



Northern Ireland
Assembly

Committee for Health

Report on the Legislative Consent Memorandum on the UK Government Tobacco and Vapes Bill

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Report: NIA 12/22-27 Committee for Health.

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Powers and Membership

Powers

1. The Committee for Health is a statutory departmental committee established in accordance with paragraphs 8 and 9 of Strand One of the Belfast Agreement and under Assembly Standing Order No 48. The Committee has a scrutiny, policy development and consultation role with respect to the Department for Health and has a role in the initiation of legislation.

2. The Committee has power to:
 - consider and advise on Departmental budgets and Annual Plans in the context of the overall budget allocation;
 - approve relevant secondary legislation and take the Committee Stage of relevant primary legislation;
 - call for persons and papers;
 - initiate inquiries and make reports; and
 - consider and advise on matters brought to the Committee by the Minister of Communities.

Membership

The Committee has 9 members, including a Chairperson and Deputy Chairperson, and a quorum of five members. The membership of the Committee is as follows:

- Liz Kimmins MLA (Chairperson)
- Danny Donnelly MLA (Deputy Chairperson)
- Alan Chambers MLA
- Linda Dillon MLA
- Diane Dodds MLA
- Órlaithí Flynn MLA

LCM on the UK Government Tobacco and Vapes Bill

- Nuala McAllister MLA
- Colin McGrath MLA
- Alan Robinson MLA

Introduction

1. The Tobacco and Vapes Bill (“the Bill”) was introduced in the UK Parliament on 20 March 2024. A copy of the Bill as introduced and accompanying explanatory notes are included at Appendix 1. The latest version of the Bill can be found at: <https://bills.parliament.uk/bills/3703/publications>.
2. The Tobacco and Vapes Bill will introduce measures to stop people from ever starting smoking as well as introducing measures to reduce youth vaping. The Bill’s Explanatory Notes¹ set out that the core measures in the Bill will:
 - a. make it an offence to sell tobacco products to anyone born on or after 1 January 2009;
 - b. bring in measures to reduce the appeal and availability of vapes to children; and
 - c. strengthen enforcement activity to support implementation of the above measures.
3. The second reading² of the Bill took place on 16 April 2024 and, at the time of writing this report, the Bill has been referred to Committee stage.
4. There are a number of provisions contained within the Bill that are transferred matters and fall within the legislative competence of the NI Assembly. The NI Minister of Health wrote to the Committee for Health on 15 February 2024, in advance of the Bill’s introduction in Westminster, to advise of his intention to seek Executive agreement for Northern Ireland’s inclusion in the UK Bill along with the other UK regions. The Minister wrote again on 4 March to confirm that Executive agreement had been given. A copy of all correspondence from the Minister is included at Appendix 2.

¹ Tobacco and Vapes Bill Explanatory Notes, Available at: <https://publications.parliament.uk/pa/bills/cbill/58-04/0189/en/230189enlp.pdf>

² The Hansard of the second reading debate: <https://hansard.parliament.uk/commons/2024-04-16/debates/EDBAAEB6-8690-4448-83D3-1C0EAD384ABE/TobaccoAndVapesBill>.

5. The Minister laid a Legislative Consent Memorandum (LCM) in the Assembly on 26 March 2024 and it was referred to the Committee for Health for its consideration. A copy of the LCM is included in Appendix 2. The Memorandum sets out the Minister's intention to seek the Assembly's endorsement of Northern Ireland's inclusion in the UK Tobacco and Vapes Bill.

Background

6. In October 2023, the UK Government announced its intention to create a smoke free generation and to reduce the appeal and availability of vaping to young people. The Government's proposals were set out in its policy paper, *Stopping the start: our new plan to create a smokefree generation*³. These included a proposal to prohibit the sale of cigarettes to anyone born on or after 1 January 2009, meaning that anyone who turns 15 or younger in 2024 will never legally be sold a tobacco product. It also included proposed measures aimed at addressing rising youth vaping rates across the UK, including restricting flavours, plain packaging and bans on point of sales displays.
7. A UK wide consultation on the proposals to create a smoke free generation and tackling youth vaping took place between 12 October and 6 December 2023. The consultation was undertaken across the UK and the Government's response paper was published on 29 January 2024.⁴ The Government's paper noted that the large majority of responses to the consultation supported the proposal to create a smoke free generation and that respondents were mostly in favour of measures to tackle youth vaping. The response paper also noted there was support for extending the provisions to cover non-nicotine vapes as well as to other consumer nicotine product and the introduction of a ban on the sale and supply of disposable vaping products.

³ UK Government Department of Health and Social Care (October 2023) *Stopping the start: our new plan to create a smokefree generation*, Available at: <https://www.gov.uk/government/publications/stopping-the-start-our-new-plan-to-create-a-smokefree-generation/stopping-the-start-our-new-plan-to-create-a-smokefree-generation>

⁴ UK Government Department of Health and Social Care (January 2024) Consultation outcome creating a smokefree generation and tackling youth vaping consultation: government response, Available at: <https://www.gov.uk/government/consultations/creating-a-smokefree-generation-and-tackling-youth-vaping/outcome/creating-a-smokefree-generation-and-tackling-youth-vaping-consultation-government-response>

8. The Health Ministers in Scotland and Wales subsequently agreed in principle to a UK-wide application of the Bill subject to the necessary legislative consent. In correspondence of 4 March to the Health Committee, the Health Minister confirmed that the NI Executive had also agreed that a Legislative Consent Motion is progressed to allow for the inclusion of NI in the UK Bill.
9. The Minister of Health set out his reasons for the inclusion of NI in the UK Bill in correspondence of 10 April. The Minister emphasised the significant public health opportunities of the measures contained in the Bill. He also added that the alternative of progressing local legislation would result in a delay in the availability and impact of the measures here than in the rest of the UK; the public support for the measures in NI expressed in the UK-wide consultation; and the efficiency of inclusion in UK-wide legislation.

The Provisions of the Tobacco and Vapes Bill

10. The Bill has been divided up into parts, corresponding to their application across the UK. Part 1 concerns arrangements in England and Wales; Part 2 concerns arrangements in Scotland; and Part 3 concerns arrangements in Northern Ireland. The provisions in Parts 2 and 3 ensure consistency in tobacco and vaping regulation across the whole of the UK. Part 4 (on tobacco and vaping product requirements) and Part 5 (on notification requirements for vaping and nicotine products) apply across the UK.⁵
11. The key features of the Tobacco and Vapes Bill are to: prohibit the sale of tobacco products to anyone born on or after 1 January 2009; and to enable product requirements to be imposed in connection with vapes and other nicotine products.
12. The LCM from the Department sets out that the Bill includes a range of measures covering: tobacco age of sale; and E-cigarette/vapes, which include regulation making powers to:

⁵ The House of Commons Library Briefing Paper (April 2024), Tobacco and Vapes Bill 2023-24, sets out the background to the Bill and provides an explanation of the Bill clauses.

- Allow all administrations in the UK to regulate point of sale displays for vapes and other nicotine products (each administration will be required to bring forward regulations separately).
- Allow all administrations in the UK to restrict vape and other nicotine product flavours and packaging, which will be achieved through UK wide regulations with consent of devolved administrations.
- Allow the NI Executive to introduce age of sale requirements for non-nicotine vapes and banning the free distribution of vapes (addressing current legal loopholes).

Provisions that deal with transferred matters

13. The provisions of the Bill that deal with transferred measures as set out below.

Part 3

14. Clause 48 would amend the current tobacco age-of-sale legislation in NI.
15. Clause 49 would allow the Department of Health to make regulations to restrict tobacco sales offences to retail settings.
16. Clause 50 would allow the Department of Health to make regulations about warning statements.
17. Clause 51 would allow the Department of Health make regulations on non-nicotine vapes age of sale.
18. Clause 52 would allow the Department of Health to make regulations to restrict nicotine products offence to sale by retail (similar to clause 49).
19. Clause 53 would allow the Department of Health to make regulations prohibiting the free distribution of nicotine products and non-nicotine vapes.
20. Clause 54 would allow the Department of Health to make regulations regarding the displays of vaping and nicotine products.

21. Clause 55 would allow the Department of Health to make consequential amendments.
22. Clause 56 would amend existing legislation to update the list of offences that are classified as a tobacco, nicotine or non-nicotine vape offence.
23. Clause 57 would allow the Department of Health the power to make consequential provision.

Part 4

24. Part 4 of the Bill (clauses 58 to 70) provides the Secretary of State with UK-wide regulation making powers in relation to product requirements. This includes requirements relating to the packaging, flavour and appearance of tobacco products and the packaging, contents and flavour of vaping and nicotine products.
25. The Department advises, in its LCM, that depending upon the nature of future regulations, these may concern transferred functions relating to consumer protection and/or public health. Accordingly, clause 67 sets out that the Secretary of State must obtain consent where regulations relate to matters falling within the legislative competence of the NI Assembly. The Department advises that consent would be sought from the Executive Office.
26. In his correspondence of 10 April, the Minister advises that a UK-wide approach is considered necessary to ensure that enforcement action is able to be taken in respect of products from across the UK without any ambiguity about which region's regulations apply. The Minister advised that the UK Government will carry out further consultation in relation to such measures.

Part 5

27. There are existing requirements for manufacturers of nicotine vaping products to notify the Medicines and Healthcare products Regulatory Agency (MHRA), when placing their products on the market. Part 5 of the Bill (clauses 71 to 74) would provide the Secretary of State with UK-wide regulation making powers to extend this requirement to non-nicotine vapes and other nicotine products. The

Secretary of State would also be able to amend the information manufacturers must submit under the notification requirements.

28. The Department of Health advised, in its LCM, that any future regulations under Part 5 may contain elements of transferred (consumer protection) matters for NI and consent may be required. The Department confirms that the consent role for future regulations has been allocated to the Executive Office.

Part 6

29. The Department advised that Part 6 includes a number of general provisions relating to regulation procedure, transitional provisions and commencement etc and is therefore considered as engaging the legislative consent process.

Not included in the Bill

30. The Department confirmed that a ban on the sale of disposable vapes is not included in the Bill. The UK, Welsh and Scottish Governments announced in February 2024, their intention to introduce legislation to ban the sale and supply of disposable vapes.

Committee Consideration

31. The Committee was briefed by Department of Health officials both before and after the introduction of the Bill in Westminster, at the committee meetings on 14 March and 18 April 2024. The Committee also requested, and was provided with additional written briefing on the content of the Bill from the Department. The Department's written briefing is included at Appendix 2 and the Hansard of the departmental evidence sessions are included at Appendix 4.
32. Given the limited time constraints within which the Committee had to consider the LCM, the Committee agreed to ask the Institute of Public Health to provide its views on the Bill. The Committee also agreed to engage with the Northern Ireland Youth Assembly to seek the views of its membership on the Bill which if enacted, will have a significant impact on young people. Papers from both these bodies are included at Appendix 3.

33. In addition, the Committee commissioned the Assembly Research and Information Service to provide an overview of the current perspectives on the health and environmental considerations of vapes, as well as the efforts to reduce their use among children and young people across the UK. A copy of this paper can be found at Appendix 5.
34. The evidence considered by the Committee is discussed below.

Department of Health

35. The written briefing provided to the Committee by the Minister and his Department sets out the background to the development of Bill and the Minister's reasons for seeking consent that Northern Ireland is included in the Bill. A copy of all the Departments papers are included at Appendix 2.
36. As the Tobacco and Vapes Bill had not yet been introduced at the time of the first briefing on 14 March, officials were unable to provide detail on the clauses of the Bill. The Chief Medical Officer and officials did set out the policy context of the planned Bill and answered Members' questions. In the meeting on 18 April, officials provided further detail on the content of the Bill, how it applied to Northern Ireland and the regulation making powers within the Bill. A copy of the Hansards of the Department's briefings can be found at Appendix 2.
37. During the briefing with officials on the 14 March, the Committee questioned what engagement had been undertaken with the Irish Government and what consideration had been given to different rules and regulation on tobacco and vaping controls operating on the two sides of the border. Officials advised that there has been ongoing engagement with respective policy teams in the Republic of Ireland as well as in GB. Officials confirmed that a similar consultation on the regulation of tobacco and vapes has been carried out in the Republic but that the outcome of that consultation, which ended in January, had not yet been published.
38. The Committee was also interested in what engagement the Department had undertaken with young people to understand the increase in youth vaping.

While officials advised that no formal engagement with young people had been undertaken in relation to the Bill, the Public Health Agency had undertaken related research in post-primary schools and had been engaging with schools and youth groups on vaping. At the meeting on 18 April, the Committee asked officials to engage with the NI Youth Assembly when carrying out its consultation work on the regulations relating to vaping.

39. The Committee was also interested in the level of engagement from people from NI in the UK-wide consultation on the policy proposals contained in the Bill. Officials confirmed that the response rate from NI was high, at 4.5% of the total responses received and that support for the measures was also significantly high.
40. Enforcement was identified as a potential area of difficulty and officials advised the Committee that the Department would engage with the environmental health teams in district councils that will be responsible for enforcement of the Bill. Officials confirmed that while there were no immediate plans to develop a register for retailers of e-cigarettes similar to the register of retailers of tobacco, this is something that could be considered in due course as part of the consideration of the NIAO recommendation⁶ on the development of quality standards around the monitoring and enforcement of tobacco and vaping control, to ensure a more consistent approach, including decisions on issuing penalties.
41. Members were also interested in the content of vapes including the flavours used and in what research had been undertaken to understand potential harms. Officials advised that the long-term harm of continued use is not currently known. Officials referred to the World Health Organization findings which identified that the consumption of nicotine in children and adolescents has deleterious impacts on brain development, leading to long-term consequences

⁶ NI Audit Office (January 2024) Tacking the public health impacts of smoking and vaping (Recommendation 10), Available at: <https://www.niauditoffice.gov.uk/files/niauditoffice/documents/2024-01/NI%20Audit%20Office%20Report%20-%20Tackling%20the%20Public%20Health%20Impacts%20of%20Smoking%20and%20Vaping.pdf>

for brain development and, potentially, to learning and anxiety disorders. Officials also referred to the UK Command Paper which raised concerns about some of the other components and ingredients of vapes, which, when heated, can produce toxic compounds. Officials advised that the long-term health impacts of inhaled colours and flavours are unknown, but they are unlikely to be beneficial.

Institute of Public Health

42. The Institute of Public Health (IPH) is jointly funded by the Departments of Health in Ireland and Northern Ireland. Its role is to inform public policy to support healthier populations in both jurisdictions.
43. IPH provided the Committee with a copy of its response to the UK Government and devolved administrations' consultation on creating a smokefree generation. A copy of the IPH's consultation response can be found at Appendix 3. IPH representatives also attended the Committee's meeting on 11 April to provide oral evidence on this issue. The Hansard of the evidence session with the IPH representatives is included in Appendix 4. A copy of the additional papers IPH provided to the Committee are also included at Appendix 3.
44. In its written and oral evidence to the Committee, IPH stated its strong support for the Tobacco and Vapes Bill and its application to Northern Ireland. IPH provided the Committee with its views on the potential impact of the measures; shared findings from an evidence review it carried out to support the Department of Health in responding to concerns around youth vaping; and set out implications for future decision making on e-cigarette regulation.
45. In support of the measures to create a smokefree generation, IPH pointed out that while there has been reduction in tobacco use amongst children and adults through measures such as taxation and the regulation of marketing and packaging, it was clear that incremental progress was not enough and that despite the measures in place, children continue to start smoking and adults continue to find it difficult to stop.
46. IPH highlighted a study carried out by the Department of Health and Social Care that modelled changes in smoking prevalence across 14 to 30-year-olds in

England arising from the smoke-free generation measure. The most conservative estimates are for a 10% reduction in smoking initiation rates, and that 11,466 smoking-related deaths could be avoided by 2075; saving the government £67 billion (£7bn in healthcare costs). If a 90% reduction in smoking initiation rates was achieved, 28,688 smoking-related deaths could be avoided by 2075, and £121 billion (£11bn in healthcare costs) in social value could be gained.

47. IPH's review of work undertaken relating to the health effects of e-cigarettes on children and young people found strong, high-quality evidence of an association between vaping and subsequent cigarette use, supporting a gateway effect of these products. The review also found evidence to support the association between vaping and negative mental and physical ill-health.
48. IPH made a number of recommendations in its response to the UK consultation relation to the regulation of the retail of vapes that focussed on reducing the appeal and accessibility of e-cigarettes to children and young people.

Northern Ireland Youth Assembly

49. The NI Youth Assembly was established in June 2021, the current membership (of 90) took their seats in October 2023. At the time of their appointment members were aged between 12 and 16 years old. Membership includes young people from every constituency and is proportionately representative of the Section 75 protected categories. The role of the Youth Assembly includes engaging with Assembly Committees on legalisation and inquiries relevant to young people.
50. At a meeting on 9 April 2024, the Youth Assembly used the online app, Mentimeter, to capture the views of its membership on a range of questions relating to the Tobacco and Vapes Bill. A summary report of the survey is available at Appendix 3. Youth Assembly Members also presented their views to the Health Committee at an informal event held in Parliament Buildings on 18 April where they also discussed their real life experiences of smoking and vaping. Members of the Committee noted the main concerns of the Youth

Assembly was in relation to vaping rather than smoking and the proliferation of vapes and vaping in schools and the accessibility of vapes.

51. The Youth Assembly membership was split on the Bill's provision relating to the tobacco age of sale, although most were broadly in favour. Those in favour felt the public health benefits outweighed any diminution of rights. Concerns expressed included the infringement on personal freedoms and the difficulties around enforcement, while others felt that the provisions in the Bill did not go far enough and suggested that a total ban on tobacco sales should be considered.
52. The membership overwhelmingly agreed (91%) that the 'age of sale' for vaping products should rise from age 16 to 18.
53. In relation to the proposed fixed penalty notice of £100 for the underage sale of tobacco and vaping products, the vast majority of the Youth Assembly Members felt that the proposed level was not a sufficient deterrent and needed to be raised, with increasing penalties for repeat offences.
54. Most of the Youth Assembly Members were in favour of the introduction of restrictions relating to the display and packaging of tobacco, nicotine and vaping products, with many recognising that current vaping packaging can be appealing to young people. They also mentioned that most young people are exposed to advertising on social media and through influencers rather than in shops.
55. Most Youth Assembly Members were in favour of the Minister introducing restrictions on tobacco and vape flavours, citing that current flavours available can be appealing to young people.
56. When asked what else they believed should be included in the Bill, suggestions from the Youth Assembly Members included: banning disposable vapes; increasing fines; education in schools around vaping; banning social media advertising on vapes and vape shops; and stronger enforcement around illegal vapes. Concerns were expressed around enforcement and unintended consequences such as black market trading leading to an increase in illegal vapes which may be more unsafe.

Conclusion

57. At its meeting on 18 April, the Committee agreed to support the Minister's Legislative Consent Motion asking the Assembly to endorse the principle of Northern Ireland's inclusion in the UK Tobacco and Vapes Bill. The Committee agreed that the Bill provided a timely opportunity to progress the ambition to create a smoke-free generation.
58. The Committee requests that the Department engage with the Committee at the earliest opportunity in relation to both the development of the local regulations for which the Minister of Health has responsibility and the UK-wide regulations for which the Secretary of State has responsibility.
59. In recognition of the concerns that the Youth Assembly raised in relation to vaping, the Committee recommends that the Department of Health engage with young people, and in particular the Youth Assembly, on the future regulation of vapes and vaping products.
60. The Health Committee shares the concerns expressed by the Youth Assembly on the potential harms caused by vaping products, recognises the lack of research that is available on this subject and recommends that the Department supports research into developing an evidence base to widen understanding of the impacts of vaping products on health.

Links to Appendices

Appendix 1: Bill Papers

View the Tobacco and Vapes Bill as introduced and explanatory notes.

Appendix 2: Memoranda and Papers from the Department for Health

View Memoranda and Papers supplied to the Committee by the Department of Health.

Appendix 3: Memoranda and Papers from Others

View Memoranda and Papers supplied to the Committee from the Northern Ireland Youth Assembly and the Institute of Public Health.

Appendix 4: Minutes of Evidence

View Minutes of Evidence from evidence sessions related to the report.

Appendix 5: Research Papers

View the Research Papers produced by the Assembly's Research and Information Service (RaISe) in relation to the report.

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