



Northern Ireland
Assembly

Committee for Health

OFFICIAL REPORT (Hansard)

Tobacco and Vapes Bill — Legislative
Consent Memorandum: Department of
Health

18 April 2024

NORTHERN IRELAND ASSEMBLY

Committee for Health

Tobacco and Vapes Bill — Legislative Consent Memorandum: Department of Health

18 April 2024

Members present for all or part of the proceedings:

Ms Liz Kimmins (Chairperson)
Mr Danny Donnelly (Deputy Chairperson)
Mr Alan Chambers
Mrs Linda Dillon
Mrs Diane Dodds
Miss Órlaithí Flynn
Miss Nuala McAllister
Mr Colin McGrath
Mr Alan Robinson

Witnesses:

Mr Bryan Dooley Department of Health
Ms Karen Oldham Department of Health

The Chairperson (Ms Kimmins): I welcome Bryan Dooley, head of the health improvement branch, and Karen Oldham, who is also from the health improvement branch. Thank you for coming back to brief us on this.

Mr Bryan Dooley (Department of Health): Thank you, Chair, and thank you to the Committee for inviting us back to provide you with a further update on the UK Government Tobacco and Vapes Bill. When we attended previously, on 14 March, the Bill had not been introduced at Westminster. It was introduced the following week, on 20 March, and the Department laid a legislative consent memorandum on 26 March. The Second Reading of the Bill took place on 16 April. Normal procedure is that the deadline for Assembly agreement to a legislative consent motion is the last day for tabling amendments. That is the Report Stage in the Commons and Third Reading in the Lords. Subject to the Committee report being finalised around 25 April, our timetable predicts a legislative consent motion debate taking place towards the end of May — we hope around 20 May. That would appear to be on track with the UK Government process.

The Bill, as published, sets out a number of provisions that fall within the legislative competence of Northern Ireland, hence the need for legislative consent. We have outlined the provisions in the written briefing that has been provided to the Committee. I am happy to recap on those, if the Committee is content — it would take about six minutes — or to go straight to questions, if you prefer.

The Chairperson (Ms Kimmins): Members, I am happy to go to questions, because, at this stage, we have had quite a lot of information on this. I appreciate that, Bryan, and I do not want to delay you any longer than needed. To kick off, I have just one question on the regulations, because we have asked quite a few questions over the past number of weeks. Which of the regulations will be made and

upheld by local Ministers and which will be made and upheld through the Westminster Government? Can we determine which of the regulations will be the responsibility of which Minister, if that makes sense? I am just trying to clarify who will have responsibility for what elements.

Ms Karen Oldham (Department of Health): Part 3 of the Bill is the part that applies specifically to Northern Ireland, and that sets out the amendments that are required to introduce the smoke-free generation. Those provisions are in the Bill, and no further regulations are needed. They will come into force in 2027. Part 3 also has a number of amendments, and those introduce the regulation-making powers that I think you are referring to. They are amendments to the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016.

There are a number of things that would fall within the scope of our Minister bringing forward regulations, and I will outline them very quickly. We would deal with non-nicotine vapes and age of sale locally, and that would be subject to the draft affirmative process in the Assembly. There are a couple of incidental things, such as restricting sales to retail etc, that we can pick up if need be, but I will cover the big hitters. There is the free distribution of non-nicotine vapes and all other nicotine products. That includes the current nicotine vapes plus things like nicotine pouches, which we are seeing more of. That would be about free distribution to under-18s. Our current age-of-sale provisions do not cover that. We are not seeing a huge problem in Northern Ireland with that as yet, but we know that other parts of the UK have seen that become increasingly used as a marketing technique. We are conscious that there is a risk that, once other restrictions are in place, it will be exploited further here. Those would be locally made regulations and, again, would be subject to the draft affirmative procedure. We also have the powers locally to bring forward display of vaping and nicotine products and prices regulations. That would be similar to the current provisions that we have for tobacco products, and, again, those would be able to be made locally by our Minister and would be subject to the draft affirmative procedure. Those are the main things.

Part 4 of the Bill gets into the product requirements. It restates some provisions that already exist in the Children and Families Act 2014, which is a UK Act. That is around flavours and packaging restrictions for tobacco. Those powers already exist but are being restated in this Bill. That is just a protocol for clarity etc that happens when there is a variety of pieces of legislation. I understand that those clauses are effectively being mirrored in relation to vapes, so there will be new powers, and they will sit with the Secretary of State. The intention is that the Secretary of State will seek the consent of the devolved Administrations to make UK-wide regulations in relation to those measures. The intention is that there will be close working on those aspects. Diane asked about content at the previous meeting: this provision also allows for restrictions on other content.

Part 5, similarly, sits with the Secretary of State — those regulation-making powers, again, with consent. We believe that most of this Part relates to the notification requirements that exist for manufacturers in relation to putting e-cigarettes — currently, nicotine e-cigarettes — on the market. Northern Ireland is in a slightly different position to the rest of the UK in relation to this. At one point, we all had to notify an EU system known as the EU common entry gate. After EU exit, GB basically invented its own parallel system, but Northern Ireland still has to comply with that EU requirement to notify. However, Part 5 seeks to extend those notification requirements to other products, such as non-nicotine vapes and other nicotine products such as pouches etc. If that were to happen, because there are no EU rules around those provisions, they could be extended to Northern Ireland.

That is the division. As I say, for the product requirements and the notification requirements, the powers sit with the Secretary of State. The others sit with our Minister and the Assembly.

The Chairperson (Ms Kimmins): Thank you, Karen. You mentioned free distribution, which is something that I had not even been aware of. Our young people pointed that issue out in our session with them. It is a huge issue. We were quite shocked by the number of children who got their first vape through promotional, free-of-charge distribution by some of the companies. That was a real learning curve, certainly for me. I suppose that that is how they get them hooked on the vape, and then it escalates from there. Thank you for that.

Miss McAllister: We talked a little bit about enforcement at the previous session, or maybe the session before that; it was the session that you were at. Has the Department given any thought to coordinating with the Department for Communities any further on the issue of enforcement, particularly with regards to whether local authorities will be given further assistance with how they can enforce quicker and better. What will happen with preparation for that post 2027?

Ms Oldham: I will start, and maybe Bryan can jump in if he has something else. We will certainly engage with councils. We have quite tight working relationships with a tobacco control group that is within the councils. Belfast City Council is the body that is in charge of the tobacco retailer register. We have those close working relationships with the councils, and we will engage with them further. We wanted to see where this went and be sure that we had legislative consent, and then we will discuss with them the challenges and what they think the enhanced needs will be. It is probably fair to point out that they already enforce age-of-sale restrictions on tobacco, but that is not to dismiss the fact that something more will be needed, including publicity, training and probably some kind of communication with retailers through those forums. That is planned. We will discuss it with them. There is not a ready pot of money to throw at this. When England made the announcement, it mentioned the sort of enhancements that are going to be made to financial support for enforcement. There is a Barnett consequential from the funding announcements, and of course we will explore that. I am not sure how far we will get with it, but we will explore it. We will have to work out what the likely costs are going to be before we start to try to make a case for funding.

Mr Dooley: Yes, with the limited time that we have until it comes into force, we hope that we can raise some awareness and work with retailers to do some training. There are lots of things that we can do to try to cross that off in the time that we have.

Mr McGrath: Thank you for the presentation. You mentioned a number of times that some of the things that we can control will be done by affirmative — what do you call those things? These are the things that we should know. It is secondary legislation.

Mr Dooley: Affirmative procedure?

Mr McGrath: Affirmative procedures. When they land with us, they are done. We either support them or we do not. Is there any way that we can influence what they say? Today, the Youth Assembly Members made it very clear that they felt that the £100 fine was not enough and that they were concerned about the distribution of free items. If the Minister were to take the regulations on board, it would just come to us as a piece of draft legislation that goes into the Assembly so that we can either approve it or not. Can we, as a Committee, have some sort of influence at the drafting stage?

Ms Oldham: I do not see why not. There would be consultation on any regulations. I do not see any reason why we could not have some influence. You talked about the Youth Assembly. We would be very interested to hear about that, because information has been mentioned that was not on our radar. We can absolutely look at that. We will probably have to work out the timescales and the sequencing of regulations, but we can come back to you about that.

Mr Dooley: I cannot see you being blindsided by this. There will be an opportunity to consult at different stages.

Mr McGrath: Will you take away and consider the idea of meeting the Youth Assembly as part of a consultation process? That would give them their place as a Youth Assembly, but also, as this impacts on young people, hearing their views would be —.

Ms Oldham: That sounds like a great idea.

Mr Dooley: We can do that, and the Public Health Agency as well.

Mr Donnelly: I was with the Youth Assembly as well, and I was quite taken aback by some of the things that its Members were saying. I thought that they were incredibly thoughtful and incredibly thorough. The report was great. Vaping is a massive issue for them, whereas smoking does not tend to be, so we need to look a bit stronger on the vaping side of it. It appears to me that there are no regulations for vaping to be licensed. Is there any way to amend the legislation so that people who want to sell vapes can be licensed in the same way that we license people who want to sell cigarettes? Obviously, vapes are a nicotine product and a very addictive product. Will there be a way that legislation will be able to be amended to bring in licensing of people who are selling vapes so that we can control them?

I have a second question. Again, it is something that came from the Youth Assembly. It was looking at a lot of the unintended consequences. As I said, its work was very thorough. One of the things that it was concerned about was illegal tobacco and the rise in other substances being smoked. Do you think

that that could potentially be an unintended consequence of this, and is there anything that you can do to head that off?

Ms Oldham: The first point about a retail register is one that has come up before, and I know that there is an appetite for that among some of the voluntary sector. We maybe touched on this at the previous meeting. I think that we mentioned that Northern Ireland Chest, Heart and Stroke supports that, and we know that there is also support within the councils' enforcement bodies for something like that. Last time, we referenced the difficulties that they have in identifying the vast variety of businesses that are selling these products. This Bill does not contain provisions on that, and I know that England and Wales have indicated that they do not intend to bring forward a register. That does not mean that we could not do it locally. Last time we were here, I think that I mentioned the Northern Ireland Audit Office's report. It has also suggested that we look at that. We started work on our strategy at the end of last year. It has been slightly delayed as we look at this piece of work now, but that is certainly something that we had planned to explore during the conversations on that strategy. It would require primary legislation. You mentioned the tobacco strategy. That was a locally made piece of primary legislation. This would require primary legislation, so I do not think that it would be an instant answer, but it is certainly something that we could explore further.

On illicit tobacco and the content stuff that you mentioned, the Bill extends to other types of smoked substances. It covers herbal-type products as well as tobacco. I suppose that it is difficult to know where to go beyond that, because, obviously, there are already laws around illegal substances. We hear, particularly in relation to vapes, about spice and about spiked vapes. That also exists in relation to smoked products. I hope that some of that is already covered by existing drugs legislation. Yes, herbal products, which we understand also contain cancer-causing chemicals, are covered by the Bill.

Mr Donnelly: I understand that illicit tobacco is already a problem, with cigarettes being sold illicitly. Do you see that growing and expanding?

Ms Oldham: No, not necessarily. As you say, it is already there, but, as with all those illicit products, the demand is fuelled by addiction. The intention of the Bill is that we are going to reduce that addiction, and, hopefully, that will have a positive impact on those illicit products anyway. I mentioned earlier the money that England has announced. Part of that money will be used to enhance funding to HMRC and Border Force to deal with illicit products. They recently published a joint strategy on illicit tobacco, and I understand that a task force is being set up as part of that strategy that will expand on existing arrangements and look to enhance intelligence with other countries where things are being imported from. There are measures in place to try to deal with that. I suppose that is as far as we can go to reassure at this stage.

Mr Dooley: In the past, it reduced the illicit trade. Facts from the past tend to indicate that, when we make these sorts of changes, it helps to reduce illicit trade, because you are reducing the addiction.

Mrs Dodds: Following on from Danny's question, which is really interesting, how much will the Bill and the delegation to Northern Ireland allow us to regulate the content of vapes?

Ms Oldham: The powers around content fall within Part 4 of the Bill, as I mentioned, which deals with issues such as content, flavours and packaging. Those powers sit with the Secretary of State at present, but regulations will be made with Northern Ireland and the other devolved Administrations' consent. There is an intention that we work jointly and together on developing such regulations. I do not know whether you have any particular content in mind, but I guess that you are talking about chemicals and other such things. It would probably have to be an agreed position across the devolved Administrations and England and Wales at this point.

Mrs Dodds: Are you saying that, as of now, the Bill does not help us to regulate the content of vapes? Whatever you think of the tobacco industry — I am very anti-smoking — it is a highly regulated industry. The vaping industry is not. We need to take steps to actually start to regulate what people are buying because this is new — a new device and a relatively new phenomenon — and we have precious little research to understand what the current position is and the impact on health. The Bill would be missing a trick if we could not start to regulate, around people's health, what is actually in vapes. You are saying that the Bill, as it stands, does not do that. Is that correct?

Ms Oldham: The Bill provides powers to do that. The Bill provides regulation-making powers, and the intention is that there will be regulations. In fact, we are looking at regulations by some time next year.

That is the initial suggestion. They have said that there has been a commitment, and a commitment was given in the debate on Tuesday, to further consultation on any regulations made under that section. The intention is that the decisions on what those regulations contain will be evidence-based. The intention is there, and action will be taken to address that. We just need to fine-tune the evidence base to know exactly what those regulations need to contain.

Mrs Dodds: OK. What are the exact notification requirements to the EU for Northern Ireland under the changes to the legislation?

Ms Oldham: There will not be any changes with regard to the EU notifications. What they are allowing for within the Bill is regulation-making powers to allow the GB part of that notification system. As I said, they have basically mirrored the EU requirements in their GB system. The powers within the Bill will allow for that system to be extended to other products that are not currently covered by the EU, and those could be applied to Northern Ireland. That would be non-nicotine-containing vapes and other nicotine products. At the minute, there are no notification requirements for those at EU level. As I said, those could apply to Northern Ireland. Beyond that, the provisions allow for the UK Government and the Secretary of State to refine exactly what types of information they want to be captured in relation to those products. They could do that for nicotine-containing vapes as well. With regard to the actual type of information that is currently required to be reported, there is a wide range. It includes stuff such as the content, the way the product has been manufactured, the name and the contact points in member states etc. There is a list that I can, of course, supply, if needs be. There is a wide range of requirements at the minute.

Mrs Dodds: So, as it stands, Northern Ireland's notification process for nicotine will not change with the EU.

Ms Oldham: That is right.

Mrs Dodds: OK. Thank you.

Mr Chambers: I have a very quick question. The current situation is that, if a young person goes into a shop and tries to hoodwink a retailer with fake ID, and if the retailer falls for that and sells the tobacco product, the retailer has committed an offence. They may have a defence in court, given the circumstances. However, there is no deterrent to the young person's trying that. I know that it is an extremely difficult thing to police, but there is going to be a lot more of that going forward, given that there will be more age controls and more onus on retailers to avoid being prosecuted. Has any consideration been given to bringing in any form of deterrent to stop young people trying to use fake ID and so forth to purchase tobacco products?

Ms Oldham: No, not that I am aware of. In the past, there has been considerable concern about criminalising children. The offences sit, as you say, with the retailer or with anyone proxy purchasing on behalf of children. I am not aware of anything in the pipeline, either locally or at a UK level. You could argue that, if there were to be something like that, it would need to extend beyond tobacco to any age-restricted products. We are certainly not considering anything at the moment.

Mr Dooley: There is research into age identification as an issue generally that might be applicable to this in future. There is an age notification system in Scotland. If a shopkeeper thinks that a person is under 25, they are obliged to ask them their age. That is only in Scotland at the minute. That is the sort of thing that might be considered in future as well.

Mr Chambers: Thank you.

The Chairperson (Ms Kimmins): Karen and Bryan, thank you very much. That has been very helpful. We have had quite a lot of information to date, which has certainly been useful for the Committee. We appreciate your time. Thanks very much.

Ms Oldham: Thank you very much.

Mr Dooley: Thank you.