



Northern Ireland
Assembly

Committee for Health, Social Services and Public Safety

Report on the Health (Miscellaneous Provisions) Bill

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

Ordered by the Committee for Health, Social Services and Public Safety
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Powers and Membership

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 1988 and under Standing Order 48.

The Committee has the 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 person 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 Alex Easton (Deputy Chairperson)

Mrs Pam Cameron

Mrs Jo-Anne Dobson

Mr Thomas Buchanan

Mr Kieran McCarthy

Ms Rosaleen McCorley

Mr Michael McGimpsey

Mr Daithí McKay

Mr Fearghal McKinney

Mr Gary Middleton

¹ With effect from 23 January 2012 Ms Sue Ramsey replaced Ms Michaela Boyle

² With effect from 06 February 2012 Ms Sue Ramsey replaced Ms Michelle Gildernew as Chairperson

³ With effect from 23 April 2012 Mr Conall McDevitt replaced Mr Mark Durkan

⁴ With effect from 02 July 2012 Ms Michelle Gildernew is no longer a Member

⁵ With effect from 10 September 2012 Ms Maeve McLaughlin was appointed as a Member

⁶ With effect from 15 October 2012 Mr Roy Beggs replaced Mr John McCallister

⁷ With effect from 04 September 2013 Mr Conall McDevitt resigned as a Member

⁸ With effect from 16 September 2013 Mr David McIlveen replaced Ms Paula Bradley

⁹ With effect from 16 September 2013 Ms Maeve McLaughlin replaced Ms Sue Ramsey as Chairperson

¹⁰ With effect from 30 September 2013 Mr Fearghal McKinney was appointed as a Member

¹¹ With effect from 04 July 2014 Mrs Jo-Anne Dobson replaced Mr Samuel Gardiner

¹² With effect from 23 September 2014 Ms Paula Bradley replaced Mr Jim Wells as Deputy Chairperson

¹³ With effect from 06 October 2014 Ms Rosaleen McCorley was appointed to the Committee

¹⁴ With effect from 06 October 2014 Mr George Robinson replaced Mr David McIlveen

¹⁵ With effect from 06 October 2014 Mr Michael McGimpsey replaced Mr Roy Beggs

¹⁶ With effect from 01 December 2014 Mr Paul Givan replaced Mr Gordon Dunne

¹⁷ With effect from 11 May 2015 Mr Alex Easton replaced Ms Paula Bradley as Deputy Chairperson

¹⁸ With effect from 03 June 2015 Mr Mickey Brady resigned as a Member

19 With effect from 14 September 2015 Mr Daithí McKay was appointed as a Member
20 With effect from 5 October 2015 Mr Thomas Buchanan replaced Mr Paul Givan
21 With effect from 9 November 2015 Mr Gary Middleton replaced Mr George Robinson

Executive Summary

1. The Health (Miscellaneous Provisions) Bill is divided into three parts. Part 1 deals with the regulation of the sale of nicotine products and tobacco; Part 2 deals with primary dental services, general ophthalmic services, pharmaceutical services and charges for services provided to persons not ordinarily resident; and, Part 3 deals with the interpretation of the Bill, subordinate legislation and repeals, and sets out the title and commencement dates.
2. The evidence from stakeholders focused mainly on those clauses which deal with the regulation of the sale of nicotine products and tobacco. However, significant comments were also made in relation to smoking in private vehicles carrying minors; a provision that was not included in the Bill as introduced.
3. Having considered the written and oral evidence received in relation to the regulation of the sale of nicotine products and tobacco, the Committee reached a view that extending the tobacco retailers register to include e-cigarette retailers would future proof the legislation should evidence emerge of difficulties in enforcing the age of sale provisions in relation to e-cigarettes.
4. In response to the views expressed by the Committee, the Department proposed an amendment that would allow it to amend the provisions of the Tobacco Retailers Act (Northern Ireland) 2014 relating to the register of tobacco retailers, to apply them in relation to nicotine product retailers as well as tobacco retailers. The Department also proposed a consequential amendment to Clause 3.
5. The Committee agreed that it was content to support the Department's proposed amendments at Consideration Stage of the Bill.
6. As referred to by the Minister for Health, Social Services and Public Safety, during the Second Stage debate on the Bill, the Department proposed an amendment to insert a new provision to provide the Department with regulation-making powers to allow for the creation of offences in relation to

smoking in a smokefree private vehicle; and, failing to prevent smoking in a smokefree private vehicle where under 18s are present, and for fixed penalty notices to be applied to the offences. The Department also proposed a consequential amendment to the Long Title.

7. The Committee welcomed the new policy and agreed that it was content to support the Department's proposed amendments at Consideration Stage of the Bill.

Introduction

1. The Health (Miscellaneous Provisions) Bill (NIA 72/11-16) was introduced to the Assembly on 30 November 2015. At Introduction, the Minister of Health, Social Services and Public Safety made the following statement under section 9 of the Northern Ireland Act 1998:

“In my view the Health (Miscellaneous Provisions) Bill would be within the legislative competence of the Northern Ireland Assembly.”

2. The Bill passed its Second Stage on 8 December 2015 and was referred to the Committee for Health, Social Services and Public Safety on 9 December 2015.
3. The stated purpose of the Bill is to make provision to regulate the sale of nicotine products and tobacco; to amend the Health and Personal Social Services (Northern Ireland) Order 1972 and the Health (Miscellaneous Provisions) Act (Northern Ireland) 2008 in relation to the provision of health care; and for connected purposes.
4. The Bill has 16 clauses and 2 schedules and is split into 3 parts:
5. Part 1 deals with the regulation of sale of nicotine products and tobacco. It consists of 5 clauses and provides for regulations to be made prohibiting the sale of nicotine products both to under 18s and from vending machines. It provides, through Schedule 1, for amendments to be made to the Tobacco Retailers Act (Northern Ireland) 2014 and, separately, for an amendment to the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991. It also makes provisions for interpretation of Part 1 of the Bill.
6. Part 2 deals with miscellaneous provisions. It consists of 6 clauses to amend the 2008 Act provisions in respect of primary dental services, general ophthalmic services, pharmaceutical services and charges for services provided to persons not ordinarily resident.

7. Part 3 deals with general provisions. It consists of 5 clauses and makes provision in respect of interpretation of the Bill, subordinate legislation and repeals, and sets out the title and commencement dates.
8. During the period covered by this Report, the Committee considered the Bill and related issues at 7 meetings. Details of the meetings can be found at Appendix 1.
9. The Committee had before it the Health (Miscellaneous Provisions) Bill and the accompanying Explanatory and Financial Memorandum. On 1 December 2015, the Committee wrote to key stakeholders and inserted public notices in the Belfast Telegraph, Irish News, and News Letter seeking written evidence on the Bill by 15 December 2015.
10. A total of 10 organisations responded to the request for written evidence. The written submissions received by the Committee are included at Appendix 3.
11. Prior to the introduction of the Bill, the Committee took evidence from the Department of Health, Social Services and Public Safety (the Department) on 23 September 2015. Following the introduction of the Bill, the Committee took evidence from the British Medical Association and Cancer Focus NI on 7 January 2016.
12. The Committee discussed the evidence received with the Department on 7 January 2016.
13. The Committee carried out its clause-by-clause scrutiny of the Bill on 27 January 2016. At its meeting on 3 February 2016, the Committee agreed its report on the Bill and that it should be published.

Consideration of the Bill

Introduction

14. This section of the report provides a summary of the key issues on which the Committee deliberated at its meetings on 13 January and 20 January 2016. The evidence received on every single clause and the Schedule is not rehearsed in this section of the report; a complete picture of the written and oral evidence received can be found in Appendices 2 and 3. A summary of the written evidence and the Department's response to the issues raised can be found in Appendix 4 (correspondence dated 5 January 2016).

The inclusion of e-cigarette retailers in the tobacco retailers register

15. In its written evidence, the British Medical Association (BMA) recommended that e-cigarette retailers should be included in the tobacco retailers register. The BMA pointed out that this would allow support and advice to be directed at such traders to avoid illegal sales and enable easier enforcement of the law.

16. The BMA expanded on this issue during oral evidence:

"We have concerns about the rising popularity of e-cigarettes. The aggressive promotion and marketing of those products has led to their increased use by children and young people. That was recently highlighted by a YouGov survey that found that 10% of young people had tried e-cigarettes, which was up from 7% in 2013. We propose an additional amendment to the Bill to specify that retailers who sell e-cigarettes are included in the Tobacco Retailers Act (Northern Ireland) 2014."

17. At the Committee meeting on 7 January 2016, the Department advised the Committee that it was in the process of establishing the tobacco retailers register with the intention that it will be operational by Spring 2016. The Department stated that, at present, it had no plans to extend the register to include e-cigarette retailers. However, it pointed out that this would be revisited in future if there were difficulties enforcing the age of sale provisions in relation to e-cigarettes.

18. The Department also advised the Committee that to extend the 2014 Act to require e-cigarette retailers to register, would incur additional administration costs in region of £20,000 a year. Officials also pointed out that the Department had not consulted on the issue as part of the consultation on the Bill.
19. The Committee shared the BMA's position in relation to the matter and was of the view that extending the tobacco retailers register to include e-cigarette retailers would future proof the legislation should evidence emerge of difficulties in enforcing the age of sale provisions in relation to e-cigarettes. The Committee therefore wrote to the Department following its meeting on 7 January 2016, asking if it would consider an amendment which would amend the Tobacco Retailers Act (Northern Ireland) 2014 to allow for the inclusion of those selling e-cigarettes in the tobacco retailers register.
20. The Department responded positively on 19 January 2016, and provided the text of a proposed amendment to insert a new clause after Clause 2 (Clause 2A), to provide that the Department may by regulations amend the provisions of the Tobacco Retailers Act (Northern Ireland) 2014 relating to the register of tobacco retailers, to apply them in relation to nicotine product retailers as well as tobacco retailers.
21. The Department also provided the Committee with the text of a proposed amendment to Clause 3 which was consequential to the amendment to insert new Clause 2A.
22. The Committee agreed that it was content to support the Department's proposed amendments at Consideration Stage of the Bill.

New provision to prohibit smoking in private vehicles carrying children under the age of 18

23. In its written and oral evidence, the BMA recommended the inclusion of a new provision that would prohibit smoking in private vehicles carrying children under the age of 18. It also recommended that further consideration should be

given to extending the ban to include smoking in all private motor vehicles regardless of the age of the driver and passengers. The BMA was of the view that this would help achieve the long-term goal of a tobacco free society.

24. In its written evidence, Cancer Focus expressed concern that the Bill did not include provision to introduce a ban on smoking in cars carrying children and pointed out that legislation on the matter was already in place in England and Wales. Cancer Focus highlighted that since July 2007, smoke-free legislation has been very successful in protecting adults from second-hand smoke in workplaces and public places. It therefore expressed disappointment that the Bill did not make provision to protect children in situations where they have little control or choice such as in a car. However, Cancer Focus acknowledged the Minister's announcement during the Second Stage debate on the Bill, that he would proceed at Consideration Stage with an amendment that would see smoking in cars with children being outlawed in Northern Ireland.

25. During an oral evidence session on 7 January 2016, Cancer Focus outlined the impact of smoking in cars:

“Second-hand smoke contains a cocktail of carcinogens, including arsenic, formaldehyde and benzene. It increases illness, hospital admissions and eventually causes death. Exposure in cars can reach levels that are much higher. We have already heard the 11-times-higher figure, but the same study found that, if the car was moving with the windows down, the figure was seven times higher than in a smoky bar. Second-hand smoke causes harm to the smoker and to other adults and children who might be passengers and increases the risk of accidents. Children are especially vulnerable, but no one is immune from the effects”.

26. Cancer Focus went on to illustrate how support can be translated into action with the help of legislation:

“Cancer Focus worked with other organisations in Britain in 2012 on a YouGov survey, and we found that 80% of people here wanted a ban on smoking in cars where children were present. There was also significant support from smokers for the measures. The level of support was slightly higher here than in GB, at 80% compared with 78%. It is disappointing that England and Wales

implemented their legislation over three months ago and that, in Scotland and the Republic, it is pending. Children would also welcome this move, and the British Lung Foundation showed that 86% of children wanted action on the issue. With such high levels of public support, we believe that the legislation will be self-enforcing, as witnessed by the high compliance rate for smoke-free legislation and, previous to that, seat-belt legislation. There are high levels of support, but that does not translate into action until you have the legislation, because people then act. There was something like 85% support for the seat - belt legislation, but only 25% of people were using seat belts. When you had the legislation, the figure for compliance rose to about 85% straight away”.

27. The Minister wrote to the Committee on 5 January 2016, enclosing the text of his proposed amendment to insert a new Part after Clause 5. The amendment, which the Committee considered at its meeting on 13 January 2013, would provide the Department with regulation-making powers to allow for the creation of offences in relation to private vehicles where under 18s are present. The offences being: smoking in a smokefree vehicle; and, failing to prevent smoking in a smokefree vehicle. The amendment would also allow for fixed penalty notices to be applied to the offences.
28. Following consideration of the amendment, the Committee agreed to seek clarification from the Department on the role of councils in relation to enforcement and their capacity to enforce, and its views on whether the PSNI would be a more appropriate enforcement authority.
29. In a response dated 19 January 2016, the Department stated that the definition of ‘enforcement authority’ will be provided through regulations. It highlighted that the enforcement of existing tobacco control legislation is carried out by authorised officers of District Councils. However, given that District Council staff do not have the ‘stop and search’ powers that the PSNI have, issues have arisen around the obtaining of driver information to issue fixed penalty notices.
30. The Department advised that it was considering a dual enforcement approach similar to that adopted in England and Wales. In practice this would mean that

fixed penalty notices could be issued by either the PSNI or District Councils. The Department confirmed that it was in discussions with the Department of Justice to examine the potential for such an approach and would carry out the necessary consultation before making the final regulations.

31. The Committee was content with the Department's clarification and agreed to support the Department's proposed amendment at Consideration Stage of the Bill.

Long Title

32. At its meeting on 13 January 2016, the Committee considered a proposed departmental amendment to extend the Bill to make provision for the regulation of smoking in a private vehicle. This amendment was consequential to the Department's proposed new Part to provide the Department with regulation-making powers to allow for the creation of offences in relation to private vehicles where under 18s are present and for fixed penalty notices to be applied to the offences.
33. The Committee therefore agreed that it was content to support the Department's proposed amendment to the Long Title at Consideration Stage of the Bill.

Clause by Clause Scrutiny of the Bill

34. The Committee conducted its clause-by-clause consideration of the Bill on 27 January 2016. Information on the Committee's deliberations on the Bill, which sets out the context to the decisions reached by the Committee, can be found in the previous section of this report.

35. Clause 1: Prohibition of sale of nicotine products to persons under 18

Agreed: the Committee is content with Clause 1 as drafted.

36. Clause 2: Prohibition of sale of nicotine products from vending machines

Agreed: the Committee is content with Clause 2 as drafted.

37. New Clause

The Department proposed to insert a new clause after Clause 2 (Clause 2A) to provide that the Department may by regulations amend the provisions of the Tobacco Retailers Act (Northern Ireland) 2014 relating to the register of tobacco retailers, to apply them in relation to nicotine product retailers as well as tobacco retailers. As follows:

After clause 2 insert-

"Register of nicotine product retailers

2A. The Department may by regulations -

(a) amend the provisions of the Tobacco Retailers Act (Northern Ireland) 2014

(in so far as relating to the register of tobacco retailers) so as to apply them

(with or without modifications) in relation to nicotine product retailers; or

(b) provide for those provisions to apply (with or without modifications) in relation to nicotine product retailers."

Agreed: the Committee is content with new Clause 2A proposed by the Department.

38. Clause 3: Amendments consequential on sections 1 and 2

Agreed: the Committee is content with Clause 3 subject to the amendment proposed by the Department as a consequence of its proposed amendment to insert new Clause 2A as follows:

Clause 3, Page 2, Line 21

Leave out "or 2" and insert", 2 or 2A".

39. Clause 4: Amendment of the Order of 1991

Agreed: the Committee is content with Clause 4 as drafted.

40. Clause 5: Interpretation of Part 1

Agreed: the Committee is content with Clause 5 as drafted.

41. New Part

The Department proposed to introduce a new Part after Clause 5 to amend the Smoking (Northern Ireland) Order 2006. The amendment will provide the Department with regulation-making powers to allow for the creation of offences in relation to smoking in private vehicles where under 18s are present and for fixed penalty notices to be applied to the offences. As follows:

After clause 5 insert-

"PART 2

SMOKING IN A PRIVATE VEHICLE

Smoking in a private vehicle

(1) The Smoking (Northern Ireland) Order 2006 is amended as follows.

(2) In Article 6 (smoke-free vehicles)-

(a) After paragraph (1) insert-

"(1A) Regulations under this Article may in particular provide for a private vehicle to be smoke-free where a person under the age of 18 is present in the vehicle.";

(b) In paragraph (2), for "The regulations" substitute "Regulations under this Article".

(3) In Article 10 (fixed penalties)-

(a) For the heading substitute "Fixed penalties";

(b) In paragraph (1), for "or in a place or vehicle," substitute "or in a place";

(c) After paragraph (1) insert

“(1A) An authorised officer of an enforcement authority who has reason to believe that a person has committed an offence under Article 7(5) or 8(2) in a vehicle in relation to which the authorised officer has functions may give that person a penalty notice in respect of the offence.

(1B) The Department may by regulations provide that, in the circumstances specified in the regulations, an authorised officer of an enforcement authority who has reason to believe that a person has committed an offence under Article 9(3) in relation to a vehicle in relation to which the authorised officer has functions may give the person a penalty notice in respect of the offence.”.

(4) In Article 11 (enforcement)-

(a) For the heading substitute “Enforcement”;

(b) In paragraph (1), for “premises, places and vehicles” substitute “premises and places”;

(c) After paragraph (1) insert-

“(1A) The Department may make regulations designating the persons or bodies or descriptions of person or body which are to be enforcement authorities for the purposes of enforcing, as respects vehicles, the provisions of this Order and regulations made under it.

(1B) The regulations-

(a) must specify the descriptions of vehicle in relation to which an enforcement authority has functions,

(b) may provide for a case being dealt with by one enforcement authority to be transferred (or further transferred back) to, and taken over by, another enforcement authority.

(1C) It is the duty of an enforcement authority to enforce, as respects the vehicles in relation to which it has enforcement functions, the provisions of this Order and of regulations made under it.”;

(d) In paragraph (2)-

(i) after “district council” insert “or other enforcement authority”;

(ii) after “the council” insert “or other authority”;

(iii) for “authorised by it” substitute “authorised by that council or other authority”.

(5) In Article 12(1) (obstruction of officers), after “district council” insert “or other enforcement authority”.

(6) In Article 15(3) (regulations subject to affirmative procedure)-

(a) In sub-paragraph (a), for “or 14” substitute “; 10(1B) or 14”;

(b) In sub-paragraph (b), for “or 8” substitute “; 8 or 18”.

(7) In Schedule 1 (fixed penalties), after paragraph 17 add-

“Power to amend or modify Schedule

18. The Department may by regulations-

(a) amend this Schedule so as to modify its application in relation to penalty notices issued by an authorised officer of an enforcement authority of a particular kind,

(b) provide for this Schedule to apply with modifications in relation to such notices.”.”

Agreed: the Committee is content with the new Part 2 proposed by the Department.

42. Clause 6: Persons performing primary dental service

Agreed: the Committee is content with Clause 6 as drafted.

43. Clause 7: Ophthalmic services

Agreed: the Committee is content with Clause 7 as drafted.

44. Clause 8: Pharmaceutical services

Agreed: the Committee is content with Clause 8 as drafted.

45. Clause 9: Disqualification by the Tribunal

Agreed: the Committee is content with Clause 9 as drafted.

46. Clause 10: Provision of medical or dental services: Article 15B arrangements

Agreed: the Committee is content with Clause 10 as drafted.

47. Clause 11: Charges for services provided to persons not ordinarily resident in Northern Ireland

Agreed: the Committee is content with Clause 11 as drafted.

48. Clause 12: Interpretation

Agreed: the Committee is content with Clause 12 as drafted.

49. Clause 13: Regulations and Orders

Agreed: the Committee is content with Clause 13 as drafted.

50. Clause 14: Repeals

Agreed: the Committee is content with Clause 14 as drafted.

51. Clause 15: Commencement

Agreed: the Committee is content with Clause 15 as drafted.

52. Clause 16: Short Title

Agreed: the Committee is content with Clause 16 as drafted.

53. Schedule 1

Agreed: the Committee is content with Schedule 1 as drafted.

54. Schedule 2

Agreed: the Committee is content with Schedule 2 as drafted.

55. Long Title

Agreed: the Committee is content with the Long Title of the Bill subject to the amendment proposed by the Department to extend the Bill to make provision for the regulation of smoking in a private vehicle as follows:

Page 1, Long title

After "tobacco," insert "to regulate smoking in a private vehicle".

Links to Appendices

Minutes of Proceedings can be viewed [here](#)

Minutes of Evidence can be viewed [here](#)

Written submissions can be viewed [here](#)

Correspondence from the Department of Health, Social Services, and Public Safety, and Other Papers can be viewed [here](#)

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