



Northern Ireland  
Assembly

# Research and Information Service (RaISe) Bill Paper

---

6 January 2016

**Dr Lesley-Ann Black**

## Health (Miscellaneous Provisions) Bill 2015

**NIAR 686-2015**

This paper examines the key provisions of the *Health (Miscellaneous Provisions) Bill 2015* as introduced by the Department of Health, Social Services and Public Safety (DHSSPS) in Northern Ireland, and highlights some areas for further consideration.

Paper 09/16

6 January 2016

Research and Information Service briefings are compiled for the benefit of MLAs and their support staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public. We do, however, welcome written evidence that relate to our papers and these should be sent to the Research and Information Service, Northern Ireland Assembly, Room 139, Parliament Buildings, Belfast BT4 3XX or e-mailed to [RLS@niassembly.gov.uk](mailto:RLS@niassembly.gov.uk).

**Nothing in this paper constitutes legal advice or should be used as a replacement for such**



# Contents

Key points .....	4
<b>1. Introduction .....</b>	<b>6</b>
1.1 Timeline of Bill developments.....	6
<b>2. Background: Nicotine products and young people .....</b>	<b>8</b>
2.1 Smoking .....	8
2.2 The rise of e-cigarettes as an alternative to smoking .....	8
2.3 E-cigarettes: A gateway in - or a pathway out? .....	9
2.4 Unknown health impacts .....	10
2.5 Position on e-cigarettes: UK and Republic of Ireland .....	11
<b>3. Bill overview .....</b>	<b>13</b>
<b>4. Part 1: Sale of nicotine products and tobacco .....</b>	<b>13</b>
4.1 Consultation responses in relation to Part 1 of the draft Bill .....	15
4.2 Changes to the Bill following the consultation exercise .....	16
<b>5. Part 2: Miscellaneous Provisions .....</b>	<b>17</b>
5.1 Background to Part 2 .....	17
5.2 Dental, ophthalmic and pharmaceutical services: current situation.....	18
5.3 Amendments to dental legislation .....	18
5.4 Amendments to general ophthalmic and pharmaceutical services .....	20
5.5 Powers of Tribunal for dental, ophthalmic and pharmaceutical services.....	21
5.6 Charges for services to persons not ordinarily resident in Northern Ireland.....	22
5.7 Consultation responses on the Miscellaneous Provisions (Part 2) .....	22
<b>6. Part 3: General.....</b>	<b>22</b>
6.1 Other possible implications of the Bill.....	23
<b>7. Health Committee call for evidence on the Bill .....</b>	<b>23</b>
Appendix 1: List of Consultation Respondents .....	26

## Key points

- On 30 November 2015, the Minister for Health, Social Services and Public Safety introduced the Health (Miscellaneous Provisions) Bill (“the Bill”) to the Northern Ireland Assembly. The Bill consists of 16 clauses and contains three parts and two schedules.

### Part 1 of the Bill

- Part 1 of the Bill contains provisions dealing with nicotine products that will enable the DHSSPS to:
  - make regulations prohibiting the sale of nicotine products to under 18s;
  - create an offence for proxy purchasing, in other words, an adult purchasing a nicotine product on behalf of a minor;
  - develop regulations in relation to banning the sale of e-cigarettes from vending machines;
  - raise the level of fine for sales of tobacco from vending machines to a level 5 fine, ensuring fines for all underage tobacco or e-cigarette sales offences are consistent.
- A key provision within Part 1 of the Bill is to restrict the age of sale of nicotine products - primarily e-cigarettes, in order to protect children from the risks of nicotine addiction. However the term “e-cigarette” is not used anywhere in the Bill.
- Use of e-cigarettes has grown rapidly in recent years and they are a popular alternative to tobacco cigarettes. They are mostly used by smokers and ex-smokers to help them reduce the amount they smoke, or as an aid to help them stop smoking completely. Some e-cigarettes contain nicotine and some do not.
- Whilst the use of e-cigarettes amongst young people is not widespread, awareness of them is increasing. Tentative evidence suggests that e-cigarette use could represent a new form of childhood experimentation with nicotine. There are also concerns over the lack of regulation and control of the ingredients they contain. However, more research is required to determine whether e-cigarettes serve as a gateway to tobacco use, or indeed whether they are effective in helping young people reduce the amount they smoke. Further research is also warranted to establish the health implications of using e-cigarettes.
- The definition of ‘nicotine products’ within Part 1 of the Bill covers:
  - devices (or parts of these devices) which are intended to enable nicotine to be consumed by an individual or otherwise to be delivered into the human body; and
  - substances or items which consist of or contain nicotine and which are intended for human consumption (or otherwise to be delivered into the human body).

- Part 1 largely reflects the nicotine products regulations adopted by England and Wales which are contained within the Children and Families Act 2014. Furthermore, all jurisdictions in the UK and the Republic of Ireland have, or are in the process of introducing legislation to prohibit the sale of e-cigarettes to under 18s. Some jurisdictions are considering additional measures. For example, The National Assembly for Wales is considering a Bill to prohibit the use of e-cigarettes in enclosed public places.

#### Part 2 of the Health (Miscellaneous Provisions) Bill

- The second part of the Bill amends anomalies in the Health (Miscellaneous Provisions) Act (Northern Ireland) 2008 (“the 2008 Act”). The 2008 Act amends, amongst other provision, Part 6 of the Health and Personal Social Services (Northern Ireland) Order (1972). Part 6 concerns the provision of dental, ophthalmic and pharmaceutical healthcare services, and charges for services to persons not ordinarily resident in NI.
- The amendments to Part 2 of the Bill are mainly technical in nature. For example, they will correct references to the various categories of people and bodies responsible for providing dental, ophthalmic and pharmaceutical services.
- The DHSSPS has posited that the amendments in the Bill do not affect the original policy intentions of the 2008 Act, but will instead enable these to be fulfilled.

#### Part 3 of the Health (Miscellaneous Provisions) Bill

- Part 3 of the Bill contains clauses to support Parts 1 and 2 of the Bill and other details - such as the meaning of certain phrases, subordinate legislation processes, the Bill title, and commencement dates for specific powers to be introduced.

#### Consultation and debate

- In 2014, the DHSSPS consulted on a draft Health (Miscellaneous Provisions) Bill. In total, 26 responses were received. Whilst there was broad support for the proposals, the majority of consultation respondents only replied to questions about Part 1 of the Bill (relating to nicotine products).
- The Second Stage debate of the Bill was held in the Northern Ireland Assembly on 8 December 2015. Only Part 1 of the Bill was debated by MLAs. During the debate, the Minister also announced his intention to bring forward an amendment to ban smoking in cars carrying children. This provision was omitted from the Bill as introduced, but had previously been advocated by some consultation responses and by the Committee for Health, Social Services and Public Safety during its briefings with the DHSSPS.

# 1. Introduction

On 30 November 2015, the Minister for Health, Social Services and Public Safety introduced the Health (Miscellaneous Provisions) Bill (“the Bill”) to the Northern Ireland Assembly.

The purpose of the Bill concerns two main areas:

1) to make changes to the legislation to allow for:

- regulations to prohibit the sale of nicotine products, including e-cigarettes<sup>1</sup> to those under 18; and to

2) correct terminology within the existing Health (Miscellaneous Provisions) Act (NI), 2008 which will enable the Department to achieve its legislative intentions regarding:

- the introduction of the new dental contract;
- the application procedure for the provision of ophthalmic and pharmaceutical services; and,
- exemptions for charges of services for those not ordinarily resident in Northern Ireland which will be re-instated in the legislation.<sup>2</sup>

## 1.1 Timeline of Bill developments

- ◆ **16 May 2013:** the Northern Ireland Executive agrees to drafting a Bill to amend the Health (Miscellaneous Provisions) Act 2008.
- ◆ **27 February 2014:** the Executive agrees to include additional provisions in the Bill relating to the age of sale of nicotine products.
- ◆ **1 September - 21 November 2014:** the Department of Health, Social Services and Public Safety (DHSSPS) consults on a draft Bill and draft Explanatory and Financial Memorandum (EFM).<sup>3</sup> Twenty-six responses were received. On **1 October 2014**, the DHSSPS briefs the Committee for Health, Social Services and Public Safety on the provisions of the Bill relating to the age of sale provisions for nicotine products.
- ◆ **February 2015:** the DHSSPS publishes a summary report of the consultation findings, which showed broad support for the draft Bill.<sup>4</sup> **Two substantive changes** were made to the Bill following the consultation. One is to prevent the sale of e-cigarettes from vending machines; the other is to increase to a level fine 5 both tobacco *and* nicotine sales, should an offence occur.<sup>5</sup>
- ◆ **23 September 2015:** the DHSSPS briefs the Committee for Health, Social Services and Public Safety on the Bill’s proposals.<sup>6</sup> However, the Committee indicates that the Bill should contain an enabling provision for the legislation to permit regulations

<sup>1</sup> Also known as electronic cigarettes or electronic nicotine delivery systems (ENDS).

<sup>2</sup> DHSSPS Briefing paper for HSSPS Committee – The Health (Miscellaneous Provisions) Bill.

<sup>3</sup> DHSSPS Briefing paper for HSSPS Committee – The Health (Miscellaneous Provisions) Bill.

<sup>4</sup> DHSSPS Proposal for a Draft Bill (February 2015). The Health (Miscellaneous Provisions) Bill. most of the responses related to part 1 of the bill,

<sup>5</sup> DHSSPS Briefing paper for HSSPS Committee – The Health (Miscellaneous Provisions) Bill.

<sup>6</sup> NI Assembly Official Report (23 September 2015). Health (Miscellaneous Provisions) Bill: Departmental Briefing

banning smoking in cars carrying children.<sup>7</sup> However, such provision has not been incorporated into the Bill at this stage.

- ◆ **22 November 2015:** the First Minister and Deputy First Minister agree to an urgent decision request to introduce the Bill in the Northern Ireland Assembly.
- ◆ **30 November 2015:** the Health Minister, Simon Hamilton introduces the Bill in the Northern Ireland Assembly.<sup>8</sup>
- ◆ **8 December 2015:** the Second Stage debate is held. **The Health Minister confirms that he now intends to bring forward an amendment to the Bill at Consideration Stage. If agreed by the Assembly, the amendment will ban smoking in cars carrying children.**<sup>9</sup> Another amendment to the Bill, concerning a levy on sugar-sweetened drinks (a sugar tax) was also proposed.<sup>10</sup>
- ◆ **1-15 December 2015:** The Committee for Health, Social Services and Public Safety places a call for evidence to assist with its scrutiny of the Bill. Ten written submissions from a number of stakeholders are received.

---

<sup>7</sup> Ibid p3.

<sup>8</sup> A copy of the Bill and its accompanying Explanatory and Financial Memorandum is available online at: <http://www.niassembly.gov.uk/assembly-business/legislation/primary-legislation-current-bills/health-miscellaneous-bill/>

<sup>9</sup> NI Assembly, 8.12.15 HSSPS Minister statement on the Health (Miscellaneous Provisions) Bill.

<sup>10</sup> NI Assembly Health (Miscellaneous Provisions) Bill: Notice of Amendments tabled on 9 December 2015 for Consideration Stage.

## 2. Background: Nicotine products and young people

The DHSSPS considers the Health (Miscellaneous Provisions) Bill as the most appropriate way for regulations to be made to prohibit the sale of nicotine products to children and young people.<sup>11</sup> This section of the paper considers the background to this issue in more detail.

### 2.1 Smoking

Smoking is the single greatest cause of preventable illness and premature death in Northern Ireland, killing around 2,300 people each year.<sup>12</sup> Smoking is highly addictive because tobacco contains the potent drug nicotine.<sup>13</sup> In Northern Ireland today, one in four of the adult population smokes<sup>14</sup> and estimates suggest that 5% of 11-16 year olds are regular smokers.<sup>15</sup> Four out of five (83%) adult smokers started in their teens,<sup>16</sup> meaning many become addicted to tobacco products by the time they are 18 years old. Moreover, adults who started smoking as children are three times more likely to die of cancer than those who start smoking in their mid-twenties.<sup>17</sup> There are also other known adverse effects of nicotine exposure in young people, for example – an increase in respiratory problems.<sup>18</sup>

### 2.2 The rise of e-cigarettes as an alternative to smoking

With the introduction of a ban on smoking in enclosed public places and workplaces<sup>19</sup> and an increase in the minimum age of sale for tobacco products from 16 to 18 in Northern Ireland,<sup>20</sup> popularity of alternative nicotine products, especially e-cigarettes, has grown rapidly in recent years. In 2015, a survey of over 2,000 young people in the UK showed that around 13% of 11-18 year olds reported that they had tried an e-cigarette.<sup>21</sup> Yet currently, there are no age restrictions on selling these types of

---

<sup>11</sup> DHSSPS (2014) The Health (Miscellaneous Provisions) Bill. Consultation on Health Miscellaneous Provisions Bill NI. Consultation document, p22.

<sup>12</sup> DHSSPS (2012) Ten Year Tobacco Control Strategy for Northern Ireland. Available online at: <https://www.dhsspsni.gov.uk/sites/default/files/publications/dhssps/tobacco-control-10-year-strategy.pdf> Website accessed 7.12.15

<sup>13</sup> Cancer Research UK. How smoking causes cancer. <http://www.cancerresearchuk.org/about-cancer/causes-of-cancer/smoking-and-cancer/how-smoking-causes-cancer> Website accessed 18.11.15

<sup>14</sup> NI Direct website: Health Minister Edwin Poots has welcomed the passing of the final stage of the Tobacco Retailers Bill through the Assembly today. Available online at: <http://www.northernireland.gov.uk/news-dhssps-18022014-health-minister-welcomes> Website accessed 19.11.15

<sup>15</sup> DHSSPS: Your health matters (2014) The Annual Report of the Chief Medical Officer in Northern Ireland. Available online at: <https://www.dhsspsni.gov.uk/sites/default/files/publications/dhssps/cmo-annual-report-2014.pdf> p15. Website accessed 19.11.15

<sup>16</sup> Chest, Heart and Stroke. School and Community Health Programme. Available online at: <http://www.nichs.org.uk/cmsfiles/Schools/Schools-and-Community-Health-Programme-leaflet-for-web.pdf> p2. Website accessed 20.11.15

<sup>17</sup> Association of Public Health Observatories. Young People's Report. Available online at: <http://www.ncb.org.uk/pear/research-and-public-health/association-of-public-health-observatories> p2. Website accessed 25.11.15

<sup>18</sup> WHO: Health effects of smoking among young people. Available online: [http://www.who.int/tobacco/research/youth/health\\_effects/en/](http://www.who.int/tobacco/research/youth/health_effects/en/)

<sup>19</sup> The Smoking (Northern Ireland) Order 2006.

<sup>20</sup> The Children and Young Persons (Sale of Tobacco) Regulations (Northern Ireland) 2008.

<sup>21</sup> Action on Smoking and Health (ASH) March 2015. GB smoke-free youth survey (11-18 years) commissioned by YouGov. [http://www.ash.org.uk/files/documents/ASH\\_959.pdf](http://www.ash.org.uk/files/documents/ASH_959.pdf)



products to young people. As a result, the primary policy intention of Part 1 of the Bill is to prevent or restrict young people from accessing them.<sup>22</sup>

E-cigarettes are known as ‘vaping products’.<sup>23</sup> Since there is no smoke, inhaling and exhaling the contents of an e-cigarette is often referred to as “vaping”, not smoking. Some mimic conventional cigarettes, while others appear more like an electronic device.<sup>24</sup> These devices come in many shapes and sizes; some are battery operated with refills available, whilst others are disposable. The term “e-cigarette” can be confusing, because unlike cigarettes, they do not burn tobacco.<sup>25</sup> Instead, these devices use a heating element to warm up a liquid solution – known as an e-liquid.<sup>26</sup> This liquid is released and inhaled. It may or may not contain nicotine and/or other chemicals and flavours. Instead of exhaling a cloud of smoke, the user mostly exhales a water vapor.

E-cigarettes offer an alternative to tobacco cigarettes. Their purpose is mainly for use by smokers and ex-smokers to help reduce reliance on cigarettes or to desist from smoking altogether. E-cigarettes are sometimes permitted in smoke-free places, hence their attractiveness to many smokers and those trying to give up.

Yet e-cigarettes are not regulated in terms of their safety, and currently there is no control in terms of the ingredients they consist of.<sup>27</sup> Likewise labels are not always reflective of the actual levels of nicotine contained; nor have most been independently tested. From May 2016, the EU Tobacco Products Directive will require that all nicotine-containing products (including e-cigarettes) which contain less than 20 mg per millilitre of nicotine are regulated as consumer products.<sup>28</sup> However, the Directive does not include a requirement around restricting sale to those under 18, but it will require manufacturers to report on the ingredients and emissions from e-cigarettes and provide restrictions on advertising and promotion.<sup>29</sup>

### 2.3 E-cigarettes: A gateway in - or a pathway out?

There have been a number of concerns that the vibrant colours and flavours of e-cigarettes are glamourising e-cigarette products and making them appeal to a younger audience.<sup>30</sup> Whilst e-cigarette manufacturers do not recommend their sale to under-

<sup>22</sup> DHSSPS Briefing to Committee for Health, social Services and Public Safety 1 October 2014.

<sup>23</sup> This includes inhaling and exhaling the vapour produced by an electronic cigarette or a similar device.

<sup>24</sup> BMA Website Tobacco and e-cigarettes. Available online at: <http://bma.org.uk/working-for-change/improving-and-protecting-health/tobacco/e-cigarettes> Website accessed 3.12.15

<sup>25</sup> Ash website: Will you permit or prohibit electronic cigarette use on your premises? Available online at: [http://www.ash.org.uk/files/documents/ASH\\_900.pdf](http://www.ash.org.uk/files/documents/ASH_900.pdf) p1. Website accessed 25.11.15

<sup>26</sup> E-liquids usually contain propylene glycol, glycerin, nicotine, and flavorings.

<sup>27</sup> Public Health Agency (30 May 2014) Position Statement on E-cigarettes. Available online at: [http://www.publichealth.hscni.net/sites/default/files/directorates/files/pha\\_electronic\\_cigarettes\\_position\\_statement\\_may\\_2014\\_0.pdf](http://www.publichealth.hscni.net/sites/default/files/directorates/files/pha_electronic_cigarettes_position_statement_may_2014_0.pdf) Website accessed 25.11.15

<sup>28</sup> NI Assembly Official Report: Second Stage Debate. Minister Hamilton: The Health (Miscellaneous Provisions) Bill. Available at: <http://aims.niassembly.gov.uk/officialreport/report.aspx?&amp;eveDate=2015/12/08&docID=251987#1772194>

<sup>29</sup> Manufacturers who intend to promote their products as smoking cessation aids, or to sell products which contain more than 20mg/ml of nicotine will need to apply to the MHRA for medicines regulation.

<sup>30</sup> Cancer Focus (2104) Response to the Health (Miscellaneous Provisions) Bill Consultation.

18s, and some retailers impose their own age restrictions,<sup>31</sup> the lack of regulatory oversight has increased the likelihood of e-cigarettes being purchased by children and young people.

However, although the use of e-cigarettes by those who have never smoked is very low (around 1% of never-smokers in a 2013 survey reported ever trying an e-cigarette),<sup>32</sup> there are concerns that e-cigarettes and other nicotine-containing products could act as a gateway into smoking and promote the normalisation of smoking – a trend that was previously declining.<sup>33</sup> It has been suggested that as children are especially vulnerable, they could become addicted to nicotine inhaled through e-cigarettes, which could then lead on to smoking other forms of tobacco.<sup>34</sup>

In contrast, some experts welcome e-cigarettes as a pathway to a reduction of tobacco smoking and the negative health impacts (such as cancer) they are associated with.<sup>35</sup> It has also been suggested that e-cigarettes have significant potential to help smokers quit by delivering nicotine in a way that appears to be safer than smoking cigarettes.<sup>36</sup> This in turn, could be contributing to an overall decline in the consumption of tobacco products.

## 2.4 Unknown health impacts

The health implications of nicotine-containing products are the subject of much debate:

A recent evidence review conducted by Public Health England suggested that e-cigarettes are 95% less harmful than tobacco cigarettes.<sup>37</sup>

In 2014, a World Health Organisation (WHO) report expressed concerns that “although e-cigarettes are likely to be less toxic than conventional cigarettes, e-cigarette use poses threats to adolescents and fetuses of pregnant mothers using these devices”.<sup>38</sup> The WHO has urged countries to introduce tougher regulations on the use of e-cigarettes that would include banning the use of such devices indoors and preventing their sale to minors.<sup>39</sup>

Other, more limited research, suggests that e-cigarettes, even those that *do not* contain nicotine, can inflame and damage the lungs.<sup>40</sup> In addition, poorly constructed devices

---

<sup>31</sup> BMA (2014) Response to the Health (Miscellaneous Provisions) Bill Consultation.

<sup>32</sup> Dockrell, M., et al. (2013) E-Cigarettes: Prevalence and attitudes in Great Britain. *Nicotine & Tobacco Research*, 15(10):p.1737-1744

<sup>33</sup> BMA (2014) Response to the Health (Miscellaneous Provisions) Bill Consultation.

<sup>34</sup> DHSSPS: Your health matters (2014) The Annual Report of the Chief Medical Officer in Northern Ireland. Available online at: <https://www.dhsspsni.gov.uk/sites/default/files/publications/dhssps/cmo-annual-report-2014.pdf> Website accessed 2.12.15

<sup>35</sup> WHO Report 2014. Electronic nicotine delivery systems. Available online at:

[http://apps.who.int/gb/ctc/pdf/cop6/CTC\\_COP6\\_10-en.pdf?ua=1](http://apps.who.int/gb/ctc/pdf/cop6/CTC_COP6_10-en.pdf?ua=1) Website accessed 3.12.15

<sup>36</sup> Cancer Research UK blog 2014: the promises and challenges of e-cigarettes - the story continues to unfold

<http://scienceblog.cancerresearchuk.org/2014/08/29/the-promise-and-challenges-of-e-cigarettes-the-story-continues-to-unfold/>

<sup>37</sup> McNeill A et al (August 2015). E-cigarettes: an evidence update. A report commissioned by Public Health England, 2015

<sup>38</sup> WHO Report on regulation of e-cigarettes and similar products. Available online at:

<http://www.who.int/nmh/events/2014/backgroundunder-e-cigarettes/en/> Website accessed 2.12.15

<sup>39</sup> British Medical Journal (2014) WHO calls for ban on e-cigarette use indoors; Available online at:

<http://www.bmj.com/content/349/bmj.g5335>

<sup>40</sup> American Physiological Society (May 2015) E-Cigarette Vapor- Even when nicotine-free, found to damage lung Cells.

Available online at: <http://www.the-aps.org/mm/hp/Audiences/Public-Press/2015-25.html> Website accessed 3.12.15

can result in the vapour producing dangerous levels of potentially hazardous chemicals - such as nickel and lead alloy particles.<sup>41</sup>

It is also unknown what damage is caused from non-users inhaling second-hand vapour, leading some commentators to argue that the health of all should be better protected.

As the evidence base for or against e-cigarettes is currently limited,<sup>42</sup> and their safety remains largely unproven, more extensive research is required both to determine whether e-cigarettes serve as a gateway to tobacco use, and to establish the health implications of e-cigarettes.

## **2.5 Position on e-cigarettes: UK and Republic of Ireland**

This section of the paper highlights the position in the rest of the UK and the Republic of Ireland. These jurisdictions have recently introduced legislation which restricts the purchasing and selling of e-cigarettes; however each jurisdiction has included its own additional measures. For example, England and Wales, the Republic of Ireland, and Scotland<sup>43</sup> have included a ban on smoking in vehicles carrying anyone under 18; Scotland and the Republic of Ireland are requiring nicotine product retailers to formally register themselves; Wales and the Republic of Ireland are also considering extending a ban on e-cigarettes to enclosed public places. Table 1 provides further information about these measures in more detail.

---

<sup>41</sup> Professor John Crown, cited in the Belfast Telegraph (January 2015). E-cigarettes ban proposed for Republic of Ireland. Available online at: <http://www.belfasttelegraph.co.uk/news/republic-of-ireland/ecigarettes-ban-proposed-for-republic-of-ireland-30950971.html> Website accessed 2.12.15

<sup>42</sup> BMA Website Tobacco and e-cigarettes. Available online at: <http://bma.org.uk/working-for-change/improving-and-protecting-health/tobacco/e-cigarettes> Website accessed 25.11.15 Website accessed 2.12.15

<sup>43</sup> In Scotland the ban on smoking in cars carrying children is being introduced under a separate piece of legislation- the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill. <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/84734.aspx>

**Table 1. Legislation in the UK and Republic of Ireland relating to e-cigarettes**

Jurisdiction	Legislation regarding e-cigarettes and related tobacco issues
<b>England and Wales</b>	<p><b>Children and Families Act 2014</b><sup>44</sup> – contains regulation powers<sup>45</sup> that make it illegal for:</p> <ul style="list-style-type: none"> <li>▪ retailers to sell e-cigarettes or e-liquids to someone under 18;</li> <li>▪ adults to buy (or try to buy) tobacco products or e-cigarettes for someone under 18 (i.e. proxy purchasing);</li> <li>▪ anyone to smoke in private vehicles that are carrying someone under 18;</li> </ul> <p>In addition, in June 2015, the <b>Public Health (Wales) Bill</b><sup>46</sup> was introduced into the National Assembly for Wales with the aim of banning the use of e-cigarettes in enclosed public places. The proposals aim to: protect the public from the unknown health consequences of passive “vaping”, to ensure smoking is not re-normalised, and to not undermine the current smoking ban in place. However, these proposals have been subject to much debate. Provisions also include for;</p> <ul style="list-style-type: none"> <li>- a national register of retailers of tobacco and nicotine products; and</li> <li>- adding to offences which contribute to a restricted premises order (which prohibits sale of tobacco from premises).</li> </ul>
<b>Scotland</b>	<p><b>The Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill</b> was first introduced in the Scottish Parliament in June 2015. Amongst other provisions, the Bill aims to:</p> <ul style="list-style-type: none"> <li>▪ restrict the sale of nicotine vapour products (NVP) such as e-cigarettes - including a minimum purchase age of 18;</li> <li>▪ prohibit their sale from vending machines;</li> <li>▪ make it an offence to purchase an NVP on behalf of someone under 18;</li> <li>▪ a requirement for NVP retailers to register on the tobacco and nicotine vapour product retailer register;</li> <li>▪ restrict or prohibit domestic advertising and promotions; and</li> <li>▪ place further controls on the sale of tobacco.<sup>47</sup></li> </ul> <p>A ban on smoking in cars carrying children is being introduced under separate legislation - the <b>Smoking Prohibition (Children in Motor Vehicles) (Scotland) Bill</b>.</p>
<b>Republic of Ireland</b>	<p>In 2014, the government in the Republic of Ireland consulted on proposals to restrict the age of sale of non-medicinal nicotine delivery systems including e-cigarettes.<sup>48</sup> Since then, the <b>Public Health (Regulation of Electronic Cigarettes and Protection of Children) Bill 2015</b> has been introduced in the Oireachtas. If passed, it will:</p> <ul style="list-style-type: none"> <li>▪ prohibit the sale of e-cigarettes to under-18s;</li> <li>▪ prohibit the consumption of e-cigarettes in vehicles carrying children under 18;</li> <li>▪ prohibit the advertising and consumption of e-cigarettes in public places and workplaces;</li> <li>▪ provide for the registration of persons engaged in the business of selling electronic cigarettes by retail;</li> <li>▪ provide for the standardised packaging of electronic cigarettes,</li> <li>▪ provide for the insertion of child proof caps on liquid nicotine bottles.<sup>49</sup></li> </ul>

<sup>44</sup> Legislation.gov.uk. Children and Families Act 2014. Available online at: <http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted> Website accessed 29.11.15

<sup>45</sup> <http://www.legislation.gov.uk/ukdsi/2015/9780111130568>

<sup>46</sup> National Assembly for Wales website. Public Health (Wales) Bill <http://www.senedd.assembly.wales/mglIssueHistoryHome.aspx?Ild=12763> Website accessed 27.11.15

<sup>47</sup> SPICe Briefing: The Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill.

<sup>48</sup> Department of Health (Ireland) Public consultation on legislation in relation to the sale of tobacco products and non-medicinal nicotine delivery systems. Available online at: [http://health.gov.ie/wp-content/uploads/2014/12/Consultation-Paper-28-November-2014\\_NEW.pdf](http://health.gov.ie/wp-content/uploads/2014/12/Consultation-Paper-28-November-2014_NEW.pdf) Website accessed 2.12.15

<sup>49</sup> Public Health (Regulation of Electronic Cigarettes and Protection of Children) Bill 2015. Available online at: <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2015/1715/document1.htm> Website accessed 3.12.15

### 3. Bill overview

The Health (Miscellaneous Provisions) Bill comprises of 16 clauses, two Schedules, and is divided into three parts. It is accompanied by an Explanatory and Financial Memorandum (EFM).<sup>50</sup> The various parts of the Bill are discussed below.

### 4. Part 1: Sale of nicotine products and tobacco

This section considers Part 1 of the Bill: *Sale of nicotine products and tobacco*, and its associated consultation responses. Part 1 of the Bill contains 5 clauses which are largely a read across from section 92 of the Children and Families Act (England and Wales, 2014).<sup>51</sup>

**Clause 1** of the Bill provides for the DHSSPS to make regulations to: prohibit the sale of nicotine products (including e-cigarettes) to those under 18 years of age.<sup>52</sup> The term e-cigarette is, however, not mentioned anywhere in the Bill. Under clause 1(2), a person who sells a nicotine product to a person under 18 years old is guilty of an offence.<sup>53</sup> The Bill states that the person must have taken all reasonable precautions and due diligence to avoid committing the offence.<sup>54</sup> If the person is found guilty of an offence, they are liable on summary conviction of a fine not exceeding level 5 on the standard scale (up to £5000).<sup>55</sup> However, there is an exemption for those who are employed by a manufacturer or dealer of nicotine products, and where the purchase of the product is for the purposes of their business.<sup>56</sup> The Bill also enables the DHSSPS to make regulations that will mean it is an offence for a person to purchase such products on behalf of someone under 18 (also known as “proxy purchasing”).<sup>57</sup>

**Clause 2** of the Bill enables the DHSSPS to make regulations to prohibit the sale of nicotine products from vending machines.<sup>58</sup> Regulations will detail the person(s) who are liable, should such sales occur.<sup>59</sup> A person who is guilty of an offence in relation to this is liable on summary conviction of a fine not exceeding level 5.<sup>60</sup>

**Clause 3** of the Bill describes how Schedule 1 of the Bill<sup>61</sup> will make a number of consequential amendments to Article 6 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991. This will apply the enforcement regime used presently for tobacco age of sale offences, to offences listed under Clauses 1 and

<sup>50</sup> The Health (Miscellaneous Provisions) Bill. Explanatory and Financial Memorandum (EFM). Available online at: <http://www.niassembly.gov.uk/globalassets/documents/legislation/bills/executive-bills/session-2015-2016/health-misc-provisions/health-misc-prov-efm---as-introduced.pdf> Website accessed 7.12.15

<sup>51</sup> Legislation.gov.uk. Children and Families Act 2014. Available online at: <http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>

<sup>52</sup> The Health (Miscellaneous Provisions) Bill. Part 1, Clause 1(1).

<sup>53</sup> The Health (Miscellaneous Provisions) Bill. Part 1, Clause 1(2).

<sup>54</sup> The Health (Miscellaneous Provisions) Bill. Part 1, Clause 1(4).

<sup>55</sup> The Health (Miscellaneous Provisions) Bill. Part 1, Clause 1 (5).

<sup>56</sup> <http://www.legislation.gov.uk/ukpga/1982/48/part/III/crossheading/introduction-of-standard-scale-of-fines>

<sup>57</sup> The Health (Miscellaneous Provisions) Bill. Explanatory and Financial Memorandum (EFM), p5.

<sup>58</sup> The Health (Miscellaneous Provisions) Bill. Part 1, Clause 1 (6).

<sup>59</sup> The Health (Miscellaneous Provisions) Bill. Part 1, Clause 2 (1).

<sup>60</sup> The Health (Miscellaneous Provisions) Bill. Part 1, Clause 2 (2).

<sup>61</sup> The Health (Miscellaneous Provisions) Bill. Part 1, Clause 4.

<sup>61</sup> The Health (Miscellaneous Provisions) Bill. Schedule 1

2 of the Bill.<sup>62</sup> Amendments will also be made to the Tobacco Retailers Act (Northern Ireland) 2014. This will allow for offences in relation to the underage sale of nicotine products to be included as an offence<sup>63</sup> which could lead to an application for a *restricted sale order* or a *restricted premises order*.<sup>64</sup>

**Clause 4** will amend Article 4A (4) of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991<sup>65</sup> to increase the level of fine from a level 4 to level 5 fine for offences relating to the sale of tobacco from vending machines. This will bring into line the level of fines for all retail underage sale of tobacco or e-cigarette offences.<sup>66</sup>

- **Clause 5** of the Bill defines a “nicotine product”. The EFM states that this could be an e-cigarette for example, or a component of it. The definition of ‘nicotine products’ contained within the Bill covers:
  - devices (or parts of these devices) which are intended to enable nicotine to be consumed by an individual or otherwise to be delivered into the human body; and
  - substances or items which consist of or contain nicotine and which are intended for human consumption (or otherwise to be delivered into the human body).

A number of products are not considered nicotine products for the purposes of Clause 5 - such as tobacco, cigarette papers, and devices for the consumption of lit tobacco,<sup>67</sup> which are regulated in existing legislation.

#### Points to consider:

- Clauses 1-3 state that the DHSSPS may make provisions on nicotine products via regulations (secondary legislation), which the DHSSPS intends to further consult on. The detail of the regulations remains largely unknown. Regulations will be subject to the draft affirmative resolution procedure in the Assembly.<sup>68</sup>
- According to the DHSSPS consultation document, the legislation **will not** apply to licensed nicotine replacement therapy products (such as patches, chewing gum) on the market.<sup>69</sup> However, this is not explicitly clear in the Bill.<sup>70</sup>
- Some e-cigarettes/e-liquids do not contain nicotine. This may create difficulties in terms of proving that someone has committed an offence.
- The Bill does not make it clear how or by whom offences will be policed or enforced.
- How, or will, the online retail of nicotine products to under 18 year olds be affected?

<sup>62</sup> The Health (Miscellaneous Provisions) Bill. EFM p 5.

<sup>63</sup> The DHSSPS has stated that it envisages that the legislation will be enforced in the same way as age of sale legislation for tobacco products, i.e. by Environmental Health Officers in District Councils through test purchasing exercises.

<sup>64</sup> The Health (Miscellaneous Provisions) Bill. Schedule 1 (5 and 6). This could result in a retailer being banned from selling tobacco or nicotine for a certain timeframe.

<sup>65</sup> Legislation.gov.uk. Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991.

<sup>66</sup> The Health (Miscellaneous Provisions) Bill. Part 1, Clause 2 (2).

<sup>67</sup> The Health (Miscellaneous Provisions) Bill. Part 1 Clause 5 (1 and 3).

<sup>68</sup> This will include debate and agreement by the NI Assembly. This follows the approach taken by England and Wales in the Children and Families Act 2014.

<sup>69</sup> DHSSPS (2014) The Health (Miscellaneous Provisions) Bill. Consultation on Health Miscellaneous Provisions Bill NI.

<sup>70</sup> The DHSSPS has stated that this will allow them to apply the regulations either to all nicotine products, nicotine products of a specified kind, or nicotine products subject to specified exceptions.

- Under clause 2 it remains unclear who is liable for an offence. The DHSSPS has stated that regulations will make provisions as to who is liable.
- The Bill as introduced does not contain provisions such as: banning smoking in cars carrying children under 18, or restrictions on domestic advertising of e-cigarettes (that are not covered by the EU Directive) – i.e. leaflets or billboards.

#### 4.1 Consultation responses in relation to Part 1 of the draft Bill

The consultation on the draft Bill, its accompanying EFM, and the outcome of the consultation summary report are available online.<sup>71</sup> In total, 26 respondents replied to the consultation (Appendix 1). However, most organisations were responding to specific parts of the Bill. For example, questions about nicotine products were the most commonly responded to issue; whereas questions relating to Part 2 – such as dental services or charging exemptions were not appropriate or relevant for many organisations; therefore only a handful of organisations responded to those parts of the Bill in the consultation.<sup>72</sup>

##### Questions relating to nicotine products

**Question 1:** of the consultation asked if “the sale of nicotine-containing products should be restricted to those over the age of 18”. Twenty-three responses were received and all (including tobacco manufacturers) agreed that the age of sale of nicotine containing products should be restricted to those over 18.

Further comments included:

- that non-nicotine containing e-liquids should be incorporated into the legislation (the DHSSPS has confirmed this will not be the case), with some responses highlighting the difficulty for retailers and enforcers in terms of distinguishing between nicotine/non-nicotine containing products;
- some respondents posited that e-cigarettes should be banned in public spaces, whilst others took the opposite view; and
- concerns about the quality and safety of e-cigarettes and the role of e-cigarettes in reducing the increased risk of harm on smokers’ health.

**Question 2:** asked if respondents supported proposals to amend the Tobacco Retailers Act 2014. Twenty-two responses were received and all indicated they were in agreement. Two respondents also commented that the legislation should incorporate restrictions on the sale of e-cigarettes from vending machines (which has now been included).

Further comments included:

- that the Bill should contain legislative provisions to allow a ban on smoking in cars carrying children;

<sup>71</sup> Please see: <http://webarchive.proni.gov.uk/20150724114332/http://www.dhsspsni.gov.uk/showconsultations?txtid=73241>

<sup>72</sup> DHSSPS Consultation response report (February 2015). Available online at: <http://webarchive.proni.gov.uk/20150724114332/http://www.dhsspsni.gov.uk/showconsultations?txtid=73241>

- that a promotional campaign should be provided, especially to retailers; and
- concerns about local advertising of e-cigarettes which will not be covered by the EU Tobacco Products Directive when it is introduced in May 2016.

#### 4.2 Changes to the Bill following the consultation exercise

Some changes have been made to the Bill (as introduced) following the original consultation. These include:

- A restriction on the sale of e-cigarettes from vending machines.
- An increase to a level 5 fine for both tobacco *and* nicotine sales, should an offence occur.

Amendments were also proposed at the Second Stage debate for inclusion in the Consideration Stage of the Bill namely:<sup>73</sup>

- the Health Minister proposed an amendment which, if supported, will ban smoking in cars carrying children under 18.
- an amendment concerning a levy on sugar-sweetened drinks (a sugar tax) was also proposed.

---

<sup>73</sup> NI Assembly Official Report: Second Stage Debate. The Health (Miscellaneous Provisions) Bill. Available at: <http://aims.niassembly.gov.uk/officialreport/report.aspx?&eveDate=2015/12/08&docID=251987#1772194>



## 5. Part 2 of the Bill: Miscellaneous Provisions

Part 2 of the Bill - entitled "Miscellaneous Provisions" contains 6 clauses.

### 5.1 Background to Part 2

Concerning completely separate issues from Part 1, Part 2 of the Bill amends certain terminology anomalies within the Health (Miscellaneous Provisions) Act (NI) 2008 ("the 2008 Act")<sup>74</sup> and other minor outdated legislative references.

The purpose of the 2008 Act was to amend the 1972 Order to make two separate changes:

- To introduce new legislation for dental services; and
- To extend ophthalmic and pharmaceutical lists to include *employed* individuals namely ophthalmic medical practitioners, optometrists, dispensing opticians and pharmacists.

The 2008 Act was subject to consultation between the period August 2005 and October 2005.<sup>75</sup> The Northern Ireland Assembly was at this time in a period of suspension. Following the restoration of devolution, a Committee report providing further detail and amendments to the 2008 Act was published on the Assembly's website.<sup>76</sup>

The DHSSPS insists that many of the amendments to the 2008 Act in the proposed Bill are technical in nature and will involve a number of terminology changes.<sup>77</sup> The DHSSPS has also confirmed that the changes will not affect the original 2008 Act policy intention.<sup>78</sup> As there are multiple amendments to various pieces of existing legislation, which, on reading the Bill are difficult to disentangle, this paper does not describe them in detail. Instead, reference is made to the Bill, the EFM, and Departmental briefings in order to outline the main areas of change.

For the purposes of this Bill, four areas of the 2008 Act are of relevance namely:

- Dental services;
- Ophthalmic services;
- Pharmaceutical services; and
- Charges for services of persons not ordinarily resident in Northern Ireland.

---

<sup>74</sup> Health (Miscellaneous Provisions) Act (NI) 2008; <http://www.legislation.gov.uk/nia/2008/2/notes>

<sup>75</sup> DHSSPS (2005) Further measures to improve the provision of Primary Care Services. Obtained via correspondence with the DHSSPS.

<sup>76</sup> The Health (Miscellaneous Provisions) Bill was referred to the Committee for consideration in following completion of the Second Stage of the Bill on 19 June 2007. NIA Bill 2/07 Health (Miscellaneous Provisions) Bill Report. Available online at: [http://archive.niassembly.gov.uk/legislation/primary/2007/nia2\\_07.htm](http://archive.niassembly.gov.uk/legislation/primary/2007/nia2_07.htm)

<sup>77</sup> Departmental Briefing to Health Committee. 23 September 2015.

<sup>78</sup> Briefing paper provided by DHSSPS to author on 14.12.15.

## 5.2 Dental, ophthalmic and pharmaceutical services: current situation

At present, the legislation covering the provision of Health Service dental, ophthalmic and pharmaceutical services is contained in Part 6 (Articles 61, 62 and 63) of the Health and Personal Social Services (NI) Order 1972 (“the 1972 Order”).<sup>79</sup>

Under these provisions, a *service provider* makes an arrangement with the Health and Social Care Board (HSCB) to undertake to provide such services. This is called “arrangements legislation”. The 1972 Order states who can provide dental, ophthalmic and pharmaceutical services.<sup>80</sup> It also requires the HSCB to maintain lists of these *providers*.<sup>81</sup> These lists are known as the dental, ophthalmic and pharmaceutical lists. They contain individuals or corporate bodies who have entered into an arrangement with the HSCB. However, they **do not** list professionals (or employees), in other words - *employed* dentists, ophthalmic medical practitioners, optometrists or pharmacists (unless they are also “a provider”). Further details on the listed providers are shown in Table 2.

**Table 2. Listing powers of HSCB under Health and Personal Social Services (NI) Order 1972<sup>82</sup>**

Article in 1972 Order	Health Service provision	Listed provider	Not listed employed professionals (unless also a provider)
Article 61	Dental	A dentist	Employed dentists
Article 62	Ophthalmic	An ophthalmic medical practitioner (OMP), an optometrist, a corporate body	Employed OMPs, dispensing opticians and optometrists.
Article 63	Pharmaceutical	A pharmacist, a non pharmacist provider (who must employ a pharmacist), a corporate body.	Employed pharmacists.

Providers on HSCB provider lists are also required to provide certain information and abide by the terms of service set out in the relevant regulations. The HSCB has disciplinary powers over listed providers and can refer providers to a Tribunal for suspension or disqualification from a list.<sup>83</sup>

## 5.3 Amendments to dental legislation

At present, under Article 61 of the 1972 Order, dental services may only be provided by dental practitioners. The 2008 Act aimed to change the way dental contracts in

<sup>79</sup> The Health and Personal Social Services (NI) Order 1972; Part 6 <http://www.legislation.gov.uk/nisi/1972/1265>

<sup>80</sup> This is detailed in Articles 61, 62, and 63 of the 1972 Order

<sup>81</sup> Briefing paper provided by DHSSPS to author on 14.12.15, p2.

<sup>82</sup> This table has been provided by the DHSSPS via a briefing paper to the author.

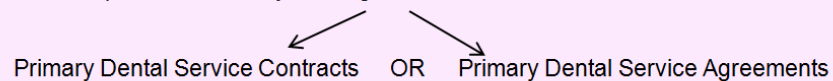
<sup>83</sup> Briefing paper provided by DHSSPS to author on 14.12.15, p2.

Northern Ireland were organised. However the Act contains some anomalies which do not provide the DHSSPS with powers to fully introduce new dental contracts as intended.

The Bill will enable changes to dental provision, known as Primary Dental Services, to be provided through *dental service contracts* or *dental service agreements*. Once these are in operation, the Bill states that a Regional Board, which the EFM clarifies as the HSCB, will be responsible for (or will arrange for) the provision of Primary Dental Services.<sup>84</sup> The changes are summarised below:

Proposed amendments to dental legislation:

- How dental services are provided currently is known as “arrangements legislation”. Under the Bill, this will change to “contractual legislation”.
- Dental services will be renamed “Primary Dental Services”
- The HSCB will be responsible for the provision of these Primary Dental Services.
- Primary Dental Services will be provided in 2 ways through:



- The term “Dental Provider Lists” will be replaced by “Dental Performer Lists” and in future will be bound to a contract or agreement. “Dental Performer Lists” will be introduced so that no dentist will be able to perform services unless on the Performers’ List. These changes will mirror existing legislation for GPs.

With the creation of Primary Dental Services, there will no longer be a list of dental **providers** (i.e. dental Provider Lists). Rather, dental “**Performer Lists**” – will be introduced which will place wider requirements on *individual* dentists. According to the DHSSPS, the wording of “performer” was not used in the 2008 Act where it should have been. Hence, the new Bill will make the necessary changes to the listing systems so that a wider range of providers (such as corporate bodies),<sup>85</sup> not just dental practitioners, can provide Primary Dental Services.<sup>86</sup> As part of these changes, dentists will also be required to provide more detailed information prior to listing, and be subject to certain powers of suspension as well as possible disqualification by a Tribunal.<sup>87</sup>

Clauses 6, 9 and 10 of the Bill contain changes to dental provision (clause 9 is discussed further in section 5.5).

**Clause 6** of the Bill provides the DHSSPS with powers to introduce the new dental contract provisions – including “Performers’ Lists” for dentists which will give full effect to the 2008 Act policy intention by changing wording so that “provide” and “providing” are replaced with “perform” and “performing” primary dental services.<sup>88</sup> Once amended,

<sup>84</sup> The Health (Miscellaneous Provisions) Bill. Explanatory and Financial Memorandum (EFM) p2.

<sup>85</sup> Departmental Briefing to Health Committee. 23 September 2015, p4.

<sup>86</sup> DHSSPS Briefing paper for HSSPS Committee – The Health (Miscellaneous Provisions) Bill. September 2015, p6. These provisions will mirror those in place for G.Ps.

<sup>87</sup> DHSSPS Briefing paper for HSSPS Committee – The Health (Miscellaneous Provisions) Bill. September 2015, p6.

<sup>88</sup> The Health (Miscellaneous Provisions) Bill. Part 2, Clause 6 (2 and 3).

the legislation will correctly refer to the listing of performers and will mirror the equivalent legislation for GPs.<sup>89</sup>

**Clause 10** contains a number of amendments to re-word, substitute and omit words in the 1972 Order. For example, Article 15B of the 1972 Order will be amended so that *Primary Dental Services* can be provided as an alternative to the *general dental services* that currently exist, to enable the full effect of the 2008 Act policy intention.

**Points to consider:**

- Given that the Health Minister announced in November 2015 that the Health and Social Care Board (HSCB) is to cease operating,<sup>90</sup> this will have an impact on who will be responsible for delivering and overseeing primary dental services.
- According to the DHSSPS consultation summary report,<sup>91</sup> the detail about performers lists will be contained in subordinate legislation and subject to full impact assessments and consultation.

#### 5.4 Amendments to general ophthalmic and pharmaceutical services

The 2008 Act also sought to amend the 1972 Order by extending ophthalmic and pharmaceutical lists to include *employed* professionals; namely ophthalmic medical practitioners, optometrists, dispensing opticians and pharmacists to ensure that those employed provided specified information. However, unlike the dental provisions, the 2008 Act **did not** aim to change the ophthalmic and pharmaceutical arrangements legislation to contractual legislation. Nor did it intend to introduce performers' lists.

At present, ophthalmic and pharmaceutical providers are responsible for the actions of their employees, and the HSCB has to take disciplinary action against *the provider* rather than *the employee*.<sup>92</sup> For example, a Tribunal has the power to suspend or disqualify a provider (rather than an employee) from the list.<sup>93</sup> Yet the 2008 Act again did not work the way it was intended to; the term "provider" was maintained but restricted to a "health care professional" or a "registered pharmacist". These terms excluded corporate bodies and non-pharmacist contractors.

The Department intends to rectify this unintended legislative anomaly via the Bill. It will do this by returning the ophthalmic and pharmaceutical services provisions to their pre-2008 Act position. This will restore the current listing system in the 1972 Order to its original policy intent. The existing providers' list will be maintained.

<sup>89</sup> Briefing paper provided by DHSSPS to author on 14.12.15, p4.

<sup>90</sup> NI Assembly Official Report (Hansard) 11 November 2015. Committee for Health, Social Services and Public Safety Reform of Health and Social Care Evidence Session: Mr Simon Hamilton MLA (Minister of Health, Social Services and Public Safety).

<sup>91</sup> DHSSPS Consultation response report (February 2015). Available online at:

<http://webarchive.prni.gov.uk/20150724114332/http://www.dhsspsni.gov.uk/showconsultations?txtid=73241>

<sup>92</sup> Briefing paper provided by DHSSPS to author on 14.12.15, p4.

<sup>93</sup> Health Miscellaneous Act (NI) 2008 Sections 8 and 10.

The relevant amendments are set out in Clauses 7 and 8 of the Bill:

**Clause 7** will revoke the provisions of the 2008 Act and restore previous listing provisions concerning ophthalmic services by amending Article 62 (2) of the 1972 Order.<sup>94</sup>

**Clause 8** will revoke the provisions of the 2008 Act and restore previous listing provisions concerning pharmaceutical services by amending Article 63 (AA) of the 1972 Order.<sup>95</sup>

Aside from the current Bill, the DHSSPS intends to revisit its policy on extending ophthalmic and pharmaceutical listings. Extending these to include *all professionals* carrying out ophthalmic and pharmaceutical services will, dependent on Ministerial and Executive agreement, be subject to detailed policy development, consultation and legislative change and will require further primary legislation.<sup>96</sup>

### 5.5 Powers of Tribunal for dental, ophthalmic and pharmaceutical services

Under Schedule 11 of the 1972 Order, a Tribunal has the power to disqualify listed *providers* of dental, ophthalmic and pharmaceutical services. The Tribunal has no power to disqualify *employed* pharmacists, opticians, ophthalmic medical practitioners or dispensing opticians, as they are not listed.<sup>97</sup> One of the purposes of the 2008 Act was to extend the listing to include these employees, hence the powers of the Tribunal were also to be extended to cover these groups.

As the Bill will restore the pre-2008 Act position of listing only general ophthalmic services and pharmaceutical services providers and not employed professionals, the Tribunal's powers are to revert to the pre-2008 Act position for these services.<sup>98</sup> Consequently, the Bill will enable the Tribunal to consider cases from two different types of lists:

- those who have *an arrangement* with the HSCB to provide general dental services (until Primary Dental Services are introduced), general ophthalmic services and pharmaceutical services;
- lists of “performers” for primary medical services (and primary dental services when they are in operation). The Tribunals extended powers for “performers” will not apply to general ophthalmic services and pharmaceutical services.<sup>99</sup>

**Clause 9** of the Bill sets out the powers of the Tribunal to consider a case against a listed dental, ophthalmic, or pharmaceutical individual provider or a corporate body.<sup>100</sup> This clause amends Schedule 11 of the 1972 Order by returning it to its pre-2008 Act

<sup>94</sup> The Health (Miscellaneous Provisions) Bill. Part 2, Clause 7.

<sup>95</sup> The Health (Miscellaneous Provisions) Bill. Part 2, Clause 8.

<sup>96</sup> Briefing paper provided by DHSSPS to author on 14.12.15, p5.

<sup>97</sup> Separately, the Tribunal has the power to disqualify GP performers.

<sup>98</sup> Briefing paper provided by DHSSPS to author on 14.12.15, p6.

<sup>99</sup> The Health (Miscellaneous Provisions) Bill. Part 2, Clause 9.

<sup>100</sup> Please note, this excludes dental corporate bodies.

position – and returning the Tribunal’s powers to its pre-2008 Act position. It will also align the Tribunals powers to the new Primary Dental Services when they are introduced.

## **5.6 Charges for services to persons not ordinarily resident in Northern Ireland**

The final clause in Part 2 of the Bill restores the wording that was originally contained in article 42 of the 1972 Order - whereby the DHSSPS may determine charges for services and provide exemptions from the charges to people not ordinarily resident in Northern Ireland. Exemptions are detailed in subordinate legislation and may include, for example, for humanitarian reasons. In the 2008 Act, the phrase “subject to such exemptions as may be prescribed” was removed. The DHSSPS will re-instate this phrase within the Bill to clarify that the DHSSPS has the power to prescribe exemptions. This is contained within **clause 11** of the Bill as follows:

Article 42(2) of the 1972 Order (provisions of persons not ordinarily resident in Northern Ireland) will be amended to include the phrase “subject to such exemptions as may be prescribed”.<sup>101</sup>

## **5.7 Consultation responses on the Miscellaneous Provisions (Part 2)**

Perhaps due to the complexities involved in the changes in Part 2, and that the original policy intent would not be affected, very few respondents replied to the consultation document about these amendments.

Questions 3 - 6 of the consultation document asked if respondents agreed with the amendments to dental provisions (question 3); amendments to general ophthalmic services (question 4); amendments to pharmaceutical services (question 5); and amendments to charging for services to people not ordinarily resident in Northern Ireland (question 6).

For all of these questions, only 4 or 5 responses were received. All were broadly supportive of the changes proposed.<sup>102</sup>

## **6. Part 3: General**

Part 3 of the Bill contains 4 clauses (clauses 12-16) and two Schedules. Clause 12 concerns the interpretation of the Bill; clause 13 deals with regulations and orders; clause 14 concerns repeals (linked to Schedule 2); and clause 15 details commencement dates for the introduction of specific powers. Clause 16 outlines the Bill title - the Health (Miscellaneous Provisions) Act (Northern Ireland), 2015.<sup>103</sup>

---

<sup>101</sup> The Health (Miscellaneous Provisions) Bill. Part 2 Clause 11.

<sup>102</sup> DHSSPS Consultation Response report (February 2015) pages 8-9.

<sup>103</sup> The Health (Miscellaneous Provisions) Bill. Part 3 Clauses 12-16.

## 6.1 Other possible implications of the Bill

A number of further issues that the DHSSPS has considered in terms of specific implications that the introduction of the Bill may or may not have are outlined in the Bill's EFM. These are presented in Table 3.

**Table 3. Supplementary issues for consideration**<sup>104</sup>

Issue	Possible implications
Financial effects	The Bill will not create any new significant financial implications for the DHSSPS.
Human Rights	The EFM states that the provisions in the Bill are compatible with the European Convention on Human Rights.
Equality Impact Assessment (EQIA)	The DHSSPS carried out an initial screening of the policy proposals and concluded that an Equality Impact Assessment was not necessary. <sup>105</sup> The DHSSPS is satisfied there would be no adverse impact on Section 75 groups.
Regulatory Impact Assessment (RIA)	The DHSSPS has stated in the EFM that a Regulatory Impact Assessment is not required at this stage, but that it intends conduct an RIA on the regulations accompanying Part 1 of the Bill – pertaining to the age of sale for nicotine-containing products.

## 7. Health Committee call for evidence on the Bill

The final section of this paper summarises the most recent written submissions regarding the Bill from stakeholders, received by the Committee for Health, Social Services and Public Safety. The Committee placed a 2 week call for evidence in December 2015 to assist with its scrutiny of the Bill. Ten submissions were received – as listed below, which are published in full on the Assembly's website<sup>106</sup>:

1. British Dental Association
2. British Medical Association
3. Cancer Focus NI
4. Fontem Ventures
5. General Optical Council
6. Imperial Tobacco International
7. Japan Tobacco International
8. National Federation for Retail Newsagents
9. Royal College of Physicians of Edinburgh
10. Royal College of Physicians London

<sup>104</sup> The Health (Miscellaneous Provisions) Bill. Explanatory and Financial Memorandum (EFM) p2.

<sup>105</sup> The EQIA screening on the age of sale provisions of the Health (Miscellaneous Provisions) Bill was completed on 16.7.14

<sup>106</sup> NI Assembly website: HSSPS Written submissions <http://www.niassembly.gov.uk/assembly-business/committees/health-social-services-and-public-safety/legislation/health-miscellaneous-provisions-bill---call-for-evidence/written-submissions/>

Table 4 highlights the suggested amendments or changes to the Bill taken from the written submissions.

**Table 4. Summary of issues derived from written submissions**

Respondent	Part 1 of the Bill comments and suggestions:
British Medical Association	<ul style="list-style-type: none"> <li>▪ An additional clause is needed to amend the Tobacco Retailers Act (NI) 2014 to include those selling e-cigarettes. This enables support/advice to be directed at those trading to avoid illegal sales and enable easier enforcement of the law.</li> <li>▪ Further consideration should be given to extending banning smoking in all private motor vehicles regardless of the age of the driver and passengers.</li> </ul>
Fontem Ventures	<ul style="list-style-type: none"> <li>▪ Do not agree that e-cigarette legislation should take the form of extended tobacco legislation. The authorities should embody a regulatory approach aimed at preventing uptake of e-cigarettes by under 18s while encouraging tobacco smokers to shift to e-cigarettes as a smoking-cessation tool.</li> <li>▪ Do not agree with the prohibition of sale of e-cigarettes from vending machines. An outright ban via vending machines would not be proportionate to the goal of restricting sales to under 18s.</li> </ul>
Imperial Tobacco International	<ul style="list-style-type: none"> <li>▪ Do not support the prohibition of the sale of nicotine products from vending machines. By placing vending machines in over 18 establishments or limiting access to vending machines through interaction with staff first, the minimum age of vending machine users can be controlled.</li> <li>▪ Heated tobacco products do not fit the description of “nicotine products” (clause 5) - as they contain tobacco. Neither do they fit the description of “lit tobacco” as these products are not “lit” if used as intended and are claimed to heat rather than burn tobacco. Clause 5 should be amended to take account of new and emerging product categories.</li> <li>▪ Smoking in vehicles with children present Do not agree that legislation is necessary to address this. Support tobacco regulation that is reasonable, proportionate and evidence-based. However, calls to ban smoking in areas that are considered ‘private’ are in no way reasonable, proportionate, or indeed enforceable.</li> </ul>
Japan Tobacco International	<ul style="list-style-type: none"> <li>▪ Do not support the Executive’s proposal to ban the sale of e-cigarettes through vending machine technology. Such a ban is not justified as strictly controlling access to vending machines would be a more proportionate approach.</li> </ul>
Royal College of Physicians of Edinburgh	<ul style="list-style-type: none"> <li>▪ Although not covered by this Bill, nicotine vapour products should be subject to the same restrictions as tobacco products, for example, they should be banned from use in enclosed public spaces.</li> </ul>
Royal College of Physicians London	<ul style="list-style-type: none"> <li>▪ Would welcome clarity in the legislation over the marketing and advertising of these nicotine products. If a new offence is to be created banning the sale of these products to individuals under the age of 18, the legislation should also make it explicitly clear that marketing or advertising targeted at children and young people is also an offence.</li> </ul>



	<ul style="list-style-type: none"> <li>▪ Levy on sugar-sweetened drinks (sugar tax) amendment: Recommend that the Northern Ireland Executive utilises this Bill to explore the opportunities to introduce legislative measures such as a sugar tax.</li> <li>▪ Minimum unit pricing scheme for alcohol: The Bill also provides an opportunity to introduce much needed legislation to introduce an intervention which will have a significant impact and reduce alcohol consumption; i.e. a minimum unit pricing scheme for alcohol.</li> </ul>
Respondent	Part 2 of the Bill comments and suggestions:
British Dental Association (BDA)	<ul style="list-style-type: none"> <li>▪ Recognise that much of the detail on how performers lists will be introduced in NI is not contained in this primary legislation and will be covered in subordinate legislation. BDA expect that this will be subject to full impact assessments and consultation.</li> <li>▪ A new contract for dental services is a considerable time away and is dependent on progress and evaluation of pilots in the first instance, before further negotiations between the BDA and DHSSPS.</li> </ul>

## Appendix 1: List of Consultation Respondents

1. Cancer Focus NI
2. Cancer Research
3. General Optical Council
4. PSNI
5. RNIB
6. Northern Ireland Practice and Education Council for Nursing and Midwifery
7. Totally Wicked e-cigarette company
8. National Federation of Retail Newsagents
9. Action Cancer
10. NI Chief Environmental Health Officers Group
11. British Medical Association
12. Save E-cigs
13. Fermanagh District Council
14. NI Chest Heart and Stroke
15. Federation of the Royal Colleges of Physicians of the United Kingdom
16. Health and Social Care Board
17. Action on Smoking and Health (Northern Ireland)
18. Cancer Registry NI
19. Nicoventures
20. Royal College of Nursing
21. Japan Tobacco International
22. Imperial Tobacco Group
23. NILGA
24. Optometry Northern Ireland
25. Community Pharmacy NI
26. British Dental Association

### Respondents by sector/category

Category of respondent	Number
<b>Statutory sector</b>	<b>6</b>
<b>Business</b>	<b>6</b>
<b>Professional body</b>	<b>6</b>
<b>Voluntary sector</b>	<b>6</b>
<b>Other</b>	<b>2</b>
<b>TOTAL</b>	<b>26</b>