Tobacco and Primary Medical Services (Scotland) Bill

Bill Number: SP Bill 22
Introduced on: 25 February 2009
Introduced by: Nicola Sturgeon MSP (Government Bill)
Passed: 27 January 2010
Royal Assent: 3 March 2010

Passage of the Bill

The Tobacco and Primary Medical Services (Scotland) Bill [SP Bill 22] was introduced in the Parliament on 25 February 2009. Stage 1 commenced on 13 May 2009 with the Health and Sport Committee as the lead committee. The Committee published its Stage 1 Report on 14 September 2009, with the Stage 1 (general principles) debate taking place on 24 September 2009. Stage 2 proceedings commenced on 11 November 2009 and ended on 18 November 2009. The Bill was passed following the Stage 3 parliamentary debate on 27 January 2010.

Purpose and objectives of the Bill

There were two main purposes behind the Bill. Part one concerned the retailing of tobacco products, including prohibiting their display and establishing a register of tobacco retailers. Part two sought to amend the criteria for eligibility to provide primary medical services under the National Health Service (Scotland) Act 1978.

Many of the provisions concerning tobacco emanated from commitments made in the Scottish Government’s ‘Scotland’s Future is Smoke-free: A Smoking Prevention Action Plan’ (May 2008), which followed the report of the Smoking Prevention Working Group, ‘Towards a Future without Tobacco: The Report of the Smoking Prevention Working Group’, published in November 2006. It also took account of a proposal in a Members’ Bill by Christine Grahame MSP to introduce a licensing scheme for tobacco retailers. The provisions in relation to Primary Medical Services followed a consultation on proposed changes to the eligibility criteria for providers of primary medical services from October to December 2008 with the sector.

Provisions of the Bill

The main provisions of Part 1, concerning tobacco, were:

• to make it an offence to display tobacco and smoking related products
to consolidate current provision concerning the sale of tobacco products and to propose that it would be a defence if the retailer believed the customer was 18 or over, or if they were shown appropriate forms of identification

- a ban on vending machines that sell tobacco
- the creation of a register of tobacco retailers in Scotland
- to introduce a number of enforcement provisions including placing a duty on local authorities to be responsible for the enforcement of the tobacco display, tobacco sale and retail registration provisions, and allowing council officers and police constables to issue Fixed Penalty Notices for offences committed under the same provision

Part 2 of the Bill sought to amend the National Health Service (Scotland) Act 1978 to ensure that any persons contracting with Boards to deliver primary medical services must, amongst other things, regularly perform, or be engaged in, the day to day provision of those services.

**Parliamentary consideration**

In its Stage 1 Report, the Health and Sport Committee made a number of recommendations on the provisions of the Bill. These together with the Scottish Government’s response are contained in a [SPICe briefing](#), which outlines consideration of the Bill prior to stage 3. This briefing also discusses the key amendments that were laid at stage 2. The following section outlines some key areas of debate.

Probably the most contentious area of the Bill concerned the prohibition of tobacco displays. One of the key reasons put forward for this provision was that it would support efforts in tackling smoking amongst young people. Therefore, much of the debate surrounded whether or not there was significant evidence linking tobacco displays to smoking amongst younger age groups. Other areas of debate included: what the evidence from other countries that have instituted a ban (such as in Canada) actually showed; and, what economic effect the ban would have on retailers, particularly smaller retailers, both in terms of lost revenue and putting in place appropriate storage measures to comply with the legislation. In the Committee’s Stage 1 Report it was noted that, on balance, the majority of the Committee were of the view that such a ban would have a positive effect in the long term and did not believe the measure would be disproportionate to the costs associated with it. However, at Stage 2 there was an amendment to delete this section from the Bill on the grounds that there was not a sufficient evidence base to show that the ban would have an impact on smoking rates. This was not agreed to by the Committee by a 7-1 majority. In addition, there was an amendment concerning compensation for retailers, which was withdrawn. An amendment was lodged at stage 3 which again sought to remove section 1 from the Bill, but was not agreed to by a majority in the Chamber.

The sale of tobacco products to those under 18 was another key area, which resulted in several amendments being lodged at stage 2. There were two key issues. The first concerned the proposal in the Bill to insert a defence for a
retailer that they believed a person was 18 when purchasing tobacco. In the Committee’s Stage 1 Report, a majority of Members recommended that it would be a retrograde step to create such a defence. In response, the Scottish Government said it was in line with similar provisions in licensing legislation, and argued that it was necessary given the requirement of retailers to ask for a form of identification. However, at Stage 2 an amendment to remove the provisions was agreed to. Also on the age issue, the Committee noted that, under the Licensing (Scotland) Act 2005, it is an offence for a person aged under 18 to buy or to attempt to buy alcohol for him or herself. The Committee believed such a provision should be in place for tobacco. Amendments were proposed by the Minister at stage 2 to give effect to this recommendation. There were also amendments at stage 2 to combat proxy purchasing and to allow the police to confiscate tobacco.

Another controversial provision in the Bill concerned the proposal to ban vending machines. Whilst the Committee did not make any particular recommendation, there was concern within the industry about potential job losses if the ban went ahead. Amendments were laid at stage 2 which sought to give Ministers the power to ban vending machines at a later date through subordinate legislation. This was to allow a new system of radio-controlled vending machines to be tested to ascertain whether it worked. Others included exempting vending machines that were remote or radio controlled, and based in licensed premises. However, the Minister reiterated her view that there should be a full ban, believing that continuing to allow vending machine sales would undermine efforts to shift cultural attitudes to smoking. As regards vending machine operators, she stated that officials were holding discussions with them about lead-in times, adding that she was sympathetic to giving them the longest possible time to explore diversification. The amendments were either withdrawn or not agreed to by majority. Similar amendments were laid at stage 3 but were either not agreed to by a majority or withdrawn.

As regards Part 2 of the Bill, the key debate at stage 2 concerned amendments seeking to remove Part 2 from the Bill. The effect of Part 2 of the Bill was argued by some to prevent private companies from being able to provide primary medical services. Arguments were made that this would prevent alternative sources of provision being possible at a time of increasing demand for GP services. There were concerns that the current model of GP provision could not be sustained in the long term. The Cabinet Secretary argued that the debate was about whether contractors were directly involved in the running of health services or whether they had a more arm’s length relationship with the NHS. She said the Bill did not prevent companies from holding contracts, and agreed with others that it was not the case that any developments in how general practice was delivered could only be provided through a commercial model, but could be done by the NHS through the model proposed in the Bill. The amendments were defeated by majority. A similar amendment was laid at stage 3, but was not agreed to by a majority in the Chamber.
In its stage 1 report the Committee recommended that consideration be given to amending the Bill so as to allow groups such as community co-operatives to hold contracts and deliver primary medical services, including a General Medical Services (GMS) contract. As a result, the Cabinet Secretary proposed amendments at stage 2 to expand the eligibility criteria to include any company rather than only a company limited by shares. She said this would allow many social enterprises to hold such a contract as long as they met the other criteria set out in the Bill. However, whilst welcoming the amendments, some Members of the Committee were concerned that such groups would still find it difficult to enter into a GMS contract. This is because of the additional criteria which would apply to this form of contract, which included that, to be eligible to provide such services, a medical practitioner must be a member of the company making the application. Amendments were lodged to address this. However, as the Cabinet Secretary had offered to discuss the matter further prior to stage 3, these were withdrawn. Further non-government amendments were proposed at stage 3 but were either not agreed to by a majority of Parliament or were withdrawn.

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