



Northern Ireland
Assembly

Committee for Health, Social Services and
Public Safety

OFFICIAL REPORT (Hansard)

Standardised Packaging of Tobacco
Products: Legislative Consent Motion
(DHSSPS Briefing)

15 January 2014

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

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

Witnesses:

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

The Chairperson: Gerard and Jenny, you are very welcome. You know the procedure here. I will hand over to you for a 10-minute presentation, and I will then open it up to members.

Mr Gerard Collins (Department of Health, Social Services and Public Safety): Thank you, Chair. Good afternoon, Chair and members. We are here to speak on the Health Minister's proposal to table a legislative consent motion (LCM) relating to the standardised packaging of tobacco products. First, I want to confirm the latest position regarding Executive agreement. You will be aware that the Minister submitted a paper to Executive colleagues on 9 December seeking their agreement to a legislative consent motion for the provisions of the Children and Families Bill that could extend to Northern Ireland. However, that paper was not included in the agenda of the Executive meeting that was held on 16 December. In light of this, approval from the First Minister and the deputy First Minister was sought through the urgent procedure process. However, at this stage, the Department has not received a response to the urgent procedure paper and, therefore, we do not yet have approval to table a consent motion on this issue.

As you mentioned earlier, Chair, this briefing session was arranged in anticipation of Executive agreement to the legislative consent motion, but, nevertheless, we welcome the opportunity to explain to Committee members why the Department believes that the extension of provisions in the Children and Families Bill provides the best opportunity for the introduction of standardised packaging in Northern Ireland.

The primary aim of introducing standardised packaging is to reduce smoking prevalence amongst children. Evidence shows that children and teenagers are more receptive to tobacco advertising than adults and that children who are exposed to tobacco advertising are more likely to take up smoking. Branding on cigarette packs currently provides one of the last opportunities for tobacco companies to promote their products. Research shows that branded packs increase the appeal of tobacco products,

reduce the impact of health warnings and influence perceptions of product harm. Standardised packaging would remove the attractive promotional aspects of tobacco packages. Except for the brand name and health warnings, all other trademarks, logos, colour schemes and graphics would be prohibited.

Committee members may be aware that standardised packaging was introduced in Australia in December 2012, and work is under way to introduce similar legislation in New Zealand and the Republic of Ireland. A UK-wide public consultation on standardised packaging took place in 2012. A large number of responses were received, of which over 600,000 were campaign responses and around 2,500 were more detailed responses. Of the detailed responses, 53% were in favour of standardised packaging, while 43% were not. The Department of Health in London provided our Department with a breakdown of the responses from Northern Ireland-based individuals and organisations. Of the 68 detailed responses received here, 75% were in favour of standardised packaging for tobacco, which demonstrated quite a high level of support.

A consultation summary report, compiled by the Department of Health in London, was published in July 2013. At the same time, the Secretary of State for Health advised that a decision on standardised packaging would be delayed until the impact of legislation in Australia could be evaluated. Since then, the policy has been kept under active consideration by the Department of Health, and recent debates in the House of Commons and the House of Lords demonstrated a level of support for standardised packaging. Subsequently, a decision was made in November to commission an independent review of the effect of standardised packaging on public health. Sir Cyril Chantler, an eminent paediatrician, is carrying out this review and is expected to report his findings in March.

In the meantime, the Department of Health has taken advantage of an opportunity, offered through the Children and Families Bill, to table an amendment that will provide the Secretary of State for Health with regulation-making powers for standardised packaging. This will prepare the way for legislation to be introduced without delay should the outcome of the Chantler review be supportive of this measure. Minister Poots has regularly indicated his support for a UK-wide approach to standardised packaging. The Department considers that the extension of the provisions of the Children and Families Bill presents the best option for ensuring parity across the UK regarding the timing and content of legislation on standardised packaging. A UK-wide approach would ensure consistency across the four jurisdictions around the details of the regulations and how they are implemented. That would reduce the burden on business, particularly for manufacturers of tobacco products, as they would have one set of requirements to comply with and one established time frame.

The extension of the relevant provisions to Northern Ireland would also prevent a situation arising whereby our population would be exposed to tobacco promotion through branded packaging for some time after it has been banned in the rest of the UK and in the Republic of Ireland. The Welsh and Scottish Governments are working on legislative consent motions to allow their jurisdictions to be included in the provisions of the Children and Families Bill. It is worth noting also that the Scottish Government has announced its intention to introduce its own legislation should the Secretary of State for Health decide not to proceed with legislation following the outcome of the Chantler review.

Meanwhile, we are finalising a legislative consent memorandum to explain the overall purpose of the Bill and to provide detail on the provisions that would affect Northern Ireland. Obviously, any further progress is dependent on Executive approval. As the Children and Families Bill is due to complete its passage through the Houses of Parliament by mid-February, if we wish Northern Ireland to be included in the Department of Health's proposed amendment, agreement through an Assembly legislative consent motion would be required by 4 February. You will therefore appreciate that the timescale for securing Assembly approval is extremely tight.

Thank you. We are happy to answer any questions that you may have on the issue.

The Chairperson: Thank you for that, Gerard. Obviously, we are mindful that there is not Executive approval for an LCM at this stage, but I think it is probably suffice to say that the Committee has taken a huge interest in the issue of tobacco restriction, including from the angle of looking at the whole issue around the Tobacco Retailers Bill. The Committee took a very proactive role on that and participated in an event held in the Long Gallery that was hosted by Martina Anderson in the past number of months on this issue. So, I think it is critical that we send out a message that the health issue has to be paramount in this. Certainly, if this legislation can go some way in preventing people smoking, particularly young people — they do so in huge numbers; I think that around 8% of 11- to 16-year-olds smoke — we must act.

Gerard, with respect to process, if an LCM is not taken forward on this issue, are we talking about the Assembly or the Department having to come forward with legislation?

Mr Collins: We are, Chair. If we do not meet the Department of Health's time frame for a legislative consent motion and we do not have Assembly approval, it will mean one of two things: either we are in a scenario whereby we do not have Executive approval for legislating on standardised packaging or we would have to seek approval for going ahead with primary legislation for Northern Ireland, in which case we would have to go through the process of bringing that to the Executive to obtain approval. As I said earlier, if we go down that route, there are a number of risks. Obviously, we are talking about a minimum of 18 months from when a decision is taken to go ahead with primary legislation. It could be longer than that. We could run into the end of the Assembly's mandate. However, I think that the best scenario — if we went down the route of the introducing primary legislation — would be that we would be behind Scotland, England and Wales by about a year with respect to introducing this particular measure. In the worst case scenario, we could be behind by up to three years.

The Chairperson: You mentioned Scotland. Is Wales following the same process?

Ms Jenny McAlarney (Department of Health, Social Services and Public Safety): Wales has a date: their LCM will be considered next Tuesday. They have an agreement to proceed with the LCM, and the debate will take place next Tuesday.

The Chairperson: What about the Twenty-six Counties?

Ms McAlarney: They are moving quite far on. They have a draft Bill that is being considered by the Joint Committee on Health and Children, which has asked for submissions. They hope to have the legislation finalised before the end of this year.

The Chairperson: Thank you for that.

Mr D McIlveen: Just so that I am clear on this, Gerard, basically, this legislative consent motion is about us saying that, if the report across the water comes back and a decision is taken to go down a standardised packaging route, we will follow suit in parallel. Is my understanding of it correct?

Mr Collins: That is right. The amendment proposed to the Children and Families Bill is an enabling regulation, so we would still have to get our own regulations through the Assembly, but, yes, we would be able to introduce this, hopefully in parallel with the rest of the UK.

Ms McAlarney: It is more that the Secretary of State for Health would regulate on behalf of Northern Ireland, so we would not bring forward our own regulations. However, our Department would have to agree that it wants this.

Mr Collins: It would have to agree that this takes place and get Assembly agreement.

Mr D McIlveen: The two regions effectively would go hand in hand. There would not be a risk of us introducing it in Northern Ireland and it not being introduced across the water. That is what I am trying to get at.

Ms McAlarney: Not through this amendment — only if, for some reason, they decided in England not to introduce the regulations and then we decided to introduce primary legislation. If they go ahead in England, the Secretary of State would regulate on behalf of Northern Ireland, Scotland and Wales.

Mr D McIlveen: So, this LCM ties us to the Secretary of State for Health in Westminster.

Ms McAlarney: Yes.

Mr Collins: Only if the Assembly agrees to allow the Secretary of State for Health to make regulations that extend to Northern Ireland. There is still a potential opt out if we wanted one.

Mr D McIlveen: OK, so we can opt out, but we cannot —

Mr Collins: We cannot opt in if we miss the timetable for the Children and Families Bill.

Mr D McIlveen: I know that you are here to discuss the LCM and not so much the arguments around standardised packaging, but I have a huge concern about the Children and Families Bill. Look at the example of mobile phones. They are a fairly ugly piece of kit in the same way that standardised package is going to be an ugly piece of kit for people to be carrying around, but it has become very fashionable for people to get all sorts of covers and so on for their mobile phones. I fear that there is a risk that exactly the same thing will happen with standard packaging. I think that there is a huge risk that we are going to make them more attractive, and a market will be developed. People used to put their cigarettes in cigarette cases, and I think that it is inevitable that those days will come back. Is there anything in the Children and Families Bill that will impact on that?

Mr Collins: Not at present, as far as I am aware. The regulations have not been drafted yet. However, we hope that the Chantler review would look at such issues. We need to bear in mind also that it is at the retail point where we want to make sure that children are not attracted to those products. The products would be sold as they are in plain packaging, which I suppose is the key at that particular point, in order not to make them attractive to children. So, that, combined with the Tobacco Retailers Bill, where the product is covered up, should keep them away from children and keep them from being an attractive item at the point of retail. What happens when they are outside and people are using the packs and whether they use covers is a different issue and one that would have to be looked at in the regulations.

Mr D McIlveen: So, are you saying that a child who goes to a shop to buy a standardised pack of cigarettes whose friend has a Hello Kitty or Moshi Monsters holder for her cigarette pack will not be attracted to them?

Mr Collins: Well, a child should not be going to a shop to buy cigarettes in the first place, but for an adult going in to buy cigarettes, the transaction will involve a plain package, which should hopefully be an unattractive item.

The other advantage of the plain package is that, in combination with the tobacco products directive, which will introduce larger health warnings on cigarette packs, it will have a large health warning on it and only the brand name.

Mr D McIlveen: All the more reason to cover it up. Thanks very much, but I am not convinced.

Mr Brady: Thanks for the presentation. Obviously, the purpose is to minimise the attractiveness of the packaging. David's point that people will possibly put it into other containers is valid, but ultimately, we are talking about what is inside the packaging.

I chair the all-party group on heart disease and stroke. We had a comprehensive briefing from a professor from Edinburgh who has done extensive research into packaging. Packaging can be made attractive. She had a variety of examples. Some packages were shaped like lipstick containers, presumably to appeal to women. A briefing like that would probably be useful for the Committee because she did research into the Australian model.

Whatever the packaging, counterfeiters can reproduce it within days for between 10p and 15p, including the cigarettes. Roy was at that briefing, and I remember him asking questions about that. That is the reality. A package of cigarettes is now quite expensive at £7 or £8 apparently, but they can reproduce them for that amount of money and still make a huge profit by selling them for £3 or £4.

The statistics show an increase in young women in particular, and young people in general, taking up smoking. The packaging is an issue, but whatever the packaging, counterfeiters will reproduce it in a very short time.

I remember when the government health warnings first came out. I was a student at the time, and somebody said it was a government health warning and it was ignored because it did not really matter. So, it does not matter how big the warning is. It is about educating about the difficulty that smoking causes and the number of deaths per year, even here in the North. A huge number of people die from smoking-related illnesses. If anything is going to be done around packaging, there is also a need to continue to raise awareness of the dangers of smoking, particularly among young people.

Billions of pounds are spent on remedies for giving up smoking when really, at the end of the day, the person needs to say, "I need to stop smoking" or "I want to stop smoking". Electronic cigarettes and God knows what are being produced now when, ultimately, it is a matter of people saying, "I am going

to stop smoking", and just stopping. I accept that it is easier said than done, but that is ultimately the best solution for anybody.

You can see the logic of the packaging in some ways, but it is about how it is put forward to the public in many ways, because ultimately, it is about what is inside the package. Unfortunately, that is the problem.

Mr Collins: That is very true. Plain packaging is one of a raft of measures. We chip away at this, be it banning sales from vending machines, banning retail displays or banning smoking in public places. With the packaging issue, the aim is to de-normalise smoking and take it out of the mainstream. We combine that with education and public information campaigns on the dangers of smoking.

There is evidence that the public do not appreciate the health warnings to the extent that we hoped they would, but there is further evidence that branded packs with logos and colour schemes take away from the salience of the health warning. There is evidence that, if there are more than three major logos or graphics on a pack, the eye is attracted more to those and away from the health warning.

Mr Brady: In Australia, there are stark messages on some of the packaging that show lungs affected by smoking, for example. The campaign about smoking has been successful to some degree because it is now accepted largely as an antisocial habit. That is compounded by the fact that people cannot smoke in public places. That has worked very successfully, but there is still, particularly for young people, almost a mystique around smoking. The reality is not really there.

Mr Collins: In the initial feedback from Australia, there is some evidence to show that a large proportion of smokers who continued to smoke after the introduction of the plain packs find that their cigarettes do not taste as well. There is evidence that there is a perception about the packaging —

Mr Brady: Is it psychosomatic?

Mr Collins: — around taste and the satisfaction derived from smoking the product. We need to build on that to see how it impacts.

Mr McCarthy: All of us around the table, as members of the Health Committee, should encourage whatever measures to prevent young people in particular from smoking. You mentioned a ban on this, that and the other. The eventual ban should be on the production and manufacture of cigarettes and tobacco, full stop. That is what you should be aiming for, but some people would be against that. If we were genuine and sincere, we should ultimately aim to get rid of them altogether.

My question is quite simple. If I heard right, I am correct in saying that 75% in Northern Ireland said yes in the consultation and 25% said no. Do you have access to the reasons of the 25% who said no? Is there anything in that that we are missing that could be of benefit?

Ms McAlarney: The majority of the responses that said no came from people in the industry or retailers.

Mr Collins: The primary focus was that the introduction of plain packaging would facilitate the illicit and black market trade in tobacco. That was the general argument.

Mr McCarthy: Right. So, there is no benefit that we are missing.

Mr Collins: No. To be fair, there was mention of the lack of sufficient evidence to support the introduction of plain packaging as a means of reducing smoking prevalence. At this stage, the evidence is still being developed.

Mr Beggs: Thanks for your presentation. It strikes me that the legislative consent motion would be an efficient legislative mechanism for introducing it. It would also be a more efficient method for business. There would be a danger that, if we all introduced separate legislation, it could result in additional costs for businesses because we might get our wording slightly different, and we may even have to produce specialist packaging for Northern Ireland, which would be unnecessarily expensive for businesses and would ultimately be paid for by consumers.

Packaging and advertising is very important, particularly because of the addictive nature of tobacco and the varying degrees of success of smoking cessation. Once someone is hooked, it is very difficult for them to stop. Is it correct to say that 2,300 people in Northern Ireland die each year as a result of smoking and about 24% of the population smoke? That increased slightly. In effect, at least 2,300 new young people started smoking, which replaced the 2,300 who died. Is that accurate?

Mr Collins: It is fairly accurate. The prevalence over the past number of years has been hovering at around 24% or 25%. We were told by statisticians that the 1%, given the sample size, is not statistically significant. However, the bottom line is that we have been static in our smoking prevalence. We have not achieved any further reductions over the past five or so years. We need to continue to introduce measures to de-normalise smoking. The figures are roughly the same: 2,300 people die of smoking a year, so, between the number of smokers who quit and the number of smokers who die, the tobacco industry is recruiting the same number of new smokers every year, which keeps us at that 24% or 25% prevalence. Therefore, to achieve any further reductions, we need a step change. We need to really focus on preventing young people taking up the smoking habit. Even then, if we are successful in doing that, we are still talking about a fairly lengthy time to get prevalence down to the sorts of figures that Australia or California have achieved. You are talking about 10 or 15 years.

Mr Dunne: What sort of a timetable do we need to meet to get the motion onto the Floor? Is it still achievable?

Ms McAlarney: Yes. It is still achievable if we get Executive approval within the next few days, but it is that tight.

Mr Dunne: Next week.

Ms McAlarney: Maybe even by next Wednesday or Thursday.

Mr McCarthy: The Executive meet only once a month or something.

Mr Dunne: Then, it obviously has to go to the Assembly for debate.

Mr Collins: It has to, yes. We are still waiting for a response regarding the urgent procedure. The Minister is considering putting another paper up for the agenda of this week's Executive meeting. However, we have not had a final ministerial decision on whether that paper will go forward for consideration to be on the agenda.

Mr Dunne: So, it is still possible.

Mr Collins: It is still possible, but we need a decision. If we are going to go forward, we need approval very quickly.

Mr Dunne: Do you think that there will be a lot of benefits for Northern Ireland to run alongside the rest of the UK?

Mr Collins: It is certainly a much more efficient means. The Children and Families Bill provides the vehicle for introducing legislation sooner rather than later. We would take a consistent approach with the rest of the UK with regard to content and timing. So, yes, it is by far the more efficient method for getting plain packaging introduced in Northern Ireland.

Mr Dunne: So, there would be benefits for manufacturers, retailers and those who enforcing it. Everyone would benefit if we have a consistent system throughout the UK.

Mr Collins: Yes. If the decision is taken by the Department of Health, on the basis of the outcome of the Chantler review, to legislate on the issue, it certainly would be in manufacturers' interests that all UK countries go ahead as one.

Mr Dunne: Thanks very much.

Mr Beggs: Before we leave the issue, can I propose that the Committee supports the use of the legislative consent motion?

The Chairperson: What we will do is discuss the next steps of the process.

At this point, we thank you both for your presentation. It was very informative. Roy, we will certainly come back to that issue.

Kathryn will now give us an overview of the next steps with regard to the LCM. I will hand over to her now. Then we will come back to your proposal, Roy.

The Committee Clerk: Thank you, Chair. The normal procedure is that officials usually brief the Committee when the LCM has got Executive approval. The Committee then has to take a decision on whether it will support the LCM. The Committee produces a brief report with a link to the Hansard report of its evidence session that is put on the website. That report is to inform the rest of the Assembly of the Committee's position on the LCM. This is a slightly different situation because the Executive have not yet approved the LCM. If they approve it, officials will inform the Committee. The Committee would then take a decision on whether it is content to support the LCM. I am not sure whether there is any precedent of a Committee almost, I suppose, lobbying the Executive to bring forward a LCM on an issue. I probably need to take a bit of advice on that.

Mr Beggs: Are Committees not authorised to work in the area of policy development as well as simply considering everything that the Executive and the Health Minister pass to us?

The Committee Clerk: I am not quite sure of the procedure for how the Committee corresponds with the Executive. Certainly, the Committee could write to its Minister to say that it is supportive of the LCM and ask the Minister to convey those views to Executive colleagues. That might be the most straightforward way of doing it.

Mr Beggs: I was thinking a bit more about the subject. I propose that we should do that in principle. Ultimately, we want to see the exact detail at some point. In principle, we should support the legislative consent motion and indicate that to the Health Minister. At least it strengthens his hand in understanding how those who are responsible in the Assembly for looking after health feel about it.

The Chairperson: OK, members. Are there any other thoughts on that? We are saying that, in principle, the Committee supports the LCM and we will reflect that by writing directly to the Minister, conscious of protocols and processes. Are we agreed?

Members indicated assent.