



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# HEALTH AND SPORT COMMITTEE

Tuesday 19 January 2016

Session 4

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**HEALTH AND SPORT COMMITTEE**

**5<sup>th</sup> Meeting 2016, Session 4**

**CONVENER**

\*Duncan McNeil (Greenock and Inverclyde) (Lab)

**DEPUTY CONVENER**

\*Bob Doris (Glasgow) (SNP)

**COMMITTEE MEMBERS**

\*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)

\*Rhoda Grant (Highlands and Islands) (Lab)

\*Colin Keir (Edinburgh Western) (SNP)

\*Richard Lyle (Central Scotland) (SNP)

\*Mike MacKenzie (Highlands and Islands) (SNP)

\*Nanette Milne (North East Scotland) (Con)

\*Dennis Robertson (Aberdeenshire West) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Maureen Watt (Minister for Public Health)

**CLERK TO THE COMMITTEE**

Jane Williams

**LOCATION**

The James Clerk Maxwell Room (CR4)



# Scottish Parliament

## Health and Sport Committee

Tuesday 19 January 2016

[The Convener opened the meeting at 09:45]

### Health (Tobacco, Nicotine etc and Care) (Scotland) Bill: Stage 2

**The Convener (Duncan McNeil):** Good morning and welcome to the fifth meeting in 2016 of the Health and Sport Committee. At this point, I ask everyone to switch off mobile phones, as they can interfere with the sound system, but I should point out that you will see many of us using tablet devices instead of hard copies of our papers.

Agenda item 1 is stage 2 consideration of the Health (Tobacco, Nicotine etc and Care) (Scotland) Bill. I welcome to the meeting the Minister for Public Health, Maureen Watt, who is accompanied by officials from the Scottish Government's health bill team: Claire McDermott, bill team manager; Siobhan Mackay, tobacco control team; David Wilson, solicitor's office, food, children, education and social care team; and Meryl Skene, parliamentary counsel.

Everyone should have a copy of the bill as introduced, the marshalled list of amendments and the groupings of amendments. There will be one debate on each group of amendments. I will call the member who lodged the first amendment in that group to speak to and move that amendment and to speak to all the other amendments in the group. Members who have not lodged amendments in the group but who wish to speak should indicate as much by catching my attention in the usual way. The debate on the group will be concluded by my inviting the member who moved the first amendment in the group to wind up.

Only committee members are allowed to vote, and voting in any division is by show of hands. As the committee is required to indicate formally that it has considered and agreed each section and schedule of the bill, I will put a question on each section at the appropriate point.

*Sections 1 to 7 agreed to.*

#### Section 8—Register of tobacco and nicotine vapour product retailers

**The Convener:** Amendment 13, in the name of Malcolm Chisholm, is grouped with amendments 14 to 16.

**Malcolm Chisholm (Edinburgh Northern and Leith) (Lab):** Although different views were

expressed on nicotine vapour products—or what are commonly called e-cigarettes—there was not a lot of disagreement about what is in the legislation. However, concerns were expressed about the register. Fundamentally, people who saw the positive side of e-cigarettes in relation to smoking cessation were concerned that the single register would result in a conflation of tobacco products and NVPs or e-cigarettes in the minds of the public.

There was a lot of discussion about that in the oral and written evidence, and the issue was picked up in the committee's stage 1 report. Cancer Research UK, which I am sure we all respect highly, went furthest, saying that it did not want a register at all, as it might send out negative messages about the potential of NVPs to help people to stop smoking and thereby improve their health. Other people expressed concerns in oral evidence; for example, Professor Linda Bauld, who has done a great deal of work in the area, said:

"I do not think that the same register should be used for sellers of NVPs and sellers of tobacco. It should certainly not be presented as the same register, because they are not the same products. We need to do much more to get rid of tobacco from Scottish society; we should definitely not focus on trying to get rid of e-cigarettes, because they might save some people's lives."

Moreover, Sheila Duffy, of ASH Scotland, another organisation that I am sure we all respect highly, said that she agreed

"that the register should look different for retailers who register to sell NVPs, because that might help to distinguish the products."—[*Official Report, Health and Sport Committee*, 1 September 2015; c 16.]

We heard and read quite a lot about this area, and we picked up on it in our committee report. In paragraph 59, we said:

"A number of submissions highlighted concerns about NVP retailers being included within the tobacco register as it could send a confusing message that NVPs are as harmful as tobacco. Some called for NVP retailers to be listed in an entirely separate register or for a register to be created for retailers of age restricted products."

In the next paragraph, we cited Community Pharmacy Scotland, which had highlighted what it saw as a practical problem in having a single register:

"The stigma of having to be on the tobacco retailers register will likely mean that many community pharmacies will choose not to supply NVPs. This will reduce the likelihood of 'vapers' coming into contact with trained healthcare staff who may be able to advise them on reducing their use of NVPs or encourage them to enter NHS smoking cessation services."

The committee's conclusion on the matter—and this will be my final citation—was:

"We have some sympathy with the view that NVPs should not be treated the same as tobacco by registering

on the same register given that the evidence indicates that NVPs are not as harmful as tobacco products and may help with smoking cessation. However, we also recognise the benefits of retaining the existing STRR”—

I am not quite sure what that stands for; I am just reading from the report—

“in terms of reducing bureaucracy and costs to retailers by building on existing practice.”

In a sense, I am trying to reflect in my amendments the committee’s conclusions, so I am certainly not going as far as Cancer Research UK would want to. I accept the principle of registration mainly because NVPs are an age-restricted product, and we all want to prevent young people and children from accessing them.

Given that there will be a register and that having two entirely separate registers might be, as the committee suggested, problematic, I am trying to ensure two things in my amendments. First, I am trying to make it clear that the register will have distinct parts. Section 8 amends the provisions in the Tobacco and Primary Medical Services (Scotland) Act 2010, which set up the register, to ensure that it covers NVPs as well as tobacco. My amendments would formally require the register to have separate parts, which would mean that someone would have to apply to be in a distinct part of the register. It is a modest proposal that does not go as far as many of the people giving evidence wanted to, but it is the least that we could expect to happen.

I have gone a bit further in my amendments to section 15, in which I again pick up a suggestion by the committee about creating a register of age-restricted products. Section 15 changes a number of sections and part titles to refer to the register of tobacco and NVP retailers: however, my amendments change that reference to

“retailers of age-restricted products”.

I admit that, in making that suggestion, the committee said that such a register should be created in the longer term, but when I reflected on the committee’s recommendations, I did not see why we could not call the register that and start such a register at this point.

My suggested register would have three parts to begin with, but it would be quite easy for subsequent legislation to add other parts. If from the start we called it a register of age-restricted products, it would deal with some of the problems that were described by those giving evidence. In that way, we would publicly avoid the conflation of NVPs and tobacco, which is what so many people giving evidence wanted to avoid.

I move amendment 13.

**Rhoda Grant (Highlands and Islands) (Lab):** I support the amendments. Concern was expressed

about whether people using NVPs to quit smoking would get the right support, given that it was seen as much more successful if people went to a pharmacy to get an NVP and the counselling and support that went with it. I know that pharmacists are concerned about being registered as tobacco retailers; they see their role as being health retailers rather than as retailers of something that is harmful to health. There is real concern in this area, and it will be interesting to hear what the minister has to say.

**The Minister for Public Health (Maureen Watt):** Amendment 13, which would require the register to comprise three parts, would have a practical impact on the register’s structure and therefore on the database that holds it. It would require the entries in the database for each type of business to be held together and separately from entries for other types of business, and that could restrict flexibility in managing the register and presenting it to the public.

I realise that Malcolm Chisholm has lodged amendment 13 in response to concerns raised at stage 1 by some in the NVP industry and some retailers that a single register might appear to conflate tobacco and NVPs. However, I do not believe that amendment 13 would alleviate those concerns. Whether or not amendment 13 is agreed to, the bill will retain the single register, the benefits of which, as recognised by the committee in its stage 1 report, will be reduced “bureaucracy” and reduced

“costs to retailers by building on existing practice.”

That said, I understand the concerns that have been expressed. As the committee knows, I have made a commitment to considering the outward-facing aspect of the register, and my officials will explore opportunities for providing a clear separation between the two products on the website where the register is held.

I understand that Mr Chisholm might also have lodged amendments 14 to 16 with the good intention of trying to alleviate the same concerns. However, changing the register’s title from

“Register of tobacco and nicotine vapour product retailers”

to

“Register of retailers of age-restricted products”

does not accurately reflect what the register will be. One might reasonably believe that those who see Mr Chisholm’s suggested title could expect the register to be a register of all retailers of age-restricted products, including alcohol, fireworks and a wide range of other products. That is likely to cause confusion. The title in the bill describes the content of the register accurately, and if we were to begin to include those other products, we would have to have a wide consultation, as it

would involve justice interests. This might be an attempt to future proof the bill, but I think that if there were a proposal in future to amend the bill to include other age-restricted products, the title of the register should be changed then.

As I have said, I understand the concerns that have been raised by some in the NVP industry and some retailers, which is why I have made a commitment to considering the issue during implementation. For those reasons, I ask the committee to reject amendments 13 to 16 in Malcolm Chisholm's name.

**Malcolm Chisholm:** I am pleased that the minister recognises that there is a problem, but her suggested solution of clearly separating the two products on the website is not a substantive response to it. As for her comment that amendment 13 would restrict flexibility with regard to how the register will be managed and presented to the public, all I can say is, well, restricting flexibility in how it will be presented to the public is what we are trying to do. The point of the amendment is to ensure that the register is presented in a certain way, not in another way. I will have to look further at the problem of flexibility of management that the minister has highlighted, but at the moment I am a little sceptical about it.

The minister referred to the concerns that have been raised by some in the NVP industry. She will notice that all the people whom I quoted had nothing to do with the NVP industry. They included Cancer Research UK, with all of its clinical and scientific expertise; Professor Linda Bauld, a professor of public health; and Sheila Duffy, the director of ASH Scotland. The concerns are not the industry's concerns but the concerns of those who want to promote health and stop people smoking tobacco. I will reflect further on the title "register of retailers of age-restricted products" and will, in particular, look into some of the issues that the minister raised in relation to alcohol and fireworks, because I think that there are different regimes for different products.

10:00

I will revisit the issue at stage 3. I am happy to reflect on what the minister has said and, if I can come up with a better way of dealing with the problem, I will aim to put that forward at stage 3. Failing that, I might lodge one or another of the amendments in this group at stage 3. I just wanted to highlight the problem today. I agree that it has no easy solution, but the committee would like to do something in response to the many concerns that have been expressed about it.

As I have committed to revisiting the subject at stage 3, I am happy to withdraw amendment 13 and not to move the others in the group.

**The Convener:** The minister has indicated that she wishes to come back in.

**Maureen Watt:** As I understand it, Malcolm Chisholm's amendments would affect only the database, not the register's presentation to the public. However, I am happy to meet him between now and stage 3 and go over the matter together.

**The Convener:** That is a constructive approach. I hope that the committee report will be reflected in those discussions and that we can make progress through them.

*Amendment 13, by agreement, withdrawn.*

*Section 8 agreed to.*

*Section 9 agreed to.*

### **Section 10—Tobacco and nicotine vapour product banning orders**

**The Convener:** Amendment 2, in the name of the minister, is in a group on its own.

**Maureen Watt:** Tackling counterfeit trade in tobacco products is recognised in, and forms part of, the Scottish Government's wider tobacco control strategy, which seeks to reduce the availability of counterfeit tobacco in Scotland. Under the amendment, a conviction that relates to the sale, possession and control of tobacco and NVPs where there is unauthorised use of a trademark will count as a relevant enforcement action that could result in the local authority applying to the sheriff for a banning order.

The aim of the offences under the Tobacco and Primary Medical Services (Scotland) Act 2010, as amended by the bill, is to reduce the accessibility and appeal of tobacco, smoking-related products and nicotine vapour products to children and non-smokers. Including such counterfeit offences will strengthen that aim. It will also contribute to our strengthening our approach to counterfeit tobacco as well as to our making further public health gains and meeting other public interest objectives.

At stage 1, the committee considered written evidence from, among others, the Society of Chief Officers of Trading Standards, Aberdeen City Council and the Fife health and wellbeing alliance that suggested that such offences should count as relevant enforcement actions. The amendment will support local authorities in strengthening enforcement action against irresponsible retailers who knowingly put the health of the public at risk and who continually flout the law.

Trading in counterfeit tobacco is a serious offence. Although the Scottish Government is not aware of trade in counterfeit NVPs, there is potential for such a market to grow in future. It therefore seems prudent to ensure that a conviction relating to the trade in counterfeit NVPs

can also be caught as a relevant enforcement action.

I move amendment 2.

*Amendment 2 agreed to.*

*Section 10, as amended, agreed to.*

*Sections 11 to 14 agreed to.*

**Section 15—Part 1 of the 2010 Act:  
miscellaneous**

*Amendments 14 to 16 not moved.*

*Section 15 agreed to.*

*Sections 16 to 20 agreed to.*

**The Convener:** That ends our stage 2 consideration of the bill for today. I remind members that amendments to the remainder of the bill should be lodged with the clerks in the legislation team by 12 noon this Thursday.

I thank the minister and her officials for their attendance this morning, and I suspend the meeting to allow the panel to leave.

10:06

*Meeting suspended.*

10:08

*On resuming—*

## **Subordinate Legislation**

### **Public Bodies (Joint Working) (Integration Joint Boards and Integration Joint Monitoring Committees) (Scotland) Amendment (No 2) Order 2015 (SSI 2015/432)**

**The Convener:** Agenda item 2 is consideration of two pieces of subordinate legislation, both of which are subject to the negative procedure.

On the first, no motion to annul has been lodged, and the Delegated Powers and Law Reform Committee has made no comments. I invite comments from members.

**Rhoda Grant:** I am slightly puzzled by the mention in the policy note of a consultation on the order, given that there is no information on what the consultation responses were. It is helpful for us when we consider an order to know what people have said about it.

When there has been a consultation on other instruments, we have usually received at least a summary of the responses. I am not talking about getting a long summary, just a note saying that no concerns were expressed about the instrument or whatever. It just seemed to me that although there was a fair amount of responses to the consultation there was no information about what was said.

**The Convener:** We can note that comment; in fact, we can, in retrospect, attempt to get some feedback. We can also make the point that in future it might be useful for us and our understanding to have such information.

**Rhoda Grant:** I also have a question of clarification about whether those who self-reported had a code of conduct that they would adhere to. Surely if it was up to them to decide whether they had a conflict of interest, there must have been a code of conduct to go along with such a decision. That has not been made clear either.

**The Convener:** We will take those comments into consideration. Does the committee agree to make no recommendations on the amendment order?

**Members** *indicated agreement.*

### **Food (Scotland) Act 2015 (Consequential Provisions) (No 2) Order 2015 (SSI 2015/433)**

**The Convener:** On the second instrument, no motion to annul has been lodged, and the

Delegated Powers and Law Reform Committee has made no comment on it.

10:11

*Meeting continued in private until 12:20.*

If members have no comments, does the committee agree to make no recommendations on the order?

**Members** *indicated agreement.*

**The Convener:** Thank you.

We now move to agenda item 3, which is consideration of our report on the Transplantation (Authorisation of Removal of Organs etc) (Scotland) Bill. As previously agreed, we will take this item in private.



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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