

Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee
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22 May 2024

Dear Mr. McMillan,

Thank you for your consideration of the Tobacco and Vapes Bill. I am responding as the Minister responsible for Tobacco and vapes policy.

In relation to clauses 43-45 of the Bill, you have asked:

The Committee asks the Scottish Government of its plans for consultation on the exercise of these powers given that much of the detail is to be implemented through regulations, and what consideration it has given to asking the UK Government to adding any such requirement on the face of the Bill.

As noted, the Bill contains regulation making powers for Scottish Ministers to regulate in these areas. The scope of any restrictions made under these regulations will need to be carefully considered, and so further analysis and consultation will take place before any specific restrictions are introduced to ensure they are effective and proportionate in Scotland.

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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We do not believe it is necessary to include a requirement to consult on the face to Bill. We have made clear our commitment to consult on new proposals before these powers are exercised.

Given the significance of the powers, any Regulations would be subject to the affirmative procedure, ensuring that the legislation can be closely scrutinised, debated and approved by the Scottish Parliament.

It should be noted that the Bill is currently progressing through UK Parliament, and will shortly begin report stage. As the Bill progresses through UK Parliament, proposed amendments in relation to these powers may be considered in further detail.

If amendments are made to the Bill which are “relevant” under the Parliament’s Standing Orders, then a supplementary Legislative Consent Memorandum (LCM) will be submitted.

In relation to clauses 58-60 and 61-63, you have asked:

The Committee asks the Scottish Government to confirm whether it considers these powers will fall within the scope of SI Protocol 2 and whether it is content to add those powers to Annex A of SI Protocol 2?

If that is not the Scottish Government’s position, can it explain how it will facilitate the scrutiny of its decision to consent to the making of regulations under these powers within devolved competence?

On clauses 58-60, it should be noted that the Bill repeals and re-enacts (with minor modifications) existing powers in the Children and Families Act 2014 (the 2014 Act), so that the Secretary of State can make regulations about the retail packaging, flavours and product requirements of tobacco products.

As was the case with the powers in the 2014 Act, the powers are for the Secretary of State to make regulations, however the consent of Scottish Ministers is required if regulations make provision which is within devolved competence. We will continue to work across the four nations on any changes that may progress on this area.

On clauses 61-63, the Bill gives the Secretary of State powers to make regulations about the retail packaging, flavours and product requirements of vaping products or nicotine products, similar to the existing powers for tobacco. Again, regulations cannot be made for Scotland without the consent of Scottish Ministers.

There are a number of significant benefits to pursuing a collaborative approach and bringing forward a UK-wide Bill. This will help to ensure, as far as possible, a consistent public health approach across the UK in relation to tobacco and vape regulation. This has support of the 4 CMOs across the UK, with them highlighting that working together on this approach will have a profound generational impact.

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This consistency will also benefit business and aid enforcement considerably, limiting impacts on cross-UK trade and allowing for alignment of implementation timescales. This is in line with one of the key recommendations from our New Deal for Business Group, which asked us to consider alignment where policies will have an impact on businesses operating across the UK. UK-wide regulation in this area will also help to minimise the impact on trade and avoid any issues that might arise under the UK Internal Market Act.

Following careful consideration, we do not consider that these clauses fall within scope of SI Protocol 2 and would not be content to add these powers to Annex A of SI Protocol 2.

We recognise the essential role which the Scottish Parliament plays in scrutinising regulations within devolved competence, and we are happy to facilitate the scrutiny of Scottish Government's decision to consent to the making of regulations in these areas. We have worked closely with the UK and other Devolved Governments on the development of this Bill to ensure that it reflects and takes forward our priorities and intend to continue this close collaboration during its implementation, including through the development of regulations.

As part of this collaborative approach, we are committed to keeping the Health, Social Care and Sport Committee informed of the publication of consultations and consultation responses related to these regulations, where possible, in a similar way to our engagement on the four nations consultation for the Bill - "[Creating a smokefree generation and tackling youth vaping](#)".

We will also continue to ensure that the Health, Social Care and Sport Committee are informed of any decisions made on the regulations and would be happy to engage with Committee should they have any questions about regulations which contain devolved provision.

I have copied the Convener for the Health, Social Care and Sport Committee into this response, and welcome your constructive engagement on this proposed approach.

Yours sincerely,

Jenni Minto MSP

CC: Convener, Health Social Care and Sport Committee

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