period. During the consultation in 2009/2010 many local councils argued that this be diluted. The Consultation response stated:

“Having taken into account the views expressed by District Councils who will be responsible for enforcing the legislation, it has been decided that the conditions under which a prohibition order may be served will change from 3 offences within a 2 year period to 3 offences within a 3 year period.”

“Over half of respondents suggested that 3 offences over 3 years would be more realistic for district councils based on the level of planning and resources needed for test purchasing exercises.”

Northern Ireland Chest Heart and Stroke believes that if councils have an issue with the levels of planning and resources required they have had a number of years to address this issue. More significantly this position is now outdated. Given the reform of local government there is an opportunity for the new councils to devote adequate planning and resources to this important area.

Northern Ireland Chest Heart and Stroke believes that we should be legislating for the future position and not that of the current district councils. Indeed, NICHS believes that with the current level of test purchasing, and the 3 month notification that retailers receive, that it will be extremely rare that any retailer would in fact be banned under either scenario.

Northern Ireland Chest Heart and Stroke believes the criteria should be strongly strengthened to a simple provision of 3 offences leading to an order.

Offences would only be discounted after five years.

NICHS would urge that the frequency of test purchasing be increased and premises that have offended be tested on a quarterly basis for the year following an offence. Such retailers would then receive a notification every quarter i.e. they will be under notice for an entire year.

The protection of children from the dangers of smoking deserves to be treated as a greater priority by the new councils and this is an important way for the Assembly to alert the structures of local government to the importance they attach to this issue. It is important to note that the fall in smoking prevalence in the population has stalled and indeed in the last two years there is evidence of the number of smokers in the population is actually rising. (see appendix)

It also has the advantage of ensuring that many of our major retailers who have premises in NI and Scotland would have a consistent legal situation across the two jurisdictions.

With regard to resources DHSSPS is currently funding 12 Tobacco Control Officer positions so the Health committee and indeed those involved in local government reorganisation may wish to raise the question of future funding with the Health Minister. The Minister is committed via

the **Tobacco Strategy reducing the proportion of 11-16 year old children who smoke to 3% by 2020 - it is currently three times that level.**

2. **Registration**

NICHS are concerned that individual council registers but no central Northern Ireland register will not assist transparency and communication. We are surprised at the suggestion that central registration could cost £50,000. NICHS would note that even if this is correct this is less than £2000 on average per council (26 Councils) with RPA and 11 councils it would still represent less than £5000 per council (on average) per annum.

3. **Restricted Premises Order**

NICHS is concerned that there is evidence from the Republic of Ireland and England and Wales that magistrates are imposing very short orders.

Northern Ireland Chest Heart and Stroke would support the introduction of a minimum period in addition to the current maximum of 1 year. NICHS would support a minimum period three months.

4. **Restricted Sale Order**

Northern Ireland Chest Heart and Stroke would support the introduction of a minimum period in addition to the current maximum of 1 year. NICHS would support a minimum period three months.

5. **Tobacco retailing banning orders**

NICHS would strongly urge the incorporation of a clause similar to Clause 19 of the Tobacco and Primary Medical Services (Scotland) Act 2010

19 Tobacco retailing banning orders: display of notices

- (1) This section applies where—
 - (a) a tobacco retailing banning order has effect in respect of a person, and
 - (b) the person carries on a retail business at the premises specified in the order.
- (2) The person must display a notice in the premises in accordance with subsection (3).
- (3) The notice must—
 - (a) state that the premises have been specified in a tobacco retailing banning order and the period for which the order has effect,
 - (b) be displayed in a prominent position in the premises where it is readily visible to persons at every relevant point of sale, and
 - (c) be displayed no later than 14 days after the tobacco retailing banning order is made.
- (4) A relevant point of sale is one that was used for the sale of tobacco products or smoking related products at any time during the period of 2 months ending with the making of the banning order.
- (5) The Scottish Ministers may prescribe—
 - (a) the dimensions of the notice to be displayed in accordance with this section,
 - (b) the wording of the statement to be displayed on the notice, and
 - (c) the size of the statement.

NICHS believes that a display of notice should be required both when a Restricted Premise Order or a Restricted Sale Order are in force, with the notice being displayed in the premises where the offence was committed.

6. Offences

'If an unregistered person carries on a tobacco business, the person commits an offence'

NICHS would like clarity with regard to this aspect. Clause 10 sub section 7 appears to state that a person guilty of the above offence would be liable to a fine not exceeding Level 5 – a maximum of £5,000.

Under the Clause 20 sub section 6 of the *Tobacco and Primary Medical Services (Scotland) Act 2010*

'An unregistered person who carries on a tobacco business commits an offence.'

A person guilty of this offence in Scotland would be liable to:

- (i) a fine not exceeding £20,000,
- (ii) imprisonment for a term not exceeding 6 months, or
- (iii) both

NICHS would like clarity as to whether we have interpreted this correctly.

NICHS would support sanctions similar to those in force in Scotland.

7. Illicit Cigarettes

Northern Ireland Chest Heart and Stroke supports the members of the Health Committee who have urged that the sale of illicit cigarettes become a tobacco offence under the auspices of this legislation. While NICHS understands that the issue of illicit cigarettes is primarily the responsibility of Her Majesty's Revenue and Customs we believe that it does not make sense to discount such activity when considering whether a retailer is allowed to continue selling tobacco.

Any retailer who has been convicted of selling illicit tobacco has clearly demonstrated that they are not a responsible retailer with regard to the retailing of tobacco products. NICHS argue that it would be illogical not to consider any convictions with regard to illicit tobacco when assessing whether a retailer is allowed to continue retailing tobacco.

Moreover it would undermine the purpose of the Bill if council officials are told to ignore such convictions.

Conclusion

Northern Ireland Chest Heart and Stroke would strongly urge the Health Committee to strengthen this legislation in the ways outlined. It is imperative that the Assembly sends out the strongest possible messages about its determination to cut the prevalence of smoking in Northern Ireland. Doing so will reinforce the Tobacco Control Strategy.

In addition such a message is entirely in keeping with the Assembly's desire to reduce health inequality and to increase health prevention and promotion under the auspices of Transforming Your Care.

Appendix: Smoking Prevalence in Northern Ireland

The **Continuous Household Survey** Bulletin 2009/10 was published by Central Survey Unit of the Northern Ireland Statistics and Research Agency (NISRA). Last published Thursday, 30 September 2010

Smoking

- One quarter of adults (24%) were smokers in 2009-10, a figure which has **remained at broadly same level over the last five years**. Historically, smoking prevalence among adults has declined from 33% in 1983.
- Since 1983, male smoking prevalence has declined from 39% to 24%. Female smoking prevalence has fallen from 29% to 24% over the same period.
- Smoking prevalence was higher in 2009/10 among adults living in the most deprived areas (41%) compared to adults living in the least deprived areas (13%).

[The Continuous Household Survey (CHS) is one of the largest continuous surveys carried out in Northern Ireland. The survey is designed, conducted and analysed by the Central Survey Unit of the Northern Ireland Statistics and Research Agency (NISRA). It is based on a sample of the general population resident in private households and has been running since 1983. The Survey is designed to provide a regular source of information on a wide range of social and economic issues relevant to Northern Ireland. The nature and aims of CHS are similar to those of the General Household Survey (GHS), which is carried out by the Office for National Statistics (ONS) in Great Britain]

Health Survey Northern Ireland:

In the 2010/11 survey: **Twenty-four percent** of respondents currently smoke, with similar results for males (25%) and females (23%).

In the 2011/12 **Twenty-five percent** of respondents currently smoke. The proportions for males and females were 27% and 23% respectively.

[The Health Survey Northern Ireland is a new survey that will run every year on a continuous basis and will cover a range of health topics.

The fieldwork for the 2011/12 survey was conducted by the Northern Ireland Statistics & Research Agency's Central Survey Unit and covered the period April 2011 to March 2012. Data were collected using Computer Assisted Personal Interviewing (CAPI) and where appropriate Computer Assisted Self Interviewing (CASI) from those aged 16 and over in private households in Northern Ireland. The final achieved sample was 4,390 individuals and the response rate was 65%.]

Conclusion:

Recent surveys, in the past two years, have shown that smoking is on the increase in Northern Ireland.

http://www.dhsspsni.gov.uk/index/stats_research/stats-public-health.htm

Northern Ireland Chief Environmental Health Officers Group

The Northern Ireland Chief Environmental Health Officers Group (CEHOG) is grateful for the opportunity to submit a written response on the Tobacco Retailers Bill. Our response, which has been prepared by our Tobacco Task Subgroup, is as follows.

In general CEHOG welcome the introduction of the Bill and the further powers given to

councils and the courts to deal with the sale of tobacco to persons under the age of 18. Over the last number of years councils have focused resources on carrying out test purchase exercises to ensure that retailers are complying with their duties in relation to the sale of tobacco products to children. The percentage of premises who have sold cigarettes during test purchase exercises has reduced from 20% to 17% to 13% at the end of March 2012.

While CEHOG welcomes this improvement, further work is required to ensure this trend continues and that tobacco products are difficult for those under 18 to attain. It is hoped that the additional powers contained in the Tobacco Retailers Bill will assist in this regard.

It is CEHOG's view that the penalty currently available to the courts in relation to a breach of Article 3 of the Health and Personal Social Services NI Order 1978, (Level 4 — £2500) is not sufficient and that the current Bill should include a provision to increase the penalty. This would send out a strong message in terms of the unacceptability of retailers selling tobacco to persons under the age of 18. There is also a need for the level of the fixed penalty to be sufficient to ensure that retailers take the issue seriously and have in place appropriate systems, procedures and training for preventing and refusing sales in accordance with the law. CEHOG estimates that there are approximately 2500 premises selling tobacco products in Northern Ireland. Councils currently visit between 15 and 20% of these premises each year as part of test purchase exercises. In addition premises are routinely visited or provided with information on their responsibilities in relation to the sale of tobacco products. As indicated above this level of activity is having an impact. It is anticipated that the changes being brought about by the Tobacco Retailers Bill, and in particular, the introduction of fixed penalty provisions will speed up the enforcement process and should enable greater resource to be directed at undertaking test purchases.

Clause 1

We believe that as the Body charged with responsibility for enforcement of legislation in relation to underage sales it is appropriate that the register is maintained by councils.

Councils currently maintain a number of registers and have the systems to be able to establish these at a reasonable cost. A central register either hosted by a council on behalf of all, or by a central agency would appear to offer some advantages in terms of a single point of contact. However we feel that the advantages are outweighed by other administrative challenges in keeping the register up to date and ensuring that enforcement agencies have the correct and up to date information.

Clause 2

The wording in clause 2(1) does not seem appropriate when viewed alongside the other provisions included in the Bill. It states that "A person may apply to the council —" Other legislation that district councils enforce which has a registration requirement uses the word "shall or must". We feel that these terms are more appropriate given that it is an offence not to register and that the use of the word "may" sends a message that the registration is discretionary.

Line 2 of clause 2(1) currently reads

“which the person proposes to carry on a tobacco business”

CEHOG feel that the following wording would be better,

“which the person carries on or proposes to carry on a tobacco business”.

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CEHOG also feel that it may be beneficial for the person seeking registration to be required to provide details of their tobacco suppliers.

Clause 3

In clause 3(2) a registered person is given 3 months to provide details of certain changes in their registration.

This period seems very long and would impact upon the accuracy of the register. CEHOG feel that 28 days would be more appropriate.

Clause 4

Clause 4(2) requires a council to remove premises subject to a restricted premises order from the register yet no similar duty appears in relation to removing a person from the register who is subject to a restricted sales order. CEHOG is unclear as to why this is the case and would recommend a proactive duty on councils to both amend the register and advise every other council and the Department when a restricted sales order is granted, including the details of that order. We believe that such additional requirements are needed for the purposes of keeping all registers accurate and up to date, in addition to permitting the effective application of the new powers relating to persistent commission of tobacco offences.

Clause 5

See comments on clause 2 (2) (a)

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CEHOG believes that an additional requirement should be placed on enforcement agencies to share information in relation to fixed penalty notices or convictions which are considered as relevant offences for the purposes of the restricted sales order. This requirement will ensure that relevant information is proactively shared between enforcement agencies and that the powers within the Act are fully utilised.

Clause 7 and Clause 8

Clause 7 enables a court of summary jurisdiction on application by the council in whose area the premises is located to place an order on premises restricting the sale of tobacco for a maximum period of 1 year. For an Order to be granted the court must be satisfied that the offender has committed 3 offences one of which has been in that premises. It is important to consider this clause along with clause 8 (restricted sales order) which enables a court to prohibit a person from selling tobacco or being involved in the management of a premises in

so far as the functions relate to tobacco. The requirements and period of the order are the same as for a restricted premises order.

If a council seeks a restricted premises and restricted sales order and the court decide to grant these then the restricted premises order will remove the premises in which the offence leading to the application for an order took place from the register in that council area only.

The restricted sales order would have affect on removing that person from the register yet there is no indication that the council making the application needs to inform other councils if the order is granted and that that person should be removed from the register in all councils where they have premises registered. This is the same point as raised under clause 4 (2). CEHOG would seek an assurance that for a council to be able to make an application, the previous 2 offences do not have to be in that council's area and that the council making the application needs only to satisfy themselves that they can prove 3 offences over the relevant 3 year period.

The length of an Order is a matter for the court which hears the application however CEHOG believe that a period longer than a year may be appropriate in some cases and therefore feel that the maximum period stated should be extended to 3 years.

CEHOG also feel that the premises subject to a restricted premises order should be required to display a notice in a prominent position indicating that an order has been made restricting the sale of tobacco from the premises.

Furthermore it is the view of CEHOG that to prevent the inadvertent or deliberate breach of a restricted premises order and to aid enforcement, the offender should be required to remove tobacco from the premises for the period over which the restricted premises order applies.

Clause 10

CEHOG believes that if a new requirement is introduced requiring the removal of tobacco from a premises where a restricted premises order applies then there should be a corresponding offence created under Clause 10 and a fixed penalty for said offence under Clause 13.

Clause 15

Clause 15 (4) requires that a council considers any representation in relation to the service of a fixed penalty notice. We would seek greater clarity that the representation must be made in advance of the fixed penalty notice expiring (i.e. within 28 days). This is to prevent the scenario whereby someone has paid a fixed penalty and subsequently decides to make representation. If this is not included then it may make the process of seeking a restricted premises order or restricted sales order more difficult.

Clause 16

Obstructing an authorised officer in the course of their duties is a serious offence and CEHOG feel that a level 5 penalty would be more appropriate.

Clause 18

CEHOG feel that the insertion of a fixed penalty provision for an offence under article 4A of the Children and Young Persons (Protection from Tobacco) (NI) Order 1991 would be beneficial, given that this is a relevant tobacco offence for the purpose of a restricted premises/sales order.

The Northern Ireland Retail Consortium

Introduction

The Northern Ireland Retail Consortium (NIRC) is the trade association of the Northern Ireland multiple retail sector and their authoritative voice to policy makers. We bring together retailers across Northern Ireland, selling a wide selection of products through high street, out of town, neighbourhood, rural and online stores.

The NIRC and our members are supportive of the Executive's objective to reduce the prevalence of smoking in Northern Ireland and are committed to playing our part in restricting the availability of tobacco to young people.

Our members take their responsibilities as retailers seriously and have implemented robust systems and successful policies such as 'Challenge 25' across their stores to ensure that tobacco products are not sold to those under 18. Consistently our members' record in test purchasing is better than any other sector.

NIRC Position

Overall, NIRC members remain unconvinced that a registration scheme is necessary or would in any way help the Executive achieve its aims of reducing the prevalence of smoking amongst young people or helping reduce underage sales. Members feel emphasis on enforcement of existing legislation would be a better way forward. However, we understand that the Executive is minded to pursue this option and want to work with the Minister to ensure that the system is proportionate and not overly burdensome for retailers.

The proposals

Members have specific concerns about the potential disproportionate application of the sanctions included in the Tobacco Retailers Bill. Current licensing arrangements provide retailers with a legal framework within which to operate and therefore give stability in terms of licensing operations. The current proposals suggest that failing a specific number of test purchases within a proposed time will mean removal from the register and therefore a ban on being able to sell tobacco for a given period.

Clear understanding of how this will be applied is essential, including guidance on a standardized approach to test purchasing to ensure that local enforcement officers approach this in a constructive and measured manner.

Clause 7, Paragraph 8 (b)

NIRC members feel that the three year period for holding a test purchase failures on record is disproportionate and should be amended to reflect the Scottish model of two years. This would also be more appropriate given the nature of retail employment and the comparatively high turnover of staff.

Clause 2, Paragraph 7

Given the current economic climate, the NIRC feels that retailers should not have to pay for registration. We understand that, currently, the Executive has suggested that additional regulations would be required to introduce charges. We support this position. The priority of the Executive should be to increase private sector job growth, productivity and competitiveness, and to encourage investment, rather than making it more difficult for responsible businesses to thrive.

Clause 8

NIRC members seek clarity on where any list of individuals subject to a Restricted Sales Order would be kept. A retailer conducting pre-employment checks would find it beneficial to have access to this information, to ensure they are not unintentionally breaching any of the new conditions by hiring a person that has not declared a ban.

Public Health Agency

Thank you for your recent letter requesting a written response to the committee on the Tobacco Retailers Bill.

The Public Health Agency is committed to tackling the high levels of premature death and preventable illness caused by tobacco. Smoking is responsible for around 2,300 deaths in Northern Ireland each year and is a major risk factor for coronary heart disease, strokes and other diseases of the circulatory system.

The PHA welcomes this Bill which will introduce a registration scheme alongside provisions that will enable the courts to prohibit retailers from selling tobacco for a set period of time if they commit a number of relevant tobacco offences. The PHA believes that this Bill will provide a further deterrent to retailers from selling tobacco to persons under the age of 18.

It will help to achieve one of the objectives in the Ten Year Tobacco Strategy for NI 'to prevent young people from taking up smoking' by making it more difficult for those under the age of 18 to access tobacco products.

This Bill will also assist authorised officers of district councils in carrying out their duties with regards to tobacco control by providing them with a register of tobacco retailers within the district of each council.

Therefore we support and commend the adoption of this Bill as set out in the regulations published.

Police Service of Northern Ireland

Thank you for your letter of 30 April 2013 inviting comments regarding the Tobacco Retailers Bill.

The Police Service of Northern Ireland have noted the proposals and have no further comment to make on the Bill. The PSNI partnership role in this area is to support the Council officials, where they may request police assistance in relation to their enforcement role and we will continue to do this once the legislation is introduced.

Philip Morris Ltd

Philip Morris Limited (“PML”) would like to thank the Committee for Health, Social Services and Public Safety for providing the opportunity to feedback on the Tobacco Retailers Bill.

It is a matter of principle for our Company – as a manufacturer of tobacco products whose consumption poses serious health risks – to seek a comprehensive statutory regulatory framework for all tobacco products which is guided by the principle of harm reduction. We actively encourage all governments to strictly enforce minimum age laws, arguing that in order to be effective there must be a tangible impact on retailers who violate them. We also support other measures including penalties for adults who buy or provide cigarettes to minors, and where appropriate, licensing of retailers to sell tobacco products.

PML support the Northern Ireland Assembly’s plans to introduce a registration scheme for retailers to sell tobacco products.

PML believes that a positive licensing system should be the cornerstone of comprehensive tobacco regulation. A licensing system will help ensure that only legitimate and properly qualified businesses are engaged in the manufacture, importation and sale of tobacco products. A licensing system will also assist in the monitoring and enforcement of current and future regulations, including the prevention of sales to minors and measures to combat illicit trade.

(SPECIFIC FEEDBACK ON THE CLAUSES)

We would once again like to thank Committee for Health, Social Services and Public Safety for inviting our views on the Tobacco Retailers Bill. We look forward to participating fully and to sharing our views in any future consultations on proposed tobacco control regulations.

Northern Ireland Local Government Association

Introduction

NILGA, the Northern Ireland Local Government Association, is the representative body for district councils in Northern Ireland. NILGA represents and promotes the interests of the 26 local authorities and is supported by all of the main political parties. Health promotion, protection and preventative interventions have been a key policy consideration for NILGA since its formation in 2001, and we have had a working group, dedicated to examining the strategic local government approach to improving Northern Ireland's policy and practice on these issues for over 10 years.

It is vital that we improve the health and well-being of our population, to reduce the need for hospital treatment and to ensure our citizens can engage in society in a productive way, that is beneficial for all, for as long as possible.

We look forward to the new powers and functions for councils that are expected to be introduced through the forthcoming Local Government Bill, which will enhance the ability of councils to work more effectively with our partners, including those partners in the health system. We trust that the new community planning system in particular will enable a focus of combined and integrated governmental attention on the key challenges faced by our society at local level, including issues associated with smoking.

NILGA is pleased to be able to have an opportunity to comment on the Committee's request for evidence in relation to the Tobacco Retailers Bill, as tobacco control is a major component of improving health and well being. The Chief Environmental Health Officers Group provides advice on health issues to NILGA and to our member councils, and we support the comments the Environmental Health Officers have made on this Bill, detailed overleaf. It is the view of NILGA that great progress is being made by councils on the reduction of illegal sales of cigarettes to children, and we would support a strengthening of the legislation to assist councils to continue to improve on this, however would ask the Committee to ensure that local government concerns, as detailed by CEHOG, are addressed to ensure the legislation is proportionate and effective.

Chief Environmental Health Officers' Group

Notes on the Tobacco Retailers Bill

In general CEHOG welcome the introduction of the bill and the further powers given to councils and the courts to deal with the sale of tobacco to persons under the age of 18. Over the last number of years councils have focused resources on carrying out test purchase exercises to ensure that retailers are complying with their duties in relation to the sale of tobacco products to children. The percentage of premises who have sold cigarettes during test purchase exercises has reduced from 20% to 17% to 13% at the end of March 2012. While CEHOG welcome this improvement, further work is required to ensure this trend continues and that tobacco products are difficult for those under 18 to attain. It is hoped that the additional powers contained in the Tobacco Retailers Bill will assist in this regard.

It is CEHOGs view that the penalty currently available to the courts in relation to a breach of Article 3 of the Health and Personal Social Services NI Order 1978,

(Level 4 -£2500) is not sufficient and that the current Bill should include a provision to increase the penalty. This would send out a strong message in terms of the unacceptability of retailers selling tobacco to persons under the age of 18. There is also a need for the level of the fixed penalty to be sufficient to ensure that retailers take the issue seriously and have in place appropriate systems, procedures and training for preventing and refusing sales in accordance with the law.

CEHOG estimate that there are approximately 2500 premises selling tobacco products in Northern Ireland. Councils currently visit between 15 and 20% of these premises each year as part of test purchase exercises. In addition premises are routinely visited or provided with information on their responsibilities in relation to the sale of tobacco products. As indicated above this level of activity is having an impact. It is anticipated that the changes being brought about by the Tobacco Retailers Bill, and in particular, the introduction of fixed penalty provisions will speed up the enforcement process and should enable greater resource to be directed at undertaking test purchases.

Clause 1

We believe that as the body charged with responsibility for enforcement of legislation in relation to underage sales it is appropriate that the register is maintained by councils. Councils currently maintain a number of registers and have the systems to be able to establish these at a reasonable cost. A central register either hosted by a council on behalf of all, or by a central agency would appear to offer some advantages in terms of a single point of contact. However we feel that the advantages are outweighed by other administrative challenges in keeping the register up to date and ensuring that enforcement agencies have the correct and up to date information.

Clause 2

The wording in clause 2(1) does not seem appropriate when viewed alongside the other provisions included in the Bill. It states that “A person **may** apply to the council—” Other legislation that district councils enforce which has a registration requirement uses the word “shall or must”. We feel that these terms are more appropriate given that it is an offence not to register and that the use of the word “may” sends a message that the registration is discretionary.

Line 2 of clause 2(1) currently reads

“which the person proposes to carry on a tobacco business”

CEHOG feel that the following wording would be better,

“which the person carries on or proposes to carry on a tobacco business”.

Clause 2(2) (a) requires an applicant to provide their name and address. CEHOG are unclear whether this is a business address or a private address or indeed either. It is important for this issue to be clear as Clause 5 makes the register available for inspection and enables people to take copies. CEHOG would take the view that a private address is beneficial as it establishes a further point of contact with the applicant, particularly if that person is not routinely present at the premises. However, we believe that where a person has provided a private address, this information should not be publically available.

CEHOG would seek clarity on how the requirement to register applies to a company. A definition of “person” would assist in this regard.

CEHOG also feel that it may be beneficial for the person seeking registration to be required to provide details of their tobacco suppliers.

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In clause 3(2) a registered person is given 3 months to provide details of certain changes in their registration.

This period seems very long and would impact upon the accuracy of the register. CEHOG feel that 28 days would be more appropriate.

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Clause 4(2) requires a council to remove premises subject to a restricted premises order from the register yet no similar duty appears in relation to removing a person from the register who is subject to a restricted sales order. CEHOG is unclear as to why this is the case and would recommend a proactive duty on councils to both amend the register and advise every other council and the Department when a restricted sales order is granted, including the details of that order. We believe that such additional requirements are needed for the purposes of keeping all registers accurate and up-to-date, in addition to permitting the effective application of the new powers relating to persistent commission of tobacco offences.

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See comments on clause 2 (2) (a)

Clause 6

CEHOG believes that an additional requirement should be placed on enforcement agencies to share information in relation to fixed penalty notices or convictions which are considered as relevant offences for the purposes of the restricted sales order. This requirement will ensure that relevant information is proactively shared between enforcement agencies and that the powers within the Act are fully utilised.

Clause 7 and Clause 8

Clause 7 enables a court of summary jurisdiction on application by the council in whose area the premises is located to place an order on premises restricting the sale of tobacco for a maximum period of 1 year. For an Order to be granted the court must be satisfied that the offender has committed 3 offences one of which has been in that premises. It is important to consider this clause along with clause 8 (restricted sales order) which enables a court to prohibit a person from selling tobacco or being involved in the management of a premises in so far as the functions relate to tobacco. The requirements and period of the order are the same as for a restricted premises order.

If a council seeks a restricted premises and restricted sales order and the court decide to grant these then the restricted premises order will remove the premises in which the offence leading to the application for an order took place from the register in that council area only. The restricted sales order would have affect on removing that person from the register yet there is no indication that the council making the application needs to inform other councils if the order is granted and that that person should be removed from the register in all councils where they have premises registered. This is the same point as raised under clause 4 (2). CEHOG would seek an assurance that for a council to be able to make an application, the previous 2 offences do not have to be in that council's area and that the council making the application needs only to satisfy themselves that they can prove 3 offences over the relevant 3 year period.

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Down District Council

I refer to your letter of 30th April 2013 inviting a written submission in relation to the Tobacco Retailers Bill. I apologise for the delay in responding which was due to leave commitments.

Attached below are comments from the Chief Environmental Health Officers Group which would represent the views of Environmental Health, Down District Council.

I trust this is satisfactory.

Notes on the Tobacco Retailers Bill

In general CEHOG welcome the introduction of the bill and the further powers given to councils and the courts to deal with the sale of tobacco to persons under the age of 18. Over the last number of years councils have focused resources on carrying out test purchase exercises to ensure that retailers are complying with their duties in relation to the sale of tobacco products to children. The percentage of premises who have sold cigarettes during test purchase exercises has reduced from 20% to 17% to 13% at the end of March 2012. While CEHOG welcome this improvement further work is required to bring this down and therefore ensure that tobacco products are difficult for those under 18 to attain. It is hoped that the additional powers contained in the Tobacco Retailers Bill will assist in this regard.

It is CEHOGs view that the penalty currently available to the courts in relation to a breach of Article 3 of the Health and Personal Social Services NI Order 1978, Level 4 (£2500) is not sufficient and that the current Bill should include a provision to increase that penalty. This would send out a strong message in terms of the unacceptability of retailers selling tobacco to persons under the age of 18. There is also a need for the level of the fixed penalty to be sufficient to ensure that retailers take the issue seriously and ensure that they have appropriate systems, procedures and training in place.

CEHOG estimate that there are approximately 2500 premises selling tobacco products in Northern Ireland. Councils currently visit between 15 and 20% of these premises each year as part of test purchase exercises. In addition premises are routinely visited or provided with information on their responsibilities in relation to the sale of tobacco products. As indicated above this level of activity is having an impact. It is anticipated that the changes being brought about by the Tobacco Retailers Bill, and in particular, the introduction of fixed penalty provisions will speed up the enforcement process and should enable greater resource to be directed at undertaking test purchases.

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The wording in clause 2(1) does not seem appropriate in it it states that “A person **may** apply to the council—” Other legislation that district councils enforce which has a registration requirement uses the word “shall or must”. We feel that these terms are more appropriate given that it is an offence not to register and that the use of the word “may” sends a message that the registration is discretionary.

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Larne Borough Council

Larne Borough Council welcomes the opportunity provided by the Committee for Health, Social Services and Public Safety to comment on the provisions of the Tobacco Retailers Bill. The Council view tobacco control and the prevention of the sale of tobacco products to children as an important public health issue and have committed resources to ensuring that retailers are aware of their responsibilities.

In general Larne Borough Council welcomes the introduction of the Bill and the further powers given to councils and the courts to deal with the sale of tobacco to persons under the age of 18 are welcomed. Over the last number of years councils have focused resources to carrying out test purchase exercises to ensure that retailers are complying with their duties in relation to the sale of tobacco products to children. There are 40 businesses in the Larne area selling tobacco products and during the last 3 years 45 visits have been carried out to premises as part of test purchase exercises. Larne Borough Council have noted an improvement in the steps being taken by retailers in complying with their duties in relation to the sale of tobacco products to persons under 18 years of age but more still needs to be done. The council are committed to working with local retailers to ensure that further improvements are made.

Larne Borough Council feel that the penalty currently available to the courts in relation to a breach of Article 3 of the Health and Personal Social Services NI Order 1978, Level 4 (£2500) is not sufficient and that the current Bill should include a provision to increase the penalty. This would send out a strong message in terms of the unacceptability of retailers selling tobacco to persons under the age of 18. There is also a need for the level of the fixed penalty to be sufficient to ensure that retailers take the issue seriously and ensure they have appropriate systems, procedures and training in place.

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address this information should not be available. Larne Borough Council would take the view that a private address is beneficial as it establishes a further point of contact with the applicant, particularly if that person is not routinely present at the business premises.

Larne Borough Council also feel that it may be beneficial for the person seeking registration to be required to provide details of their tobacco suppliers this information may assist in work to tackle illicit tobacco.

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This period seems very long and Larne Borough Council feel that 28 days would be more appropriate.

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If a council seeks a restricted premises and restricted sales order and the court decide to grant these then the restricted premises order will remove the premises in which the offence leading to the application for an order took place from the register in that council area only. The restricted sales order would have affect on removing that person from the register yet there is no indication that the council making the application needs to inform other councils if the order is granted and that that person should be removed from the register in all councils where they have premises registered. This is the same point as raised under clause 4 (2). Larne Borough Council would seek an assurance that for a council to be able to make to make application, the previous 2 offences do not have to be in that council's area and that the council making the application needs only to satisfy themselves that they can prove 3 offences over the relevant 3 year period.

The length of a restricted premises/ sales order is a matter for the court which hears the application however Larne Borough Council believe that a period longer than a year may be appropriate in some cases and therefore feel that the maximum period stated should be extended to 3 years.

Larne Borough Council also feel that the premises subject to a restricted premises order should be required to display a notice in a prominent position indicating that an order has been made restricting the sale of tobacco from the premises.

To prevent the inadvertent or deliberate breach of a restricted premises order and to aid enforcement, Larne Borough Council feel that the offender should be required to

remove tobacco from the premises for the period over which the restricted premises order applies.

Clause 10

Larne Borough Council believes that if a new requirement is introduced requiring the removal of tobacco from a premises where a restricted premises order applies then there should be a corresponding offence created under clause 10 and a fixed penalty for said offence under clause 13.

Clause 15

Clause 15 (4) requires that a council considers any representation in relation to the service of a fixed penalty notice. Larne Borough Council would seek greater clarity that the representation must be made in advance of the fixed penalty notice expiring (i.e. within 28 days). This is to prevent the scenario whereby someone has paid a fixed penalty and subsequently decides to make representation. If this is not included then it may make the process of seeking a restricted premises order or restricted sales order more difficult.

The following additional sub clause should be added

- (5) Any representation in respect of (4) above must be made prior to the expiry of the fixed penalty notice.

Clause 16

Obstructing an authorised officer in the course of their duties is a serious offence and it is felt that a level 5 penalty would be more appropriate.

Clause 18

Larne Borough Council feel that the insertion of a fixed penalty provision for an offence under article 4A of the Children and Young Persons (Protection from Tobacco) (NI) Order 1991 would be beneficial, given that this is a relevant tobacco offence for the purpose of a restricted premises/sales order.



Northern Ireland
Assembly

Appendix 4

Written Evidence and Other Correspondence

Committee for Justice - Additional Comments in relation to the Tobacco Products Duty Act 1979



**Northern Ireland
Assembly**

**Committee for Justice
Room 242**

Parliament Buildings

Tel: +44 (0)28 9052 1629

E-mail: committee.justice@niassembly.gov.uk

**From: Christine Darrah
Clerk to the Committee for Justice**

Date: 25 March 2013

**To: Kathryn Bell
Clerk to the Committee for Health, Social Services and Public Safety**

Tobacco Products Duty Act 1979

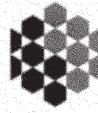
At a recent meeting the Committee for Justice considered a response from the Department of Justice to the Committee for Health, Social Services and Public Safety's request for information on the availability of statistics in relation to the Tobacco Products Duty Act 1979 and in particular the use of powers under Section 8H(4).

The Committee noted that whilst the Tobacco Products Duty Act 1979 contains a range of offences relating to the sale of tobacco products, this legislation has not been used in Northern Ireland. Instead, typical tobacco offences are pursued by HMRC using duty evasion legislation contained within the Custom and Excise Management Act 1979. The Department of Justice has advised that HMRC data shows that in 2012 there have been six individuals prosecuted in Northern Ireland for cigarette related duty evasion, resulting in five convictions.

The Committee agreed to forward the response, a copy of which is attached, to the Committee for Health, Social Services and Public Safety.

**Christine Darrah
Clerk to the Committee for Justice**

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of

Justice

www.dojni.gov.uk

Minister's Office Block B,
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Stormont Estate
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Belfast
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Our ref SUB/244/2013

Ms Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Room 242
Parliament Buildings
Ballymiscaw
Stormont

27 February 2013

Dear Christine

TOBACCO PRODUCTS DUTY ACT 1979

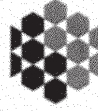
Thank you for your letter of 15 February which requested further information on the availability of statistics in relation to the application of the Tobacco Products Duty Act 1979 (Act).

The Act contains a range of offences, relating to the sale of tobacco products, which may be prosecuted by Her Majesty's Revenue & Customs (HMRC). While the Act may be applied, HMRC has confirmed that this legislation has not been used in Northern Ireland. As the banning order power depends on a conviction, it is unlikely that any subsequent banning order has been sought and granted in court.

One of HMRC's key strategic objectives is to undermine the ability and confidence of organised criminal gangs targeting the United Kingdom. HMRC has indicated that typical tobacco offences are pursued by using duty evasion legislation contained within the Customs and Excise Management Act 1979. More serious

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FROM THE OFFICE OF THE JUSTICE MINISTER



Department of
Justice
www.dojni.gov.uk

sentences are available under this legislation than under the Tobacco Products Duty Act 1979.

HMRC data shows that in 2012 there have been six individuals prosecuted in Northern Ireland for cigarette related duty evasion for the fraudulent evasion of duty. This has resulted in five convictions. The case against one person resulted in a hung jury and is due to be re-tried. One person received an immediate imprisonment sentence with a Confiscation Order. Two people received suspended custodial sentences. One person received a community sentence and one person has absconded and will be sentenced upon arrest.

I trust the Committee finds this helpful.


BARBARA McATAMNEY
DALO

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Committee for Justice - Additional Comments in relation to the Customs and Excise Management Act 1979



**Northern Ireland
Assembly**

**Committee for Justice
Room 242**

Parliament Buildings

Tel: +44 (0)28 9052 1629

E-mail: committee.justice@niassembly.gov.uk

From: Christine Darrah
Clerk to the Committee for Justice

Date: 19 June 2013

To: Dr Kathryn Bell
Clerk to the Committee for Health, Social Services and Public Safety

RE: Customs and Excise Management Act 1979

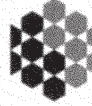
At a recent meeting, the Committee for Justice noted a response from the Department of Justice to a request from the Committee for Health, Social Services and Public Safety for clarification on whether a conviction for cigarette related duty evasion under the Customs and Excise Management Act 1979 results in the convicted person being banned from selling tobacco products for a set period of time.

The Committee agreed to forward a copy of the Department's response, which is attached, to the Committee for Health, Social Services and Public Safety.

**Christine Darrah
Committee Clerk**

Enc

FROM THE OFFICE OF THE JUSTICE MINISTER



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Our ref: SUB/659/2013

Ms Christine Darrah
Clerk to the Committee for Justice
Northern Ireland Assembly
Room 242
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

16 May 2013

Dear Christine,

CUSTOMS AND EXCISE MANAGEMENT ACT 1979

Thank you for your letter of 3 May which requested clarification on whether a conviction for cigarette related duty evasion under the Customs and Excise Management Act 1979 results in the convicted person being banned from selling tobacco products for a set period of time. This legislation is the policy responsibility of the Chancellor of the Exchequer, but the Department's understanding of its provisions is set out below.

Section 170 of the Customs and Excise Management Act 1979 contains offences and penalties for the fraudulent evasion of duty. In accordance with section 170(3) of the Act, a person found guilty of this offence is liable:

- (a) on summary conviction, to a penalty of £5,000 or three times the value of the goods, whichever is greater, or to imprisonment for a term not exceeding six months, or both; or
- (b) on conviction on indictment, to a penalty of any amount or to imprisonment for a term not exceeding seven years, or both.

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To address the specific question posed – the Customs and Excise Management Act 1979 does not contain a provision to impose a ban from selling tobacco products for a set period of time against any person convicted of cigarette related duty evasion.

Similarly, the Tobacco Products Duty Act 1979 does not contain any provision of this nature. However, as outlined in my previous letter to you, section 8H(4) of the Tobacco Products Duty Act 1979 states that where a manager who allows premises to be used for the sale of unmarked tobacco is found guilty of that offence, a court can make an order prohibiting the use of the premises for the purposes of selling tobacco for a specified period of time.

I trust the Committee finds this helpful.

B. G. McAtamney

B **BARBARA McATAMNEY**
DALO



**NORTHERN IRELAND
ASSEMBLY**

COMMITTEE FOR JUSTICE

Barbara McAtamney
DALO
Department of Justice
Castle Buildings
Stormont Estate
Belfast
BT4 3SQ

3 May 2013

Dear Barbara

Tobacco Legislation

At its meeting on 25 April 2013, the Committee for Justice considered correspondence from the Committee for Health, Social Services and Public Safety requesting clarification from the Department of Justice on whether a conviction for cigarette related duty evasion under the Customs and Excise Management Duty Act 1979 results in the convicted person being banned from selling tobacco products for a set period of time.

The Committee agreed to forward the correspondence to the Department of Justice for a response on the issues raised.

I attach a copy of the letter and would appreciate a response by 20 May 2013

Yours sincerely

Christine Darrah

**Christine Darrah
Clerk, Committee for Justice**

Room 242, Parliament Buildings, Ballymiscaw, Stormont, Belfast, BT4 3XX
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Committee for Health, Social Services and Public Safety

Ms Barbara McAtamney
Departmental Assembly Liaison Officer
Department of Justice

18 April 2013

Dear Barbara

Customs and Excise Management Duty Act 1979

At its meeting on 17 April 2013 the HSSPS Committee considered your response to Ms Christine Darrah dated 27 February 2013 concerning tobacco legislation.

The Committee agreed that I should write to you to ask whether a conviction for cigarette related duty evasion under the Customs and Excise Management Duty Act 1979 results in the convicted person being banned from selling tobacco products for a set period of time.

I would be grateful for a response within 10 working day of receipt of this letter.

Yours sincerely

Dr Kathryn Bell

Dr Kathryn Bell
Clerk, Committee for Health, Social Services and Public Safety

Committee for Health, Social Services and Public Safety
Room 414, Parliament Buildings, Ballymiscaw, Stormont, Belfast, BT4 3XX
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NILGA - Additional Recommendations on the Tobacco Retailers Bill

From: Sarah Phetpraphai [<mailto:s.phetpraphai@nilga.org>]
Sent: 14 June 2013 16:39
To: +Comm HSSPS Public Email
Cc: Karen Smyth
Subject: Evidence to the Health Committee in relation to the Tobacco Retailers Bill

Dear Committee Clerk,

On 22nd May 2013, NILGA provided evidence to the NI Assembly Health Committee in relation to the Tobacco Retailers Bill.

Please find below two additional recommendations from NILGA. These were approved today, Friday 14th June 2013, by NILGA's Executive Committee.

NILGA's Recommendations

1. Given the length of time it can take to reach a successful conclusion to court cases, NILGA supports a change to 5 years rather than 3 years, as this will be more practicable.
2. NILGA requests that the Committee ensures clarity, in that the proposal should apply to offences within the 5 years that take place in differing council areas, for example, if a multi-site retailer is prosecuted for illegal sales to children at different outlets across Northern Ireland, then an application can be made for a total restriction. This would not apply to franchises with separate management.

Please contact Karen Smyth k.smyth@nilga.org should you have any queries.

Kind regards,
Sarah

Sarah Phetpraphai
Northern Ireland Local Government Association (NILGA)
Tel: 028 9079 8972
Email: s.phetpraphai@nilga.org
Website: www.nilga.org

Japan Tobacco International - Briefing on the Tobacco Products Directive Proposal



Ms Sue Ramsey MLA
Northern Ireland Assembly
Parliament Buildings
Belfast
BT4 3XX

17th June 2013

Dear Ms Ramsey

Please find enclosed a briefing on proposals to revise the EU's Tobacco Products Directive (TPD); legislation that will have a serious impact on the tobacco manufacturing sector in Northern Ireland.

As you will see, the proposal in its current form includes, amongst other things:

- **the standardisation of pack** shape, size and materials;
- **a minimum pack size** of 20 cigarettes or 40g of hand-rolling tobacco;
- **enlarged health warnings** covering 75% of the front and back of the pack;
- **a ban on popular products** including 'menthol' and 'slim' cigarettes.

The Westminster Government chose not to include plain packaging in this year's Queen's Speech, however a UK MEP has tabled an amendment to the TPD which would introduce the legislation across the whole EU.

JTI is opposed to the measures in the Directive, which packaging suppliers and retail groups say would lead to significant displacement of trade from legitimate companies like JTI to the black market. **In 2012, 18% of cigarettes and 43% of hand-rolling tobacco consumed in Northern Ireland avoided UK taxes.**

Unite the Union is concerned that the proposals will lead to UK job losses without any positive impact on public health. The proposal for minimum pack sizes alone would outlaw 70% of the hand-rolling tobacco and 21% of the cigarettes produced at JTI's factory in Ballymena, Northern Ireland, where we employ almost 1,000 people.

The TPD is currently being scrutinised by the European Parliament and the European Council, where the Department of Health is representing the UK. If you share our concerns I urge you to raise the matter directly with UK health ministers and your colleagues in the European Parliament. Alternatively, if you would like more information, please do not hesitate to contact me on 01932 372750 or at Laura.Oates@jti.com.

Yours sincerely

Laura Oates
Laura Oates
Head of Government Relations, UK

JTI UK

JTI's UK trading company is Gallaher Limited
Registered in England; Number 01501573
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jti.com/uk

Tobacco Manufacturers Association - Additional Information

direct line: 020 7544 0110
email: jainecc@the-tma.org.uk
our ref: JCC/vt2399
your ref:



20th June 2013

Dr Kathryn Bell
Clerk, Committee for Health, Social Services and Public Safety
Northern Ireland Assembly
Room 416, Parliament Buildings
Ballymiscaw
Stormont
Belfast BT4 3XX

Dear Dr Kathryn Bell,

Thank you for inviting me to attend the Committee hearing on Wednesday 5th June on the draft Tobacco Retailers Bill.

I would like to clarify the following points:

- Please may I suggest the Committee directs its enquiry on JTI's written submission to Laura Oates at JTI.
- The Tobacco Manufacturers' Association (TMA) has no collective view regarding the frequency of test purchase visits or the length of the time period. Whatever regime is agreed however, it is important that this is communicated effectively to retailers, and that test purchasing should be adequately resourced. The TMA believes that compliance testing and enforcement are an important part of reducing young people under 18's access to tobacco products from retail premises.
- The TMA believes that criminalising 'proxy purchasing' of tobacco products would be an important and effective addition to the proposed Bill
- The TMA believes that the committee should consider ways to reduce young people's access to tobacco products from non-shop sources, particularly through measures to tackle the illicit trade in tobacco.

I hope this is helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jaine Chisholm Caunt', written in a cursive style.

Jaine Chisholm Caunt
Secretary General

Ministerial Letter - Tobacco Retailers Bill 26.07.2013

FROM THE MINISTER FOR HEALTH,
SOCIAL SERVICES AND PUBLIC SAFETY
Edwin Poots MLA



Department of
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Ms Sue Ramsey MLA
Chair
Committee for Health Social Services and Public Safety
Room 416
Parliament Buildings
Ballymiscaw
Stormont
BELFAST
BT4 3XX

Our Ref: SUB/625/2013

Date: 25 July 2013

Dear Ms Ramsey

I am writing, following an evidence session which the Committee held with DHSSPS officials on 26 June 2013 on the Tobacco Retailers Bill, to offer clarification on a number of issues which were raised during the session.

The Committee requested information on the behaviour that a person would have to be engaged in for HRMC to seek a prosecution under the Customs and Excise Management Act 1979. I understand that you received correspondence from the Department of Justice indicating that there were 5 convictions made under this Act in 2012. Of those 5 convictions, one was for attempting to smuggle 8.39 million cigarettes, two were in relation to the attempted smuggling of 200,000 cigarettes and two were for the attempted smuggling of 330,000 cigarettes.

The Committee had also asked for clarification on whether the levels of the fixed penalty notices (FPNs) being considered by the Department were equivalent to those set out in the recent Scottish legislation. This would be the case for the majority of the FPNs. The only exception is in relation to the FPN for failure to notify of a change to the register. The Scottish regulations have set the level at £200 for this offence, whereas my Department had considered applying a level of £50. The DHSSPS reasoning is that this would be considered a lesser offence than failing to register or selling tobacco to an underage child, both of which would incur FPNs of £200 under the Scottish legislation.

I would also like to reassure the Health Committee, that the levels of FPNs which I have mentioned are proposals only at this stage. Once the Bill is granted Royal Assent, my Department will prepare regulations which will set out the levels of fixed penalty notices for the various offences. These levels will be determined based on further advice from District Councils, and will be subject to draft affirmative resolution.

I would avail of this opportunity to correct some information which was proffered by an official during the evidence session. It was stated during the discussion around clause 2(7) that the Scottish legislation included a power to allow for the charging of a registration fee. Having checked the relevant legislation since, the official would now like to confirm that this is not the case, and that no such power exists in the Tobacco and Primary Medical Services (Scotland) Act 2010.

My officials will continue to work over the summer period on the more complex issues which were raised by the Committee and will liaise with the Committee Clerk and the Bill Clerk as appropriate.



Edwin Poots MLA
Minister for Health Social Services and Public Safety

Departmental Briefing Paper - Tobacco Retailers Bill

FROM THE MINISTER FOR HEALTH,
SOCIAL SERVICES AND PUBLIC SAFETY
Edwin Poots MLA



Department of
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Ms Sue Ramsey MLA
Chair
Committee for Health Social Services and Public Safety
Room 416
Parliament Buildings
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Stormont
BELFAST
BT4 3XX

Our Ref: AGY/549/2013

Date: 5 September 2013

I understand the Health Committee has invited officials to attend a meeting on 11 September at 2pm to discuss possible amendments to the Tobacco Retailers Bill.

Please find attached a briefing paper for the meeting.

The officials in attendance will be Mr Gerard Collins and Mrs Jenny McAlarney, both from Health Improvement Policy Branch and the Chief Environmental Health Officer, Mr Nigel McMahon.

Edwin Poots MLA
Minister for Health Social Services and Public Safety

Annex B

**BRIEFING PAPER FOR HEALTH COMMITTEE ON 11 SEPTEMBER 2013
DRAFT AMENDMENTS TO TOBACCO RETAILERS BILL**

DRAFT AMENDMENTS TO THE TOBACCO RETAILERS BILL

1. Following evidence sessions held between DHSSPS officials and Health Committee members, a number of proposed amendments to the Tobacco Retailers Bill have been agreed by the Health Minister for tabling during Consideration Stage of the Bill. In order to assist Health Committee members, a "black and red" version of the Bill, which includes the proposed amendments, has been attached at **TAB A**.

SUMMARY OF MAIN PROPOSED AMENDMENTS

Central register

2. Clause 1 now allows for a single body – the "registration authority" - to maintain a register of persons carrying on a tobacco business in Northern Ireland. This replaces the previous clause 1 which required councils to maintain registers for tobacco businesses in their own areas. The clause is drafted to require certain information relating to the register to be made available to the public at all reasonable times.

Previous offences of illicit tobacco sales

3. Clause 2 has been amended to include a provision stating 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 5 years from the date of the conviction.

Duty to notify changes

4. Clause 3 now requires businesses to notify of changes to the register within 28 days, rather than 3 months.

Restricted premises and sale orders

5. Clauses 7 and 8 have been amended to state that the duration of a restricted premises or sale order must be for at least 28 days and may not exceed 3 years. A change has also been made to allow for 3 offences to occur within a 5 year period, rather than a 3 year period, thereby increasing the likelihood of a repeat offender receiving a banning order.
6. For the purposes of this Bill, the definition of tobacco offence has been extended to include certain offences under the Customs Excise and Management Act 1979 and the Tobacco Products Duty Act 1979.

Display of notices and removal of tobacco from the retail area

7. New draft provisions have been included under clause 9, which apply if a retailer is subject to a restricted premises order. Clause 9A requires retailers to display a notice, stating that a restricted premises order has been made and the period for which it has effect. Clause 9B requires retailers to remove all tobacco products from the retail area of the shop for the duration of the order. Associated offences and penalties have been created to accompany the new provisions. These have been inserted under clause 10.

Consolidation of enforcement provisions

8. The Office of the Legislative Counsel (OLC) has taken the opportunity, through the drafting of the amendments, to consolidate in one place in the Bill all the enforcement provisions on powers of entry, fixed penalty notices and obstruction of council officers. These provisions, while identical in nature, would have otherwise been repeated in the Tobacco Retailers Bill, the Health and Personal Social Services (Northern Ireland) Order 1978 and the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991.
9. This amendment not only reduces the length of the Bill, but it is also of practical benefit to councils as they can now find all of their enforcement powers for the 1978 Order, the 1991 Order and this Bill in clauses 12 to 16. Given the specific

powers now included in clauses 12 to 16, OLC now feel that the general provision in clause 11 is no longer necessary.

Duty to share information

10. The new clause 16A places a duty on councils to share information on fixed penalty notices and convictions with other councils, the registration authority and the Department. This will ensure that all relevant offences are taken into account by councils when they are making applications for restricted sale or premises orders, particularly those in relation to retailers who have premises in more than one council area.

Proxy purchasing

11. Clause 18 has been amended to allow for an offence to be created in relation to proxy purchasing, i.e. an adult buying tobacco products on behalf of a minor. A penalty of a maximum level 5 fine has been applied to this offence. This clause has also been amended to raise the maximum penalty for underage tobacco sales from a level 4 to a level 5 fine.

Miscellaneous amendments

12. Following a request from councils, an amendment has been drafted to allow for a fixed penalty notice to be applied for tobacco sales from vending machines. While considering this amendment, the Department thought it might also be prudent to allow for fixed penalty notices to be applied for other tobacco offences under the 1991 order, such as selling unpackaged cigarettes, i.e. singles and for failing to display the warning statement "it is illegal to sell tobacco products to anyone under the age of 18". These amendments are now included under clause 13.
13. Clauses 5 and 6 have been removed as the provisions previously included in these clauses have been amended and inserted elsewhere in the Bill.

INFORMATION ON ENFORCEMENT ACTIVITY

14. During the Health Committee meeting on 26 June, officials were asked if they could obtain information from the 26 district councils on the relative split between enforcement action taken against owners versus sales staff in respect of underage sales. A request was put to the councils and the information received has been compiled into a table which has been attached at **TAB B**. The Department had asked councils to provide the information for a 3-year period in order to allow for a more complete picture to be shown.

TOBACCO CONTROL ENFORCEMENT ACTIVITY: UNDERAGE SALES
(COMBINED TOTALS FOR 3 YEARS: 2010/11, 2011/12 & 2012/13)

COUNCIL	NUMBER OF PREMISES VISITED TO CHECK / PROMOTE COMPLIANCE	NUMBER OF PREMISES WRITTEN TO RE RESPONSIBILITIES IN RELATION TO UNDERAGE SALES	NUMBER OF PREMISES VISITED AS PART OF A TEST PURCHASE EXERCISE	NUMBER OF PREMISES WHERE A SALE WAS MADE TO A CHILD	NUMBER OF WRITTEN WARNINGS (SPECIFY WHETHER SELLER OR OWNER/OPERATOR)	NUMBER OF FORMAL CAUTIONS (SPECIFY WHETHER SELLER OR OWNER/OPERATOR)	NUMBER OF PROSECUTIONS (SPECIFY WHETHER TAKEN AGAINST A SELLER OR OWNER/OPERATOR)	NUMBER OF PROSECUTIONS THAT WERE SUCCESSFUL (SPECIFY FINES AND PENALTIES)
ANTRIM BOROUGH COUNCIL	49	163	35	5	0	5 Owner	1 Owner	1 (Two defendants – joint owners - fined £400 each plus £97 costs each)
ARDS BOROUGH COUNCIL	185	713	89	13	8 Owner 10 Seller	4 Owner 4 Seller	0	N/A
ARMAGH CITY & DISTRICT COUNCIL	131	172	42	3	0	1 Owner 1 Seller	0	N/A
BALLYMENA BOROUGH COUNCIL	84	73	73	8	6 Owner	0	2 Owner	2 (fine £75, costs £155 & fine £200, costs £150)
BALLYMONEY BOROUGH COUNCIL	60	60	30	1	0	1 Owner	0	N/A
BANBRIDGE DISTRICT COUNCIL	73	133	35	1	Pending	Pending	Pending	Pending

COUNCIL	NUMBER OF PREMISES VISITED TO CHECK / PROMOTE COMPLIANCE	NUMBER OF PREMISES WRITTEN TO RE RESPONSIBILITIES IN RELATION TO UNDERAGE SALES	NUMBER OF PREMISES VISITED AS PART OF A TEST PURCHASE EXERCISE	NUMBER OF PREMISES WHERE A SALE WAS MADE TO A CHILD	NUMBER OF WRITTEN WARNINGS (SPECIFY WHETHER SELLER OR OWNER/OPERATOR)	NUMBER OF FORMAL CAUTIONS (SPECIFY WHETHER SELLER OR OWNER/OPERATOR)	NUMBER OF PROSECUTIONS (SPECIFY WHETHER TAKEN AGAINST A SELLER OR OWNER/OPERATOR)	NUMBER OF PROSECUTIONS THAT WERE SUCCESSFUL (SPECIFY FINES AND PENALTIES)
BELFAST CITY COUNCIL	1022	1700	172	66	3 Owner	12 Owner	44 Owner 1 Seller	43 (5x £600 fines, 32x£500 fines, 1x£300 fine, 3x£250 fines, 1x£150 fine, 1x£60 fine, 1x costs only – costs £69-72 in all cases) 5 pending N/A
CARRICKFERGUS BOROUGH COUNCIL	13	58	32	2	2 Owner	0	0	N/A
CASTLEREAGH BOROUGH COUNCIL	120	332	88	11	3 Seller	5 Owner 6 Seller	0	N/A
COLERAINE BOROUGH COUNCIL	57	121	53	2	0	1 Owner	1 pending (Owner)	pending
COOKSTOWN DISTRICT COUNCIL	81	81	12	0	0	N/A	N/A	N/A
CRAIGAVON BOROUGH COUNCIL	97	251	31	1	0	0	1 Seller	1 (Fine £50, Legal Fees £80, Court Costs £22)
DERRY CITY COUNCIL	118	571	43	9	0	2 Owner 1 Seller	6 Owner	6 (1x£250 fine, 3x£100 fines, 1x£75 fine, 1x£25 fine – costs in all cases)

COUNCIL	NUMBER OF PREMISES VISITED TO CHECK / PROMOTE COMPLIANCE	NUMBER OF PREMISES WRITTEN TO RE RESPONSIBILITIES IN RELATION TO UNDERAGE SALES	NUMBER OF PREMISES VISITED AS PART OF A TEST PURCHASE EXERCISE	NUMBER OF PREMISES WHERE A SALE WAS MADE TO A CHILD	NUMBER OF WRITTEN WARNINGS (SPECIFY WHETHER SELLER OR OWNER/OPERATOR)	NUMBER OF FORMAL CAUTIONS (SPECIFY WHETHER SELLER OR OWNER/OPERATOR)	NUMBER OF PROSECUTIONS (SPECIFY WHETHER TAKEN AGAINST A SELLER OR OWNER/OPERATOR)	NUMBER OF PROSECUTIONS THAT WERE SUCCESSFUL (SPECIFY FINES AND PENALTIES)
DOWN DISTRICT COUNCIL	203	518	113	19	16 – Owner 14 – Seller (On 11 occasions owner & seller received a warning)	2 - Owner	0	N/A
DUGANNON & SOUTH TYRONE BOROUGH COUNCIL	94	0	0	N/A	N/A	N/A	N/A	N/A
FERMANAGH DISTRICT COUNCIL	152	212	35	1	1 Owner	0	0	N/A
LARNE BOROUGH COUNCIL	69	120	45	4	3 Owner	2 Seller	1 Owner	1 (£200 fine and £260 costs)
LIMAVADY BOROUGH COUNCIL	72	138	20	6	3 Owner	1 Seller	2 Owner	2 (£250 + £75 costs, £200 + £125 council costs + £22 court costs)
LISBURN CITY COUNCIL	347	960	134	19	1 Owner	6 Owner 4 Seller	6 Owner 8 Seller	5 Owner (generally £50 + £92 costs) 6 Seller (generally £50)
MAGHERAFELT DISTRICT COUNCIL	0	60	42	1	0	1 Owner	0	N/A



Northern Ireland
Assembly

Appendix 5

List of Witnesses

List of Witnesses who gave evidence to the Committee

Mr Gerard Collins	Department of Health, Social Services and Public Safety
Ms Jenny McAlarney	Department of Health, Social Services and Public Safety
Dr Elizabeth Mitchell	Department of Health, Social Services and Public Safety
Mr Nigel McMahon	Department of Health, Social Services and Public Safety
Ms Patricia Allen	Chief Environmental Health Officers Group
Mr Sean Martin	Chief Environmental Health Officers Group
Ms Jenny Palmer	Northern Ireland Local Government Association
Mrs Karen Smyth	Northern Ireland Local Government Association
Mr Aodhán Connolly	NI Retail Consortium
Mr Glyn Roberts	NI Independent Retail Trade Association
Ms Jaine Chisholm-Caunt	Tobacco Manufacturers Association
Mr Gerry McElwee	Cancer Focus NI
Ms Fidelma Carter	NI, Chest Heart and Stroke
Mr Neil Johnston	NI, Chest Heart and Stroke



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