INTRODUCTION

1. This document relates to the Tobacco and Primary Medical Services (Scotland) Bill introduced in the Scottish Parliament on 25 February 2009. It has been prepared by the Scottish Government to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 22–EN.

BACKGROUND AND BILL OVERVIEW

2. This Bill will enable the Scottish Government to continue the drive to improve Scotland’s health and to ensure primary medical care services meet the needs of the people of Scotland.

3. Smoking remains one of the most damaging factors to public health in Scotland and is associated with a quarter of Scottish deaths each year. Given that some 80% of smokers start smoking in their teens, a key component of the Scottish Government’s health improvement drive is to protect children and young people from the impact of tobacco smoking. Statutory controls on the display and sale of tobacco products to reduce the attractiveness and availability of tobacco products to children and young people have an important role to play in that process. Consequently, the Bill will:
   - ban the display of cigarettes and other tobacco products and smoking related products;
   - introduce a registration system for tobacco retailers;
   - ban the sale of cigarettes from vending machines; and
   - introduce a new system of sanctions for breaches of the law involving fixed penalty notices and banning orders for related offences.

4. The Bill also makes provision to amend and clarify the eligibility criteria for providers of primary medical services including introducing a requirement that all parties to a contract for primary medical services must demonstrate a sufficient involvement in the provision of care and/or the day to day running of services. A consequence of this will be to exclude providers which do not meet the eligibility criteria from providing primary medical services.
5. The Bill thus covers two distinct policy areas - tobacco and primary care medical services - and this document sets out the details of consultation, policy objectives, and alternative approaches for each element of the Bill as follows:

- tobacco displays
- regulation of tobacco sales
- vending machines
- register of tobacco retailers
- enforcement and fixed penalties
- primary medical services

6. The effects of the Bill on equal opportunities, human rights, island communities, local government, sustainable development etc. are summarised in paragraphs 53 to 58.

PART 1: TOBACCO PRODUCTS ETC.

Policy objectives – background

7. The measures contained in the Bill are aimed at reducing smoking among children and young people through updated statutory controls on the display and sale of tobacco products in Scotland.

8. A generation after the health risks associated with smoking were demonstrated beyond dispute, smoking remains one of the principal causes of illness and premature death in Scotland. It is estimated to be responsible for 13,500 deaths each year\(^1\) and many more hospital admissions. Each year the cost of hospital care for treating smoking-related illnesses is estimated to be in excess of £200m\(^2\) and lost productivity £450m\(^3\). Smoking also disproportionately affects those already disadvantaged by poverty and is a major contributor in health and premature mortality inequalities.

9. Significant progress has been made since devolution in Scotland to shift the cultural acceptability of smoking through the comprehensive programmes of action set out in the UK White Paper *Smoking Kills*\(^4\) (1998) and the first ever action plan on tobacco control designed specifically for Scotland: *“A Breath of Fresh Air for Scotland”* (2004). Firm legislative action such as the smoking ban and raising the age of sale for tobacco from 16 to 18 has also had a major role to play in this.

10. In spite of these efforts, however, some 15,000 young people start to smoke each year in Scotland. While smoking is dangerous at any age, the younger people start, the more likely they

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are to smoke longer and to die early as a result of smoking. A child who starts smoking at 14 or younger is 5 times more likely to die of lung cancer than someone who starts to smoke at age 24 or over, and fifteen times more likely to die of lung cancer than someone who never smokes\textsuperscript{6}. It is also known that 82% of adult smokers start smoking in their teens\textsuperscript{7}.

11. The decline in overall smoking prevalence in recent years (dropping from 30.4% in 1999 to 24.7% in 2007\textsuperscript{8}) as a result of the tobacco control programmes is welcome. However, the Scottish Government recognises that further bold and decisive action is necessary to protect Scottish children and young people from the impact of cigarettes and other tobacco products in order to achieve their goal of improving Scottish public health.

12. In May 2008 the Scottish Government published the Smoking Prevention Action Plan “Scotland’s Future is Smoke-free”\textsuperscript{9} setting out an ambitious programme of measures designed specifically to dissuade children and young people from smoking by reducing the affordability, attractiveness and availability of tobacco products to children and young people. This included a commitment to further statutory controls on the sale and display of tobacco products which are contained in the Bill.

13. The evidence presented and the recommendations contained in the Expert Group report “Towards a future without tobacco”\textsuperscript{10} and the consultation and discussions which have subsequently taken place, provided the platform for “Scotland Future is Smoke-free” and the policy underpinning the measures contained in the Bill. The Expert Group, which was chaired by Dr Laurence Gruer, Director of Public Health Science at NHS Health Scotland and the membership of which was drawn from leading figures in the health and tobacco control fields, had been specifically tasked by the Scottish Government to make recommendations for the development of a new long term strategy for Scotland to guide smoking prevention activity at national and local levels.

**Policy objectives – specifics**

*Display of tobacco products etc.*

14. The Tobacco Advertising and Promotion Act 2002 banned the advertisement of tobacco products in the UK with certain limited exemptions. The Tobacco Advertising and Promotion (Point of Sale) (Scotland) Regulations 2004 allowed advertisement at places where tobacco products are sold but restricted the advertisement to only one display per shop and to stating only the name, emblem, price and size of the product.

15. The Expert Group advised that, despite this advertising ban, cigarettes continue to be advertised in the UK. Worryingly, studies show that there is a “positive, consistent and specific relationship” between exposure to tobacco advertising and the subsequent uptake of smoking among adolescents and that it was considered that prominent displays of cigarettes at point of


\textsuperscript{8} Scottish Household Survey 2007

\textsuperscript{9} Scottish Government: “Scotland’s Future is Smoke-free”: RR Donnelly B55383 05/08

\textsuperscript{10} Scottish Executive, Towards a Future without Tobacco” (2006)
sale have shown a similar relationship with youth smoking. Display can be considered as a form of advertising, encompassing any way of showing tobacco products with a view to promoting their sale. Currently, displays of tobacco products predominantly take the forms of gantries behind the till or of stacks of merchandise at any point in the retail premises. The Expert Group therefore recommended that the Scottish Government prohibits the display of cigarettes at the point of sale, and that this display be replaced by a simple list of the brands available and their prices.

16. Just as children and young people have been found to be more susceptible than adults to advertising in general, there is evidence that young people are disproportionately influenced by displays of tobacco within shops. The presence of visible displays of tobacco, even in the absence of overt advertising materials, has been found to affect young people’s perceptions about ease of access to cigarettes and about brand recall, both factors that have been found to increase the risk of taking up smoking\textsuperscript{11}. Henriksen et al\textsuperscript{12} found, using a sample of 2,100 Californian schoolchildren, that exposure to retail tobacco marketing resulted in a 50% increase in the odds of ever smoking. This finding was made even after controlling for other correlates of ever smoking, such as risk taking, maternal supervision and self-reported grades.

17. In addition to having a powerful effect on young people, visible displays of tobacco within shops have been shown to act as cues to smoke, including among those not intending to buy cigarettes and those trying to avoid smoking. One study\textsuperscript{13} found that when shopping for items other than cigarettes, around one-quarter of smokers reported buying cigarettes on impulse. Almost two-fifths of smokers who had tried to quit in the previous year had experienced an urge to buy cigarettes as a result of seeing a retail tobacco display.

18. Against this background the Bill proposes an outright ban on the display of tobacco products and smoking related products (i.e. when sold alongside tobacco products) at points of sale with only very limited exemptions for specialist tobacconists and trade sales.

19. As set out in the Financial Memorandum, the cost of implementing the display will vary according to the size of the premises, the nature of the sales unit (or alteration to the existing one) and the extent of the shop refitting. The Scottish Government will work with trade bodies to minimise the impact on business, exploring ways to keep the costs of refits to a minimum and providing ample lead-in time for compliance. Firm decisions about timescales will be taken in due course, but it is envisaged that these new provisions will be brought into force for supermarkets in 2011, and in 2013 for smaller shops.

\textit{Sale of tobacco products etc.}

20. Tobacco products are widely available from retail outlets across Scotland and surveys suggest that underage young people have little difficulty in accessing cigarettes from shops or vending machines. The Scottish Government is committed to firm action to prevent underage


\textsuperscript{13} Wakefield M. et al (2008), “the effect of retail cigarette displays on impulse advertising of tobacco products”, \textit{Addiction}, 103(2), pp 338-347
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young people from accessing tobacco products. The Expert Group recommended a 2-prong approach. This would involve more effective enforcement of existing law by local authorities and the introduction of a “negative” licensing scheme under which retailers would lose the right to sell tobacco if found to be repeatedly selling to under 18s.

21. The current provisions governing the sale of tobacco products to under-18s are contained in a number of pieces of legislation: the Children and Young Persons (Scotland) Act 1937; the Children and Young Persons (Protection from Tobacco) Act 1991; and the Smoking, Health and Social Care (Scotland) Act 2005. “Scotland’s Future is Smoke-free” signalled the Scottish Government’s commitment to reviewing and updating statutory controls on the sale of tobacco products, including to consider the introduction of a system of licensing/registration and issues surrounding vending machine sales. The Scottish Government further committed to working in partnership with the Convention of Scottish Local Authorities (COSLA), Scottish local authorities, the Society of Chief Officers of Trading Standards and other relevant interests to secure more rigorous enforcement of tobacco sales law and to ensure that this is complemented by action to reduce illicit sales of tobacco.

22. More vigorous enforcement of the law will be secured through the outcomes agreed between Scottish local authorities and the Scottish Government under the Enhanced Tobacco Sales Enforcement Programme (ETSEP). Backed by £4.5m of additional funding over 3 years, the ETSEP was launched officially on 25th February 2009. This will be coupled with increased emphasis and promotion of a “no proof, no sale” approach to tobacco sales and co-operation with HMRC/the UK Border Agency to tackle illicit tobacco sales in Scottish communities.

23. The provisions of the Bill will rationalise and update the current statutory framework for the sale of tobacco in Scotland bringing together and restating some of the existing statutory provisions on the sale of cigarettes (e.g. prohibiting the sale of cigarettes to under 18s; requiring notices to be displayed at points of sale; placing a duty on local authorities to have an enforcement programme in place etc), and creating new provisions to enable Scottish Ministers to ban sales from vending machines; create a national register for tobacco retailers, and introduce a fixed penalty notice regime for breaches of the law. Further information on the policy specifics for these individual measures is provided below.

Vending machines

24. It estimated that between 36 and 39 million cigarettes are sold through some 6,552 vending machines which are situated in Scotland. In 2006, one in 10 of regular smokers aged 13 and 15 reported buying from cigarette vending machines accounting for some 14.2 million cigarettes annually. The Scottish Government believes that everything possible should be done to prevent young people from accessing cigarettes. While the Expert Group did not examine issues relating to sales from vending machines, the Scottish Government committed in “Scotland’s Future in Smoke-free” to looking at this as part of the fundamental review of tobacco sales law. By their very nature tobacco vending machines are self-service which means no routine age-checks carried out prior to purchase. It would be inconceivable for other dangerous age-restricted items such as fireworks, alcohol and solvents to be available from vending machines, and the Scottish Government can think of no strong argument for continuing to allow cigarettes to be available from such a source. The only way to be absolutely certain that underage young people do not access cigarettes from vending machines is to ban the sale of
cigarettes from vending machines completely in Scotland and measures contained in the Bill will debar the sale of tobacco products from vending machines.

Register of tobacco retailers

25. Under current legislation, retailers can be prosecuted for selling tobacco to people under the age of 18 with a maximum fine of £2,500. In the 6 years since 2002 there have been 147 reports made to COPFS in relation to offences in terms of section 18 of the 1937 Act. Of that number, no proceedings were only considered appropriate in 28 of those cases. There were 23 convictions and 53 cases were dealt with by non-court disposals. (It should be noted that the breakdown does not include charges where proceedings had not yet reached a conclusion, charges which were discontinued and charges upon which a decision had not yet been taken). Of those convicted, the average fine was £188. However it would appear from recent figures released by the Society of Chief Officers of Trading Standards in Scotland that selling tobacco products to persons under age is a significant issue in Scotland, with a quarter of shopkeepers still selling cigarettes to 18 year olds.\(^\text{14}\)

26. While it is recognised that there is very little evidence of the impact of tobacco retailers licensing schemes on reducing underage sales, international experience does show that age restrictions on the sale of tobacco products are more difficult to enforce effectively without licensing. For this reason the regulation of tobacco sales is recommended as a strategic national action in the 2002 WHO European Strategy on Tobacco Control.\(^\text{15}\)

27. Having considered its options (see below) the Scottish Government has concluded a national register for tobacco retailers in Scotland offering an approach which would fall somewhere between the proposal for a Bill to introduce a licensing scheme for tobacco sales put forward by Christine Grahame MSP\(^\text{16}\) and a negative system of the sort recommended by the Expert Group which is being introduced elsewhere in the UK would best meet Scotland’s needs. Thus the Bill provides for the establishment of a national register of tobacco retailers which will allow retailers to be clearly identified, enabling trading standards and others to offer advice and support to them to avoid illegal sales. Full details of the scheme will be set out in subordinate legislation but the intention is to keep the registration process administratively simple, for example, by allowing retailers to register free on line or, if necessary through a simple paper-based system, and creating minimum burden on business. Under the Bill’s provisions registered retailers would have a certificate of registration and would be subject to orders banning them from selling tobacco and removing them the Register for a set period for breaches of the legislation. Retailing interests are broadly supportive of the creation of register which, in addition to weeding out rogue traders, would have the added advantage, of creating another barrier to illicit trade in tobacco products. In terms of implementation timescales, we would envisage the national register being in place by 2011.

Enforcement and fixed penalties

28. As indicated above, while retailers can be prosecuted for selling tobacco to people under the age of 18 with a maximum fine of £2,500, in practice, prosecutions have been rare. As part of


the fundamental review of tobacco sales law, therefore, the Scottish Government has reviewed offences and penalties. The main change the Bill will introduce is the creation of a new regime of fixed penalty notices for breaches of the law. The introduction of these fixed penalty notices and banning orders will mean that only the most serious of offenders would be referred to Procurators Fiscal. This is in accord with a UK-wide move to transform the regulatory sanctioning system following the 2005 Hampton Report, Reducing Administrative Burdens: Effective Inspection and Enforcement\(^{17}\) and the subsequent Macrory review report Regulatory Justice: Making Sanctions Effective of 2006. The Scottish Government supports these moves to rationalise regulatory justice which is resulting in a move towards the more flexible use of sanctions rather than relying, as at present, on criminal prosecution for breaches of regulations.

**Consultation**

29. To inform the development of new longer term smoking prevention strategy, the Scottish Government undertook a wide-ranging consultation between December 2006 and February 2007 on the recommendations, including for further statutory controls on the sale and display of tobacco products, contained in “Towards a future without tobacco”. In addition to the views expressed through the 64 written responses received, there were 4 regional public seminars, 2 of which were hosted by Scottish Ministers, which were attended by some 123 people. There was also specific consultation with young people through focus groups and an online consultation. Ministers also had a specific meeting with representatives of the Scottish Youth Parliament. Details of the consultation and its results can be found on [http://www.scotland.gov.uk/publications/recent/Q/MonthPicker/04/YearPicker/2007/Subject/-1/Sortby?o?page/2](http://www.scotland.gov.uk/publications/recent/Q/MonthPicker/04/YearPicker/2007/Subject/-1/Sortby?o?page/2) and [http://www.youngscot.org.surveys/?id=348&a=d&sr=242](http://www.youngscot.org.surveys/?id=348&a=d&sr=242)

30. These consultations revealed a strong level of support for measures to tackle youth smoking including further legislative action and increased enforcement of the existing tobacco sales law. In the written consultation, the majority supported the removal of displays and “negative” licensing scheme under which retailers would lose the right to sell tobacco if found to be repeatedly selling to under 18s.

31. However, though smaller in percentage terms, bodies representing the retail sector expressed concern about the potential implications of further legislative action for trade, particularly for small retailers who rely on the sale of cigarettes for “footfall”. A similar picture emerged in the public seminars, with health interests favouring further legislative action and retailers questioning the justification for them.

32. The results of the consultation informed the policy underpinning the Bill. Cognisance has also been taken of the views expressed by various interest groups, including leading retail organisations, in face to face meetings with Scottish Ministers and their officials, which took place in 2008, and of the advice received from the Scottish Ministerial Working Group on Tobacco Control.

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\(^{17}\) Reducing Administrative Burdens: Effective Inspection & Enforcement: Philip Hampton (HM Treasury): March 2005
Alternative approaches

Display of tobacco products etc.

33. In addition to a complete ban on the display of tobacco products and smoking accessories, the other options considered were 1) do nothing and 2) further restricting the display of tobacco products and accessories, e.g. limiting displays of products to a single pack of cigarettes.

34. Action is proposed in relation to displays to protect our children and young people from the impact of smoking and, thus, **Option 1** (do nothing) was ruled out because it would bring no associated benefits.

35. Although the **Option 2** (restricting displays) would bring some health benefits, these would not be as great as might be expected from a complete ban, particularly when the likely costs of adjusting displays to comply with such a restriction incurred by the retailer could be as high or higher than those incurred for a complete ban.

Register of tobacco retailers

36. Other options considered were: 1) do nothing; 2) the introduction of “banning orders” (also known as negative licensing); and 3) positive licensing. Options 2 and 3 were considered in conjunction with the introduction of a fixed penalty notice scheme.

37. **Option 1** (do nothing) was ruled out because keeping the status quo would do nothing further to protect children and young people from the impact of tobacco and, consequently, there would be no public health benefits for Scotland.

38. **Option 2** (negative licensing) would not require retailers to actively apply for a licence but would allow local authorities to impose a prohibition order, or “banning order”, preventing a retailer from selling a particular product, either temporarily or permanently, if they are found to be in breach of legislation. This option was ruled out because it would not provide authorities with any additional information about tobacco retailers in Scotland or act as a deterrent to illicit trade.

39. It could be argued that **Option 3** (positive licensing requiring retailers to apply for a formal application for and pay a sum of money for that licence) might act as a greater deterrent to retailers who currently sell tobacco to under-age customers; allow for targeted education of tobacco retailers; send a clear public health message; provide enforcement options that are less costly than legal actions in court and ensure that tobacco retailers are aware of their legal obligations. However, this was ruled out because it would require a costly and resource intensive administrative effort, placing a disproportionate burden on Scottish local authorities and retailers.

Vending machines

40. Other options considered were 1) do nothing and 2) introduction of age-restrictions mechanisms.
41. As indicated at para 27 above, one in 10 of regular smokers aged 13 and 15 in Scotland reported obtaining cigarettes from vending machines. As this is clearly unacceptable **Option 1** (do nothing) was ruled out as it would do nothing to prevent sales to young people and there would be no gain to public health.

42. Under **Option 2** (age-restriction mechanisms) a number of possible means of restricting underage access have been identified, including infra-red control, ID coin mechanism, or electronic age-verification. While this may have an impact on underage sales, we have concluded the only guaranteed way of preventing underage sales is to ban sales from vending machines completely.

**PART 2: PRIMARY MEDICAL SERVICES**

**Policy objectives – background**

43. Health Boards are currently able to make arrangements (other than a section 17C arrangement or a general medical services (GMS) contract), as they think fit for the provision of primary medical services, which includes making contractual arrangements with any person. The scope of this power is extremely wide, and does not sit comfortably with the Scottish Government’s vision of a mutual NHS which is publicly owned and where the providers of care have a direct involvement with and interest in patient care.

44. Although Health Boards may employ doctors directly to provide primary medical services, and may also contract with each other, normally such services are provided under contracts or agreements between Health Boards and providers. Although Health Boards may make other arrangements under section 2C of the NHS (Scotland) Act 1978, there are two specific forms of contractual arrangement provided for in the 1978 Act for primary medical services:

- a GMS contract with an individual medical practitioner, a partnership where at least one of the partners is a medical practitioner, or a company where at least one of the shareholders is a medical practitioner. In the case of a partnership all the other partners, and in the case of a limited company all the other shareholders, must be from a statutory list of individuals who provide services in the NHS GMS contracts encompass the full range of GP services which are set out in detailed regulations, and are negotiated annually on a UK wide basis with the close involvement of the British Medical Association and taking account of the recommendations of the Review Body on Doctors’ and Dentists’ remuneration;

- a section 17C agreement which is a locally negotiated agreement with medical practitioners, health care professionals or other persons from a statutory list. There is no requirement that at least one partner to the contract is a medical practitioner. This type of agreement provides more limited services depending on specific local circumstances, for example, nursing services only.

45. The vast majority of primary medical services are currently provided by GP practices under GMS contracts with the Health Board.
Policy objectives – specifics

46. The policy objective is to ensure that there is a commitment from providers of primary medical services in the form of a minimum time involvement in the clinical care management of patients and/or day to day running of the service, before they can be holders of contracts or enter into arrangements with Health Boards for the provision of such services. This will mean that some providers which do not meet the new eligibility criteria will be potentially excluded from being able to contract for primary medical services on the basis that they are unable to satisfy the requirement that all parties must have a day to day involvement in the provision of the services. Further details of the involvement requirements will be set out in regulations.

47. The Bill will not be retrospective so will not affect those who already provide primary medical services under existing contracts, but it may make some of these providers ineligible to do so under new contracts.

Consultation

48. A consultation on proposed changes to the eligibility criteria for providers of primary medical services was carried out for a six week period from October to December 2008 with the sector. The responses in general were strongly in favour of limiting the persons with whom a Health Board could contract for primary medical services to persons, companies and partnerships where all the parties were directly involved in the provision of the services. Only two organisations and two individuals were against. There was very strong support for the proposal requiring contract holders to have a specific day to day involvement in the running of a GP practice which has been reflected in the Bill. On the general proposals to simplify the eligibility criteria and to align across all types of arrangement for the provision of primary medical services, there was also broad support. The existing eligibility provisions in the 1978 Act, where they apply to those in addition to medical practitioners who may enter into an agreement or contract, describe individuals by various methods including by reference to corresponding legislation in other administrations. In the case of GMS contracts this runs to no less than 11 categories of individual. The Bill proposes that Health Boards may only enter into contracts or arrangements for the provision of primary medical services with medical practitioners, health care professionals, qualifying partnerships, limited liability partnerships or companies. For GMS contracts, a medical practitioner must be a party to the contract, whereas for section 17C contracts this is not a requirement. This reflects the current position.

49. The 1978 Act provides that nurses on their own may hold a contract with a health board for the provision of primary medical services under section 17C arrangements. The consultation asked whether nurses should be allowed to hold a GMS contract without being in partnership with a medical practitioner. This proposal generated strong disagreement from the sector, although one organisation was in favour. The proposal was also not extensively trailed prior to the consultation, and this generated some criticism. It has been decided that there is no compelling evidence to support pursuing this option.

Alternative approaches

50. Other options considered were 1) do nothing and 2) instruct Health Boards to contract only for GMS contracts or section 17C agreements, not for any other arrangement.
51. **Option 1** would not be consistent with the Scottish Government’s vision of a mutual NHS as set out in *Better Health, Better Care*[^18], where providers of primary medical services will be provided only by those with a direct interest in the patients they treat and the good of the wider NHS.

52. **Option 2** would not remove the provision in the National Health Service (Scotland) Act 1978 which empowers Health Boards to make contractual arrangements with any person, and would not introduce into the Act the involvement requirement which is central to the policy.

**EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.**

**Equal opportunities**

53. The Bill’s provisions are not discriminatory on the basis of age, gender, race, disability, mental status or sexual orientation.

**Human rights**

54. In relation to the provisions on primary medical services, the Scottish Government does not consider the Bill to contain anything which raises substantive issues in this area. The Scottish Government considered whether Article 1 Protocol 1 European Convention on Human Rights (ECHR) was engaged as regards potential primary medical services providers. Article 1 Protocol 1 provides that every legal or natural person is entitled to peaceful enjoyment of his possession. As case law has illustrated that this does not extend to future claims of property nor the hope or expectation of earning or income and so is not engaged by the provisions, which do not have retrospective effect. It is not considered that there is any potential engagement with any other right under the ECHR.

55. The Scottish Government is satisfied that the tobacco provisions are compatible with the European Convention on Human Rights. In reaching this conclusion particular consideration was given to the provisions in the Bill relating to displays of tobacco products, banning the sale of tobacco products to under 18s, banning the sale of tobacco products from vending machines, requiring registration in order to retail tobacco, providing for tobacco retailing banning orders and providing for fixed penalties in respect of offences under the Bill. It is important to note that the purpose of the tobacco provisions is to promote public health and the Convention envisages that certain rights can lawfully be interfered with on public health grounds. In particular, Article 1 of Protocol 1 to the ECHR (the right to peaceful enjoyment of possessions) and Articles 6 (right to a fair trial), 8 (right to private life) and 10 (right to freedom of expression) of the ECHR were considered in relation to the tobacco provisions. It was concluded in each case that either the right was not engaged or where engaged the provision was Convention compliant, where appropriate with regard to the requirement that the interference was a proportionate measure in the interests of public health.

Island communities

56. The provisions of the Bill will apply equally to all communities in Scotland and there are no particular implications for island communities.

Local government

57. The Convention of Scottish Local Authorities (COSLA) and Scottish local authorities had the opportunity to take part in the consultations on the Expert Group’s report on which Part 1 of the Bill is based. COSLA and the Scottish Society of Chief Officers of Trading Standards have also been closely engaged in the development of the measures contained in the Bill and the development of the Regulatory Impact Assessment which will be available on the Scottish Government website after the Bill is published. The implementation of the measures contained in the Bill will undoubtedly have implications for local authorities but, given their existing role in the regulation of tobacco, there is not expected to be any significant financial burden on local government and, indeed, may in the long-term lead to savings in manpower and resources.

Sustainable development

58. The Bill will have no impact on sustainable development.
This document relates to the Tobacco and Primary Medical Services (Scotland) Bill (SP Bill 22) as introduced in the Scottish Parliament on 25 February 2009

TOBACCO AND PRIMARY MEDICAL SERVICES (SCOTLAND) BILL

POLICY MEMORANDUM


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