

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TOBACCO AND VAPES BILL

Sixth Sitting

Thursday 9 May 2024

(Afternoon)

CONTENTS

CLAUSES 10 to 27 agreed to.

SCHEDULE 1 agreed to.

Adjourned till Tuesday 14 May at twenty-five minutes past Nine o'clock.

Written evidence reported to the House.

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Monday 13 May 2024

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The Committee consisted of the following Members:

Chairs: GORDON HENDERSON, SIR GEORGE HOWARTH, SIR GARY STREETER, † DAME SIOBHAIN McDONAGH

Aiken, Nickie (*Cities of London and Westminster*)
(Con)

† Baker, Duncan (*North Norfolk*) (Con)

† Bell, Aaron (*Newcastle-under-Lyme*) (Con)

† Blackman, Bob (*Harrow East*) (Con)

† Cameron, Dr Lisa (*East Kilbride, Strathaven and Lesmahagow*) (Con)

† Charalambous, Bambos (*Enfield, Southgate*) (Lab)

Foy, Mary Kelly (*City of Durham*) (Lab)

† Gill, Preet Kaur (*Birmingham, Edgbaston*)
(Lab/Co-op)

† Glindon, Mary (*North Tyneside*) (Lab)

Harrison, Trudy (*Copeland*) (Con)

† Johnson, Dr Caroline (*Sleaford and North Hykeham*) (Con)

† Leadsom, Dame Andrea (*Parliamentary Under-Secretary of State for Health and Social Care*)

† Maskell, Rachael (*York Central*) (Lab/Co-op)

† Oswald, Kirsten (*East Renfrewshire*) (SNP)

† Richardson, Angela (*Guildford*) (Con)

† Tuckwell, Steve (*Uxbridge and South Ruislip*) (Con)

† Wakeford, Christian (*Bury South*) (Lab)

Katya Cassidy, Kevin Maddison, Lucinda Maer,
Committee Clerks

† **attended the Committee**

Public Bill Committee

Thursday 9 May 2024

(Afternoon)

[DAME SIOBHAIN McDONAGH *in the Chair*]

Tobacco and Vapes Bill

Clause 10

POWER TO EXTEND VAPING PROVISIONS TO
NICOTINE PRODUCTS

2 pm

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 43 stand part.

The Parliamentary Under-Secretary of State for Health and Social Care (Dame Andrea Leadsom): Welcome back, everyone.

Clause 10 provides regulation-making powers for the Secretary of State for Health and Social Care in England, and Welsh Ministers, to extend the offences relating to the sale, purchase and free distribution of vapes to other consumer nicotine products, such as nicotine pouches. Clause 43 gives Scottish Ministers the equivalent regulation-making powers. Part 3 of the Bill provides for similar measures for Northern Ireland, which will be discussed separately. The measures will ensure that we have a consistent approach across our nations to protecting children from accessing other nicotine products and being exposed to the health harms and addictive nature of nicotine. They also address a point that was raised earlier by hon. Members.

Nicotine is a highly addictive drug, and we must not replace one generation addicted to nicotine with another. Giving up nicotine is very difficult, because the body has to get used to functioning without it. Withdrawal symptoms can include cravings, irritability, anxiety, trouble concentrating, headaches and other mental symptoms. Evidence also suggests that the brain in adolescence is more sensitive to the effects of nicotine, so there could be additional risks for young people.

Under current legislation, there are no mandatory age restrictions on other consumer nicotine products. Although data suggests that the use of other nicotine products is low overall, there is a growing trend of use, particularly among adolescent boys, and there are indications that industry is beginning to encourage the uptake of other nicotine products. As we work to tackle youth vaping, it is important that there are not loopholes that can be exploited to put children at risk of nicotine addiction through the use of other nicotine products. That is why we are including powers to extend age of sale, proxy purchasing and age verification requirements to other nicotine products.

Clauses 10 and 43 are an important part of our work in ensuring that the collective package of measures in the Bill succeeds in protecting children from potential health harms. I therefore commend them to the Committee.

Preet Kaur Gill (Birmingham, Edgbaston) (Lab/Co-op): We support clause 10 as a tidying provision that ensures that the additional restrictions on the sale and free

distribution of vaping products to under-18s can be extended to other nicotine products in England that have the potential to cause similar harms. It provides that the measures in clauses 7 to 9 can be extended to emerging products such as nicotine pouches, and clause 43 makes similar provisions for Scotland.

It is clearly not right that addictive nicotine products can be sold and freely distributed to children. Awareness of the products is growing, and legislation needs to keep up. According to research by Action on Smoking and Health, awareness and usage of nicotine pouches is higher among younger adults, and just over 5% of 18 to 24-year-olds have tried one. As with vapes, the marketing of nicotine pouches is likely to be attractive to children and young people, with similar branding to sweets and soft drinks. At present, a loophole means that it is not illegal to sell them to children, so I support the measures to close it.

Will the Minister set out her intentions with regard to the use of the new powers, and what conversations she has had with devolved nations on the issue? Will she also explain the Government's view on the potential harms from the use of nicotine pouches? Does she believe that these products could have value as a stop-smoking aid, like vaping? What merit does she see in including the products in regulations similar to the tobacco-related products regulations for vapes? If she intends to introduce regulations on nicotine pouches, can she set out her intended timescale for that?

Dr Caroline Johnson (Sleaford and North Hykeham) (Con): I support clause 10. We heard compelling evidence from Professor Gilmore last week about the tactics the industry uses to try to get young people addicted to nicotine, so that it can continue to profit from their buying the products for the rest of their lives. We also heard from Professor Gilmore about emerging evidence showing that exposure to nicotine at a young age, particularly as a teenager, can rewire the brain, making it more difficult to quit. I therefore welcome the powers in clause 10 that allow the Government to be flexible and respond to changing techniques in the market in order to stop children becoming addicted to nicotine, but why do we not just make it illegal to sell nicotine of any kind to children?

Rachael Maskell (York Central) (Lab/Co-op): I appreciate being called to speak to clause 10, which is a very important part of the Bill. As we have heard many times already, the industry will look at every possible mechanism to try to bring about a new generation of people who are addicted to nicotine and make it harder for them to quit. That goes not just for people under 18 but for those in later adolescence and adulthood.

My concern is with products already on the market that are being taken up quite readily. Next week, the Health and Social Care Committee will look at the public health measures being taken in Sweden. We will see how nicotine pouches—snus, as they are referred to there—are being used as an alternative to smoking, really quite extensively.

Dr Johnson: Does the hon. Lady agree that nicotine pouches are starting to be marketed to young people in a similar way to vapes, with an increasing amount of flavours, a relatively inexpensive price per unit and horrifyingly high levels of nicotine?

Rachael Maskell: I am grateful to the hon. Lady for making that point, which is certainly where I want to go with my speech. She is right: the industry will look at every single option to reformulate its products, including introducing nicotine pouches disguised with various flavours and colours—you name it, they will do it—to induce young people to engage with them. If we do not get ahead of the curve, the industry will be right there—I guarantee it.

We need to wise up to the tactics the industry has deployed over decades and recognise that, whether with pouches or something else further down the line, it is again on the move to sell its products in a reformulated way. I urge the Minister to look at whether this should be covered by secondary legislation—I know she is concerned about the amount of secondary legislation that will come through from the Bill—or in the Bill as vaping is.

Bob Blackman (Harrow East) (Con): Does the hon. Lady not accept the counter-argument that putting things in the Bill means that we have to change primary legislation, but that by doing things via regulations, the Government can make changes in a speedy fashion and combat big tobacco's fleetness of foot in bringing terribly addictive new products to the market?

Rachael Maskell: I am grateful to the hon. Member for that, and I agree that we want to be able to adapt as soon as the market does, but right now the industry is promoting nicotine pouches and we must ensure that we take the earliest opportunity to bring them into the scope of legislation, so that the industry does not just think, "Well, we've got six months now to promote our product." Given the way the industry is behaving, this is a bit like a game of cat and mouse, and we need to do whatever we can to ensure that we are ahead of the curve, whether that is through primary or secondary legislation.

I ask the Minister to ensure that the regulations are brought forward expeditiously and that the first set—we may need further sets; I appreciate what the hon. Member for Harrow East says—is introduced in the shortest time possible. Can she tell the Committee what the timescale will be for that, so that we know how quickly these other products will be brought within the scope of the Bill, ensuring that young people are protected?

Dr Johnson: I agree with the hon. Lady and with my hon. Friend the Member for Harrow East. Clause 10 applies to clauses 7, 8 and 9, giving the Government flexibility on all three. As the hon. Lady said, it is great to have the flexibility to bring in regulations to amend clauses 8 and 9, but on clause 7, can she think of any good reason why we would want to be able to sell nicotine products to under-18s?

Rachael Maskell: The hon. Lady is following up on a theme that I probed at earlier stages of the Bill, notably on Second Reading. I believe that we need to look at stringent measures, so that people do not have their choices restricted by the addiction that they adopt. It is really important that young people today, or anyone else who engages with these products, do not get addicted

at an early stage. We have to look at the issue of the impact of addiction in that wider realm, as we are doing on the Health and Social Care Committee, which is looking at products that are addictive and harmful to health in connection with the public health measures that we are scrutinising.

The hon. Member for Sleaford and North Hykeham makes an important point, and at a later stage of the legislative process I hope to examine how we address the drug nicotine and its harmful impacts on young people and more widely. Addiction has been utilised by people who exploit the lives of others for their own profit, and we need to ensure that they do not get the opportunity again with children, young people or adults. They plague those who live in the greatest deprivation in our country, driving them to more harmful addiction. I therefore welcome the legislation, but I believe that we can go further. Given the industry's activities right at this moment in trying to find new ways around legislation before it is even on the statute book, the Committee needs to be wise about ensuring that it does not get that opportunity.

Kirsten Oswald (East Renfrewshire) (SNP): Everything that the hon. Member for York Central just said is worth reflecting on. Clause 43 applies to Scotland, and we are also talking about clause 10.

I spent a little time looking at nicotine pouches, which suddenly seem to be everywhere—or perhaps it is just that I am finding them advertised to me. I am definitely not the right person to advertise them to, but whenever I go on to social media, I inexplicably find them appearing before my eyes. There are a whole lot of questions around that. I will not be taking them, so that is fine, but other people will. We have heard about the uptake among young men in particular, which is concerning, because we heard some powerful evidence from health experts about the real harms that can be caused and the addiction that will follow people throughout their lives.

All the time, industry is finding new ways to hook young people. Some of the websites that I have looked at suggest that the pouches are a way to "avoid the health risk". That is obviously not true—it is patent nonsense, actually. They also suggest that, for a sports person, "according to some reports"—that is me quoting again—there are "performance" benefits. Again, that is patent nonsense. It is obviously absolute rubbish, but I think it speaks to the narrative that surrounds pouches, as if they are somehow okay—a good thing—and they are not going to cause the harms that other nicotine-based products do. But of course these things will cause harm, and the addiction risk and health challenges are still there, too. The social normality, acceptability and prevalence of these things is deeply depressing. Their use by sportspeople in particular puts them across with some kind of veneer of being okay. They are not okay; they are deeply damaging to health.

Unsurprisingly, I am always keen to hear from the Minister about advertising and football strips, but to take that a step further, because we are talking about the same sports-based area, will she say how we can use legislation to keep ahead of companies that are so fleet of foot in hooking into things that people are interested in to promote these products directly or, more concerningly, indirectly?

2.15 pm

Dame Andrea Leadsom: I wholeheartedly endorse almost everything I have heard. I share hon. Members' concerns and applaud them for their commitment to solving the issue of nicotine pouches. As my hon. Friend the Member for Harrow East rightly pointed out, should the industry find a way around something in the Bill, we would have to legislate again with primary legislation. The right thing to do, therefore, is to take powers to make secondary legislation that gets on top of the issue and future-proofs us, so that right across the United Kingdom we can tackle this appalling scourge: the tobacco industry's determination to get our children addicted.

Extraordinarily, the tobacco industry dominates the UK nicotine pouches market, and it claims to self-regulate—that is, it claims not to sell to under-18s. That is absolutely extraordinary. A recent study suggests that although nicotine pouch use is low among adults, with roughly one in 400 adults in Great Britain using them, nicotine pouches are increasingly popular with younger, largely male audiences. The Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment has identified gaps in research and flagged that the long-term health harms are not known, but use by non-smokers is likely to be associated with some adverse health effects due to the nicotine.

We all know that other nicotine products need to be clamped down on. We will not need to consult on age of sale restrictions on nicotine products; we will be able to use regulations, hopefully in this Parliament, with implementation from 2025. It is certainly our plan to consult on all of this regulation to get ahead of nicotine pouches and other nicotine products with a view to implementing the regulations in 2025.

Rachael Maskell: I do not know whether the Minister is aware that the strength of the nicotine in these products is excessively high—much higher than in other products—and so they rapidly bring about addiction. When the Government brought forward measures to try to educate the country about alcohol use, they did a comparison. Perhaps it would be helpful to do a comparison about the amount of nicotine that individuals are taking through a nicotine pouch, because the public would be alarmed to know that we are talking about their taking multiple factors of nicotine into their bodies.

Dame Andrea Leadsom: The hon. Lady is absolutely right; they vary from 2 mg to 150 mg per pouch. I imagine that that variation would make it hard to provide a complete comparison, but she is quite right that education will be a big part of the implementation.

Dr Johnson: I think that most parents in my constituency would be horrified to think that nicotine pouches are available for sale to children. I appreciate that the Bill takes the power to ban nicotine products other than vaping products at a later date, but I would be grateful if the Minister could explain why we should not ban the sale of nicotine to under-18s full stop. I do not understand why and in what circumstances anyone would ever wish under-18s to have nicotine sold to them.

Dame Andrea Leadsom: My hon. Friend makes a good point. The Bill takes powers to bring forward the age of sale restriction, and that in itself will not require further consultation. It is my expectation that, if possible, that will be brought forward in this Parliament. However, as has been explained, if we put something in the Bill, the industry will get around it by saying, for example, “This doesn't contain nicotine”—except it does, as we have already seen.

The other thing I want to raise with hon. Members is that clauses 61 to 63, which will grant the ability to restrict flavours, packaging and location in store, will also apply to nicotine products. Those measures are clearly designed to reduce their attractiveness to children.

Rachael Maskell: In response to my questions and accepting the clause as it is written, can the Minister give the Committee an assurance about when the regulations will be brought forward to ensure that products such as nicotine pouches will come within scope of the Bill?

Dame Andrea Leadsom: All I can say to the hon. Lady is that she has heard me, and I am determined to bring that forward as soon as possible. There are good reasons for not putting the provision on the face of the Bill, which are to do with future-proofing. I can only give her my absolute assurance that, as soon as humanly possible, I will bring the regulations forward for consultation where necessary and for implementation where not.

Dr Johnson: I am grateful for the Minister's answer, but I am still a bit confused. I can see the point she makes about the industry and the need to remain flexible; that is really important and why we support clause 10—particularly in relation to sections 8 and 9, which are about the purchase of products on behalf of children. I welcome the fact that later in the Bill we will see restrictions on the appeal of the packaging of vaping and tobacco products, which will help to make them less attractive to children.

However, I still do not understand why any product containing nicotine would need to be available to children and why that would not be on the face of the Bill. If we were to specify nicotine pouches in the Bill, I see that that could be got around by calling them “nicotine gum” or something else, but if it said, “Nicotine—full stop—cannot be sold to under-18s,” that would be difficult to work around, because no nicotine product could be sold to under-18s. I expect that if I did a survey of parents in my constituency, most would presume that that was already the law.

Dame Andrea Leadsom: My hon. Friend makes a good point, which I will take away and reflect on. We have obviously already aired the discussion about the benefit of taking powers as opposed to putting something in primary legislation, but she makes a good point and I will come back to her.

Bob Blackman: One of the challenges we are talking about is not only nicotine itself—we had medical evidence last week to suggest the damage it does to the body, let alone its delivery mechanisms—but the mixture of different routes by which it gets into the body. At the moment, evidence is emerging about the damage from the use of

different accelerants to get nicotine into the body. Will the Minister consider what may need to be done about those particular types of chemicals and other methods that may need regulation to outlaw them, because of the damage that they do particularly to children and to all other vapers?

Dame Andrea Leadsom: My hon. Friend makes a really good point. We have heard about some of the heavy metals and other carcinogens in vapes. The Bill is so comprehensive in banning things such as cigarette papers, herbal cigarettes and so on precisely because of other things that people put into their lungs. As the chief medical officer for England said, it is fine to drink a glass of water but have you ever tried inhaling one? It is not such a pleasant experience. He made the point that although it might be perfectly safe to eat a non-toxic flavour, it could be very different to inhale it.

As we heard last week, the fact of the matter is that there simply is not yet the evidence to say what some of these products do to human beings when inhaled. It is absolutely right that we protect children from those effects, hence this Bill. I hope that one of the outcomes of this legislation will be that we get far more evidence via independent research into the potential harms of first-hand vaping and other consumption of nicotine as well as second-hand consumption, which I know a number of hon. Members are interested in. I am sure we will come back to that in due course.

Question put and agreed to.

Clause 10 accordingly ordered to stand part of the Bill.

Clause 11

DISPLAYS OF VAPING AND NICOTINE PRODUCTS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Clause 45 stand part.

Clause 54 stand part.

Dame Andrea Leadsom: Clause 11 provides a regulation-making power to allow the Secretary of State for Health and Social Care in England and the Welsh Ministers in Wales to introduce future restrictions or requirements on the display of vaping and nicotine products, and their packaging and pricing where they are offered for sale. Clause 45 provides the same regulation-making power to Scottish Ministers, and clause 54 provides the power to Northern Ireland.

At this point, I would like to reiterate our plans for future vaping regulations, including on vape displays. I have made a commitment to consult on future regulations. Any regulations made will be accompanied by clear impact assessments. We will introduce new regulations as soon as possible following the passage of the Bill.

We simply cannot replace one generation addicted to nicotine with another, and we know that giving up nicotine is so difficult because the body must get used to functioning without it. Withdrawal symptoms can include cravings, irritability, anxiety, trouble concentrating, headaches and other mental symptoms. Despite this very

clear health advice, there has been a significant and alarming rise in the number of children vaping in this country. Data shows that the number of young people vaping has tripled in just the last three years, and now one in five children has used a vape. That is alarming and unacceptable.

Evidence shows us that vapes are currently far too easily accessible to children within shops. Vapes are sometimes displayed alongside sweets and confectionery in retail environments, and often promoted in shopfront windows. These products are too easily seen and too readily available to children, and we have a duty to protect our children from harm. These clauses therefore provide regulation-making powers for new restrictions on where and how vapes and nicotine products can be displayed within a retail setting, and ensure that we are aligned right across the United Kingdom. The display restrictions will include both packaging and pricing. Future regulations on point-of-sale displays will help to reduce the ease of access to vapes to children, and the degree to which vapes can be targeted at children. These are important clauses to help us tackle youth vaping and to protect children from addiction and future health harms.

Preet Kaur Gill: We welcome the inclusion of these powers to regulate the display of nicotine and vaping products in retail settings. All of us have seen what has been happening in some shops: as the Minister said, colourful products that look like confectionery kept next to the pick 'n' mix at pocket money prices. I appreciate that some in the sector have concerns that regulations on point-of-sale displays need to be balanced in respect of their impact on retailers, given existing restrictions on products like tobacco and some of the associated costs. In my view, however, there is no argument against the inclusion of the powers themselves.

I heard from a retail worker at a major supermarket chain that they are paid by the vaping companies to put displays of vapes in prominent locations in their stores. These are often far away from the tills, where there is little to no oversight by staff. I was told that where children once shoplifted sweets, they are now going straight for these products. One worries that the vape companies are almost happy to lose them, if they can get a new customer addicted who they know will come back for more.

None the less, I want to highlight that there appears to be broad support for some restrictions on the display of vapes among retailers. I note that in the Action on Smoking and Health survey of retailers in England and Wales, 80% of tobacco retailers supported prohibiting advertising and promotion of vapes or vaping products in store, and requiring them to be put behind the counter; only 12% were opposed. I would be grateful if the Minister outlined whether it is her firm view—she has alluded to it—that vapes should be kept behind the counter, or whether display should be prohibited entirely, which seems to be what the Government have looked at in their impact assessment. Alternatively, does she feel that further consultation is necessary?

I would also like to raise other questions about the potential for such regulations to be undermined. Clause 34 of the Bill provides an interpretation of terms used in part 1 of the Bill, but it does not define “retailer”. I therefore wonder whether other forms of display for

[Preet Kaur Gill]

sale would be caught under the powers as drafted here. I am thinking of vape vending machines, which are not in widespread use now but could be in the future.

Have her officials looked at that issue? Given the introduction of some vending machines with automated age verification features, has the Minister considered prohibiting vape vending machines, as has happened in Scotland? We can easily see how this situation could undermine the consistency of regulations on displays.

2.30 pm

We need clarity that vending machines could be included in the regulation-making powers granted under this or other clauses. I have no desire to divide the Committee on these clauses and support their inclusion, but I would be grateful to hear from the Minister.

Rachael Maskell: If I might be so bold, I think the Minister is making life slightly complicated for herself. We know the impact that taking smoking products out of the line of sight of people who go into shops or supermarkets has had. Putting them in closed cabinets has very much had the effect that we would want. People do not see the products, but they have to request them; they are not on display for people to just glance an eye over. They are simply not there in the line of sight.

If the same legislation applied to all vaping and nicotine products, that would make things simpler for shopkeepers and supermarkets. They already have the shelving and the shutters; it is not as if they would have to make a financial investment in new shelving. They would not have to do anything different—just pick up the vapes and put them into a contained, enclosed space. I do not see any reason why that could not be in primary legislation, because it would be so simple, and I believe the expectation of the public is already there.

I walked down a street in York just the other day, and almost every shop had their little vape display. Putting them behind the counter, behind screens, behind shutters, would be the simplest method of dealing with that. We know it is effective for smoking. There is no reason why tobacco products should be dealt with at a different standard than vaping products when people go to purchase them, and we would get the effect of “out of sight, out of mind”. We know how much the industry spends on packaging to draw the eye to products, and how powerful that is. Putting them out of sight would have the required effect of reducing people’s thinking about those products.

Simplifying and bringing the legislation into line, for shopkeepers, the public and for us as legislators would meet the public expectation that this is what will happen. I do not think we need separate legislation to deal with vapes one way and smoking products another. Let us just pool it together, make it simple and say that this is about protecting the public. I do not think anyone will bat an eyelid.

Dr Johnson: I rise in support of clause 11 on restricting the display of vaping and nicotine products. I have been horrified to see that after the Government, with good intentions, made it difficult for children to see sweets at the counter, to reduce pester power and help protect them from obesity, the sweets were in many cases replaced

by vapes. The Government are doing exactly the right thing in taking the powers to look at displays. As has been mentioned, the ability and flexibility of doing so through regulations means that we can move swiftly when the industry seeks to get round the latest rules. I think that is great.

I have two examples for the Minister. Would they be covered by paragraph (1)(c)? The first is a mini-mart in Grantham. The entire shop window is covered in pictures of things such as Kinder chocolate, Haribos, fruit and very large-size vape devices in bright colours. I was in WH Smith in Nottingham last weekend; this is a shop that sells children’s books, children’s toys, sweets and children’s stationery, yet at the till there is a very large video display of vape adverts immediately behind the shopkeeper’s head. Will these two types of advertising and display be covered by the regulations?

Dame Andrea Leadsom: Again, I appreciate the sentiments expressed and associate myself with all of them. The hon. Member for York Central requested that we put in primary legislation that vapes must be behind the counter. It is clear from the impact assessment and the consultation that that is the intention. However, as my hon. Friend the Member for Sleaford and North Hykeham points out, the reason for taking the powers is that doing so allows us to stay ahead of the next place they might be sold, for instance outside the shop, on a bus or outside a school—we can imagine all sorts of other ideas. It is important to have the regulations to get ahead of other ideas, rather than saying, “They shall be behind the counter.” That is why we are taking regulatory powers right across the Bill, so that answer holds for all the areas in which we are taking powers: we are taking them to stay ahead of an industry that has shown itself to be very imaginative and brutal in its determination to addict children. We need to stay one step ahead, and that is the plan.

Mary Glendon (North Tyneside) (Lab): Something has occurred to me rather later than sooner, as things often do. Vape shops are prolific in our town centres. Can anything be done to limit young people’s access to those shops, for instance a minimum age of entry, so that no one under 18 should be on the premises? I do not think that we have thought about that hitherto in our discussions.

Dame Andrea Leadsom: I appreciate the hon. Lady’s suggestion, and I will take it away and look at it. The immediate thing that springs to mind is that if someone is out with their children, it is difficult for them to say, “You stand out there; I am going in.” That could give parents concern. I take the point that, in a vape shop, someone cannot say, “Go and look at the toys while I choose my vapes,” but I can imagine all sorts of objections from a practical point of view. However, I will take the suggestion away and reflect on it.

Mary Glendon: Is it not the case that children are not allowed in bookies and betting shops? That is perhaps a similar situation.

Dame Andrea Leadsom: As I say, I accept the hon. Lady’s point and will reflect on it.

The broader point is that there is obviously a balance here. We want to exclude vapes from children, but we do not want to exclude vapes from adults who want to quit smoking, because that is the real prize that we are seeking to hang on to. The more difficult we make it for adults to access vapes as a quit aid, the more we are discouraging adults who, we have all agreed—violently—we want to stop smoking. That is the killer.

Dr Lisa Cameron (East Kilbride, Strathaven and Lesmahagow) (Con): The Minister is making an extremely important point: we have to do everything in a proportionate manner. Although we need to protect children, and do not want children—I have children of my own—to take up vaping in childhood or have access to vapes, vaping can be a harm-reduction approach for adults. Putting vapes behind the counter, like tobacco, might go against some of the evidence we heard about the harm of vaping being much less than that of smoking itself. It could perhaps give the wrong impression to the public: that vaping is not a harm-reduction tool, that it is not going to be useful to them, and that it is in the same category as smoking itself.

Dame Andrea Leadsom: My hon. Friend highlights exactly the challenge, which is the balance between helping adults to stop smoking, where turning to vapes can be the most successful tool in the toolkit, and preventing children from ever taking up and becoming addicted to nicotine.

Dr Johnson: I have a question, but I appreciate that the Minister may not know the answer. Adults who wish to stop smoking have many smoking services that they can go to for advice, such as their GP or pharmacist. Other mechanisms of giving up smoking, such as Nicorette gum and nicotine patches, are available, but they are nowhere near as widely advertised as vapes. Does the Minister think that smokers are unaware of them?

Dame Andrea Leadsom: That is a very tricky question to answer. I certainly think that stop-smoking services are fully aware of all the different alternatives that an individual can take up. There is of course the question raised in previous discussions, which nobody has raised today, about whether there should be a prescription-only vape. Many people would say, “No, I want the convenience of buying a vape. I don’t want to have to go and get a prescription, argue why I need it, and so on. I’d rather just buy one.” There is a genuine issue of convenience and accessibility, but my hon. Friend is absolutely right that it is vital that stop-smoking services set out the whole array of different choices to help adult smokers to quit, and that will include vapes. The evidence is that vapes are particularly successful in helping adults to quit smoking.

Dr Johnson: My point was about that balance between protecting children and making adult smokers aware that they can use vapes to quit or to change their habit to one that may be safer for them. There seems to be a reluctance to apply stringent methods that would protect children in order to protect adults. My point on advertising was really about whether adults are any less aware of gums and patches because they are not as floridly

advertised as vapes. Do we really need to be as sensitive in protecting adults, or should we prioritise the protection of our children?

Dame Andrea Leadsom: Intellectually and morally, I completely agree that we need to protect children, and that is the priority. I think the Bill will do exactly that. We are taking the powers to restrict the flavours, the location and the accessibility, and we are massively ramping up enforcement. All of the measures that we are taking are exactly designed to strike the right balance between helping adults to quit smoking and protecting children.

I want to address one other point raised by the hon. Member for Birmingham, Edgbaston on vending machines, and I think the hon. Member for East Renfrewshire also raised it. There will be powers taken in the Bill to limit the use of vending machines for vapes. At the moment, the evidence is that it is not a real problem; vapes do not tend to be sold in vending machines. We need to take the powers, as I have already said, so that we can stay ahead of whatever approach is taken next by the tobacco industry.

Dr Johnson: May I push on that point? Does that mean that the Government will accept new clause 16—the vending machine clause?

Dame Andrea Leadsom: We are not at that point yet. We will come to those amendments and new clauses as and when.

Question put and agreed to.

Clause 11 accordingly ordered to stand part of the Bill.

Clause 12

RESTRICTED PREMISES ORDERS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to consider the following:

Clauses 13 to 15 stand part.

Clause 56 stand part.

Dame Andrea Leadsom: This group of clauses relates to restricted premises orders, or RPOs. These are existing measures that local authority trading standards in England and Wales, and district councils in Northern Ireland, can deploy when a retailer is found to persistently breach tobacco and vape age of sale restrictions.

Clauses 12 to 14 are based on and replace existing legislation in England and Wales. Clause 12 provides that a persistent offender can be issued with a restricted premises order, which could prohibit the sale of products—such as tobacco products, herbal smoking products, cigarette papers, vaping products and any nicotine products—on premises for up to 12 months. This is an important enforcement mechanism for tackling persistent offenders. A persistent offender is someone who has sold tobacco or vape products to someone under-age at least twice within the previous two years.

2.45 pm

Clause 12 is important to the overall functioning of the Bill, as it enables trading standards to use a range of enforcement measures and to escalate the punishment for retailers who do not change what they are doing, in order to deter offenders from re-offending. It allows trading standards to take a proportionate approach to enforcement action on under-age sales that reflects the level of offence committed.

Clause 13 requires notice to be given to people who might have an interest in a restricted premises order being made and sets out situations where an interested person might challenge such an order. An interested person is someone who occupies or has an interest in the premises where tobacco or vaping products are sold, such as the manager or the owner. Clause 13 sets out the circumstances in which interested persons are allowed to make representations to the court to try to prevent a restricted premises order being made against a retailer. This is a safeguard to ensure that suitable steps are taken before a restricted premises order is made, and to maintain fairness so that a relevant person is informed of an impending restricted premises order.

Clause 14 makes it an offence to breach a restricted premises order. The offence is committed when a product prohibited under a restricted premises order is sold on the premises. The penalty for the breach is an unlimited fine. Still with me, everyone? This is complicated. Making it an offence to breach a restricted premises order gives trading standards the ability to escalate action to tackle persistent offenders. The penalty of an unlimited fine is a great deterrent.

Clause 15 provides the Secretary of State for the Department of Health and Social Care and Welsh Ministers with the power to add to the offences under which restricted premises orders can be made. Again, that is trying to get ahead of the sorts of breaches that could take place. This is a new power for the Secretary of State for the Department of Health and Social Care and re-enacts an existing power for Welsh Ministers. The Secretary of State and Welsh Ministers must consult before making regulations under this power. Additional offences can relate to tobacco products, herbal smoking products, cigarette papers, vaping products or nicotine products only.

Bob Blackman: I thank my right hon. Friend for explaining the nature of these various different measures. I think retailers will have a concern about, for example, where a manager or an errant individual breaches these rules and is therefore subject to action, what actions the retailer can then take to alleviate the challenge afterwards. For example, if the person is dismissed or is told they are no longer welcome on the premises, will that be sufficient, or will it have to be a case of serving a time before such premises can be brought back into action? Obviously, retailers will want to know what they must do to comply with not only the letter but the spirit of the law.

Dame Andrea Leadsom: My hon. Friend makes a really good point. It also justifies why this is particularly complicated to explain, let alone to take in. That is one of the reasons why there is a long lead-in period for that new regulation. There will be training for retail. We have discussed this with various industry bodies, and they support it and consider that there is enough time

for them to get up to speed. Essentially, that strays into the issue of the quantum of fines. The idea is that it is effectively an on-the-spot fine; it is really, “Two strikes and you’re out.” If someone offends twice, they will end up with a restricted premises order, and if they offend again, they will get an unlimited fine. It is an appropriate escalation. At the starting point, there are a number of other fines that are of a similar quantum, where someone could potentially argue, “Well, I did not realise. I am new; I did not get the training; I was not here that day,” and then it is not such a painful fine. They would certainly learn their lesson, however, and after two offences it escalates very significantly.

Clause 56 amends the Tobacco Retailers Act (Northern Ireland) 2014 and introduces the power for the Department of Health in Northern Ireland to amend the definition of a tobacco, nicotine or non-nicotine vape offence for which a restricted premises order can be issued. That is the same provision made for England and Wales in clause 15. Clauses 15, in England and Wales, and 56, in Northern Ireland, are important to maintain the longevity of the legislation. They will ensure that enforcement action remains up to date to reflect any relevant new tobacco or vape products that come on to the market in future. I therefore commend the clauses to the Committee.

Preet Kaur Gill: We support the introduction of restricted premises orders for breach of age of sale laws on nicotine and vaping products in the same way that they already exist for tobacco. A repeat offender should know that there are serious consequences for breaching age of sale legislation, so I strongly support the principle of providing a strong deterrent to any retailers that would break the law. The threat of enforcement action cannot be seen as the cost of doing business.

I have a few questions about how the orders work in practice. The Bill introduces a requirement for trading standards authorities to consider whether to conduct a programme of enforcement at least once a year. That is not a strong requirement. There is nothing to say that local teams must conduct any enforcement action within a two-year period on the matter, even if they receive complaints, and many trading standards teams are woefully under-resourced. Therefore, the requirement for the powers to be used for “persistent” offences, meaning at least two breaches within a two-year period, suggests to me that the orders will be very seldom used.

That is not to mention the question of how the orders would be enforced once granted by a magistrates court, or indeed the backlogs before that. Can the Minister say how many times restricted premises orders have been used in relation to tobacco in recent years, or even in the last decade? We heard from trading standards at the evidence sessions that boots are needed on the ground to make this work. My understanding is that of the money that the Government have announced for enforcement, only £10 million will go to trading standards. Will the Minister confirm whether that is correct?

At the same time, the Chartered Trading Standards Institute is warning that its profession is in jeopardy because of a lack of investment. Its funding has been cut by 50% over the past decade, and it estimates that around the UK as much as half the workforce is set to retire over the next decade. Has the Minister heard any of those concerns? What conversations has she had with colleagues and other Departments about staff retention and investment?

I am foregrounding one of my amendments to a later clause, but I am of the view that the proposed fixed penalty notice powers will be a more effective mechanism to enforce compliance on age of sale, particularly given the clause on use of proceeds, if we do not have strong reassurances that trading standards will get the necessary resources from central Government.

We strongly welcome any measure that will aid authorities in cracking down on the sale of tobacco, vapes and nicotine products to children. However, I urge the Minister to look again at whether the new regulations will be coupled with the enforcement action needed on the ground. Without it, they will not achieve what we need them to, and more young people will fall prey to addiction.

Dame Andrea Leadsom: I am pleased that the hon. Lady supports the clauses. They are absolutely vital to ensure that we have the proper enforcement powers. She asked about the investment in enforcement. I can tell her that we are investing over £30 million of new funding a year into enforcement agencies, including trading standards, HMRC and Border Force. That increased investment will boost enforcement surrounding the sale of illicit tobacco and illicit vapes and help local trading standards with enforcement on underage sales of tobacco and vaping products at a local level. There will also be £100 million of funding over five years to support HMRC and Border Force's new illicit tobacco strategy, which will seek to tackle the illicit trade and create a new illicit tobacco taskforce. Various measures are under way, including training, but enforcement will be absolutely key.

Question put and agreed to.

Clause 12 accordingly ordered to stand part of the Bill.

Clauses 13 to 15 ordered to stand part of the Bill.

Clause 16

RESTRICTED SALE ORDERS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 17 stand part.

Dame Andrea Leadsom: Clauses 16 and 17 are based on and replace existing legislation for England and Wales. They relate to restricted sale orders, which is one of several measures in the Bill that will ensure that our enforcement approach to tackling under-age sales is both effective and proportionate.

Clause 16 provides that a persistent offender can be issued with a restricted sale order, which is similar to a restricted premises order but puts a ban on an individual from selling tobacco or vape products rather than a business. The clause is important for the overall functioning of the Bill as it provides local authority trading standards with a further tool for enforcement. Restricted sale orders also act as a deterrent to persistent offenders as they apply to a specific person, regardless of their place of employment.

Clause 17 makes it an offence to breach a restricted sale order. The offence is committed when the individual has done something, such as sell a product, that they have been prohibited from doing under the order. As with restricted premises orders, making it an offence to

breach restricted sale orders gives local authority trading standards the ability to escalate action to tackle persistent offenders. The penalty for breaching a restricted sale order is an unlimited fine, which will again be a good deterrent. I commend clauses 16 and 17 to the Committee.

Preet Kaur Gill: Once again, we support these clauses, which will provide an effective deterrent to those who would sell addictive products to children and ensure that repeat offenders have that freedom taken away. I echo my comments on restricted premises orders: the success of the policy will depend on effective enforcement. May I ask the Minister why the Government have not provided similar powers to add to the list of relevant offences for which a restricted sale order can be issued, as they have with a restricted premises order? What is the rationale there?

Likewise, I am interested in whether the Minister has data on how many of those orders have been issued in relation to tobacco in recent years. I think she has clarified that the orders are designed to stop repeat offenders being able to simply move around, but can she assure us that local trading standards authorities are sufficiently joined up, and that someone moving between different shops in other local authorities in a retail chain could be picked up?

Once again, we support the principle of the clauses, which brings the consequences of breaching age of sale law for vaping and nicotine products into line with the existing laws for tobacco, but I have some concerns about how it will work in practice. I would be grateful if the Minister could address those.

Dame Andrea Leadsom: I thank the hon. Lady for her points, which were all very well made. If I may, I will write to her about her question of how many times such orders have been used in the past. I will reflect on what she says about the ability to enforce. I have set out the amount of new funds going to enforcement and the plans for further education and training, but I will certainly reflect on her point.

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Clause 17 ordered to stand part of the Bill.

Clause 18

LIABILITY OF OTHERS FOR CERTAIN OFFENCES COMMITTED BY BODIES

Question proposed, That the clause stand part of the Bill.

Dame Andrea Leadsom: The clause makes a person potentially liable for an offence committed by a body, when that offence has been committed with their consent, connivance or neglect. That means that a person would be liable in addition to the body, such as the company or partnership, that they are working for. It helps the overall purpose of the Bill by supporting local authority trading standards in enforcing tobacco and vape age of sale regulations, as they can punish both individuals and businesses when conducting their enforcement activity. I commend the clause to the Committee.

Preet Kaur Gill: As with previous clauses, we support clause 18. It would not be right if someone working in a local shop could receive orders from a higher authority in their organisation to breach the regulations, but only that person or premises could be proceeded against, not the company or the director, manager or senior person who may ultimately be responsible.

There are already a number of situations in our law where, if an offence is committed by a company and it is proven to have been committed with the consent or connivance of a director, manager or senior person, that person is also guilty of the offence. I am satisfied that the clause is an appropriate application of that mechanism, as it refers to the persistent breach of regulations, and therefore would indicate a systemic problem. We support its inclusion in the Bill.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Clause 19

ENFORCEMENT BY LOCAL WEIGHTS AND MEASURES AUTHORITIES

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clauses 20 and 21 stand part.

3 pm

Dame Andrea Leadsom: Clauses 19, 20 and 21 relate to the enforcement requirements of local weights and measures authorities in England and Wales. Clause 19 places the duty to enforce the tobacco and vaping measures in England and Wales on local weights and measures authorities. For England and Wales, “local weights and measures authorities”

means local authority trading standards.

The clause provides local authority trading standards with the power to use the investigatory powers under the Consumer Rights Act 2015 to conduct their enforcement activity. The investigatory powers are comprehensive and include the power to purchase products, observe a business, enter premises with or without a warrant, inspect products, test equipment, require the production of documents, seize goods, seize documents as evidence, break open containers and require assistance from persons on the premises. The existing regulatory regime for tobacco enforcement provides for local authority trading standards to use the same investigatory powers, which are considered to be effective, and thus clause 19 provides continuity with the current enforcement approach, ensuring enforcement of this new legislation at the local level.

Clause 20 provides a requirement for local authority trading standards in England to consider yearly a programme of enforcement, and the potential design of such a programme of enforcement, for offences under part 1 of the Bill. A programme of enforcement includes at least one of the following: investigations of complaints regarding alleged offences, prosecutions in respect of such offences, and/or other measures intended to reduce the incidence of such offences. The clause is important to the Bill, as it reconfirms what local authority trading standards should consider as appropriate to enforce the tobacco and vapes regulations.

Clause 21 makes the same provision for programmes of enforcement in Wales as is made for England under clause 20. I commend clauses 19, 20, and 21 to the Committee.

Preet Kaur Gill: Trading standards officers are experts in this area. They know what they are looking for in retail settings, they are experts in the legislation they have to enforce, and they do an important job in difficult circumstances. As we heard in evidence, trading standards officers enforce dozens of regulations, but in many local authorities there are barely one or two officers to do the job. As we consider the new regulations that we give to them to enforce, it is important that we make sure they get the support they need to do the job.

As I mentioned, I have some concerns about clause 20, in that it provides a relatively weak basis on which to compel a programme of enforcement to be carried out. However, I am glad it at least sets out something of the Minister’s expectations, and we acknowledge that different local authorities face different local challenges. We do not want to be overly prescriptive in what we set in law. The issue therefore comes down to resources, so can the Minister tell us what has been the result of Operation Joseph and whether it will be continuing? I note that it received £3 million in funding last year, but the timeframe in which that was scheduled to be delivered was unclear. Can the Minister clear that up?

The Chartered Trading Standards Institute estimates that one in three vapes on British shelves may be illicit, which suggests that local authorities are struggling to fully get to grips with existing enforcement priorities, as we add new ones. What assessment have the Government made of authorities’ capacity to absorb these new responsibilities with the resources allocated?

Bob Blackman: I want to put one issue to the Minister before she sums up these clauses. Obviously, the overwhelming number of retailers will wish to conform to the rules and regulations under which they exist. On re-reading the Bill, I notice that it does not cover the contents of products. For example, we have cited the issue of so-called nicotine-free products that contain nicotine and, indeed, many other products that may have different amounts of nicotine from what is stated. We hear anecdotally of some suppliers wanting to reduce the amount of nicotine in vapes to get people to buy more of them because the nicotine hit is insufficient. Under these powers, will trading standards officers have the opportunity to look at those products and take action against retailers who are clearly selling products whose contents clearly do not accord with what should be in them?

Rachael Maskell: I want to pick up on this point as well because it is incredibly important, and we cannot put the responsibilities on to trading standards if they do not have the tools to do the job. Clearly, this is a new field and, as we have discussed throughout the Bill, new products will come out and be marketed if we do not get ahead of the curve. It is therefore important that we ensure that new testing kits are made available and that we look at how they can be brought into play.

We heard strong evidence last week about the benefits of introducing a track and trace system, which would simplify the work of trading standards. If a product has

not been through that process, and there is therefore not an authoritative basis on which to say that it can be sold, it would clearly be an illicit product. If a proper track and trace process was put in place, that could aid the work of trading standards, and addressing the real challenges we are trying to deal with through these clauses would not require such extensive resourcing.

Will the Minister therefore comment on her appetite for bringing in a track and trace system for vaping and other nicotine products to get ahead of the curve? That would ensure that the illicit trade is suppressed and does not rear its ugly head and that it is as easy as possible for trading standards to uphold every part of the Bill.

Dame Andrea Leadsom: This is obviously an incredibly important area of enforcement, and successful enforcement is integral to the success of this policy.

To the question from the hon. Member for Birmingham, Edgbaston about Operation Joseph, in the year before the operation—2022-23—2.1 million illicit vapes were seized by trading standards across England. In the same year, 1,199 test purchases were carried out by trading standards in England, with 27.3% resulting in an illegal sale. Those are the numbers. As the hon. Lady says, Operation Joseph has had £3 million of investment over two years, led by National Trading Standards. It conducts a range of illicit vape enforcement activities, including data collection and analysis of the scale of illegal products and under-age sales; market surveillance; under-age sales testing; court enforcement action; and upskilling of trading standards staff. A further operation—Operation CeCe—was established in January 2021 as a joint venture between National Trading Standards and His Majesty's Revenue and Customs to tackle illicit tobacco sales.

So those individual measures are in place. As hon. Members will know, the Medicines and Healthcare products Regulatory Agency looks at the product notifications for legal products, which have to meet the compliance standards of the MHRA. It is then for trading standards to enforce, and they have had a significant increase in resources to tackle enforcement, as I have set out. I am obviously happy to write to Members with more detail should they wish.

Question put and agreed to.

Clause 19 accordingly ordered to stand part of the Bill.

Clauses 20 and 21 ordered to stand part of the Bill.

Clause 22

POWER OF MINISTERS TO TAKE OVER ENFORCEMENT FUNCTIONS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss clause 23 stand part.

Dame Andrea Leadsom: Clauses 22 and 23 relate to powers for Ministers to take over enforcement in England and Wales. Clause 22 provides a power for the Secretary of State for the Department of Health and Social Care or Welsh Ministers to carry out the enforcement of a particular case, or a particular type of case, instead of local authority trading standards.

Trading standards operate in all local authorities, and it is standard practice that they undertake required local enforcement action, as will be the case for offences under part 1 of the Bill. However, a situation could arise where they are unable or unwilling to undertake enforcement in a particular case. For example, a tobacco company could develop a new tobacco product that it argues is outside the scope of enforcement, which could result in trading standards being hesitant about pursuing action—as we have discussed, tobacco companies are nothing if not inventive in their determination.

Clause 22 replaces, and is based on, existing legislation. It allows for the Secretary of State for Health and Social Care or Welsh Ministers to take over enforcement action, should that be deemed necessary, and it ensures consistent, strong and effective enforcement of the tobacco and vape measures in the Bill.

Clause 23 provides a power for the Secretary of State for Health and Social Care or Welsh Ministers to take over from trading standards the conduct of any legal proceedings relating to an offence under part 1 of the Bill. In a similar manner to clause 22, this clause replaces, and is based on, existing legislation. It allows the Secretary of State for Health and Social Care or Welsh Ministers to take over the conduct of any legal proceedings, should that be deemed necessary, and it ensures consistent, strong and effective enforcement of the provisions in part 1 of the Bill. I therefore commend clauses 22 and 23 to the Committee.

Preet Kaur Gill: Let me start by saying that I support these two clauses being added to the Bill, providing the Secretary of State with powers to take over enforcement functions from local authorities or to take legal proceedings in court instead of a local enforcement authority.

The rationale for these additions is, first, to ensure that where local authorities are unwilling or unable to take enforcement action, the Government themselves can intervene to speed that work up and get it done. That can only be a useful backstop, although it does underline the important points that I and other colleagues have raised about local authorities having appropriate resources to discharge their responsibilities in the first instance. Secondly, as we heard in evidence, there is the matter of illicit tobacco, and often vapes too, being linked to organised crime. Such criminal networks often span large areas, crossing local authority lines, and in theory it could be useful for national Government to intervene in large cases that extend beyond the jurisdiction of a single local authority.

We hope that the work of trading standards officers is sufficiently joined up with the work of officers in other local authorities and the work of national agencies such as the MHRA and Border Force, but the point remains that national authorities should be able to step in if required. Nevertheless, I would be grateful if the Minister could for the record expand on how she would expect to utilise the powers in clause 22 and in what scenario she would consider that necessary. Could she also confirm whether she plans to devote additional resources to national trading standards as part of her plans to deal with the rapid growth of the illicit market in vapes in recent years, including unsafe products with illegal nicotine strengths and so on?

[Preet Kaur Gill]

Given the widespread appearance of some illicit products on the shelves of shops and the co-ordination work that will need to be undertaken with the likes of Border Force to stop such illicit products getting into the country, in what scenario would the Minister consider it appropriate for the national authorities to lead on certain priorities instead of local teams? We know that local trading standards officers are often intelligence-led, whereas national authorities have greater resources at their disposal. How is that work co-ordinated, and can we do it better?

3.15 pm

Dame Andrea Leadsom: I thank the hon. Member for Birmingham, Edgbaston for her comments and views. She asked a really important question: will we enforce at a national level? The answer is that, at the moment, we want to be able to enable that, should it prove necessary. She will be aware that, as I set out, we are expanding—by £30 million a year—the resourcing available to His Majesty’s Revenue and Customs, trading standards and Border Force to clamp down and enforce. As that work progresses, we may well uncover organised crime, for example, or significant bad practice that, as she rightly pointed out, crosses local borders and where a national-level intervention would be more appropriate. I cannot tell her right now what the plan is, because it will emerge over time, but having those powers is essential.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Clause 23 ordered to stand part of the Bill.

Clause 24

FIXED PENALTY NOTICES

Preet Kaur Gill: I beg to move amendment 20, in clause 24, page 12, line 14, leave out “£100” and insert “£200”.

The Chair: With this it will be convenient to discuss the following:

Clause stand part.

Clauses 25 and 26 stand part.

Preet Kaur Gill: The amendment is very simple: it would amend clause 24, which introduces fixed penalty notices for retailers that breach age of sale, proxy purchasing and free distribution restrictions on tobacco, vapes and nicotine products, by doubling the fixed penalty notice from £100 to £200.

The need for the amendment is clear. In 2022-23, national trading standards identified that 20% of the 1,000 vape test purchases carried out with retailers resulted in an illegal sale. In 2019-20, 50% of councils that undertook test purchasing reported that cigarettes or tobacco products were sold to under-age people in at least one premises. Despite existing regulations, there is a big and widespread problem, which suggests that the current penalties and fines, which can end up as high as £2,500, are an insufficient deterrent. I strongly support giving trading standards officers the power to issue on-the-spot fines to retailers doing the wrong thing, but the current level of the fine is too low.

My amendment would increase fines to £200, precisely doubling the deterrent in the Bill. Under the Bill as drafted by the Government, offenders can be forced to pay only £50 if they pay off their fixed penalty notice within 14 days, and it is surely too easy for those breaching the law to factor that in as the cost of doing business. Stakeholders including the Association of Convenience Stores and the Local Government Association agree that £100 is too low and that £200 makes logical sense as the level at which to set fines, equalising it with the level for other, similar offences, such as that proposed in the draft regulations for the disposable vapes ban. In the Government’s consultation, £200 was also the most popular response—three times as many respondents supported £200 over £100.

The other reason why my amendment is important is that the penalties from fixed penalty notices can be retained by the local authority. I have raised my concerns, as others have, about the decline of local trading standards, and the amendment would increase the funds they have available to enforce other aspects of the Bill, including regulations yet to be made under it. All of that comes with a cost, and anything that we can do to give local authorities the tools they need to enforce the regulations, the better. I note that clause 26 would provide the power to amend the level of the fixed penalty notice by way of regulations, so the issue could be revisited if needed.

I urge other Committee members to support my amendment in order to strengthen enforcement and provide a proper deterrent to rogue retailers that choose to sell addictive and dangerous products to children.

Rachael Maskell: I rise to support my hon. Friend the Member for Birmingham, Edgbaston. I completely agree that when we set these figures, we often forget that the economy has moved on so much, and that the rise in inflation has meant that so many things cost so much more. Just £100 is a very small amount to many shops, which take their cut from these products. It is therefore essential that we move into the realms of reality, not least because the consultation advised the Government that £200 would be an appropriate starting point and would have public support.

Clause 26 says that the figure can be amended by the Secretary of State, should they choose to do so. So the amendment would not place a limit in primary legislation, but it would make this a more realistic deterrent to ensure that shopkeepers abide by the law. It is also really important to have an incentive for them to ensure that they are fully up to speed with their obligations. This change would focus their minds as regulations are introduced, as the Minister alluded to, and ensure that they keep themselves up to date, because they know that the penalty makes it worth doing that. I therefore urge the Committee to adopt my hon. Friend’s amendment. It is a simple measure that would not cause the Minister any grief as the Bill passes through its later stages.

Dame Andrea Leadsom: I am grateful to the hon. Member for Birmingham, Edgbaston for bringing this discussion to the Committee, and I fully appreciate the sentiment behind the amendment. I completely understand why it is attractive to raise the fixed penalty notice and make it more material to the individual, but I urge hon. Members to take into account the fact that local trading standards take a proportionate approach to tobacco and vape enforcement. The Bill proposes fixed penalty

notices of £100 to enable trading standards to take swifter action by issuing on-the-spot fines, rather than needing to go through lengthy court processes. Littering, parking or under-age alcohol sales attract on-the-spot fines. The proposal in the Bill is for £100, or £50 if it is paid within two weeks. That avoids people thinking, “I can’t pay this, so you’ll have to pursue me through the courts.” That creates an incentive for these issues never to come to court, and it can clog up court time and so on. I fully appreciate the hon. Lady’s point, but this is about practicality.

I find it slightly odd that the hon. Lady says £100 is affordable but £200 is not. I would be shocked to get a £100 on-the-spot fine, and I am sure she would, too. Most retail workers would find a £100 fine to be quite devastating vis-à-vis their daily cost of living. I fully understand the sentiment behind the amendment, but £100 is in line with the precedent set by penalties for comparable offences. The fixed penalty notice for under-age alcohol sales is £90. If the penalty were raised to £200, as the amendment suggests, trading standards could issue higher on-the-spot fines, but how many of us have that kind of money on us? It would push a person into severe difficulty. As we have discussed, there is a very swift escalation—it is a “two strikes and you are out” policy—and there is the ability to take the business to task, too, so I think the current penalty is actually quite stringent.

Dr Johnson: The Minister will not be surprised to hear that I think we must always consider the most stringent possible fine for selling these things to kids. Will she confirm that, in the event that someone is selling age-restricted tobacco and vaping products to children, the shop worker, who is unlikely to be on a particularly high income, could receive an on-the-spot £100 fine, which they would have to pay immediately; and that the shop premises can be taken to court, and if necessary, enforcement can result in the shop not being able to sell these products at all? In addition, under clause 1 an individual can be taken to court for selling these products and can get a level 4 fine. There is a whole range of options, from on-the-spot fines, which may be relatively low and can be used if the trading standards officer wants to quickly remind someone not to make such mistakes in future, to much more severe penalties for those who are more persistent or deliberate.

Dame Andrea Leadsom: My hon. Friend is exactly right, and I will run through the levels of fines for the benefit of hon. Members.

Mary Glendon: Is not the whole point of having fines that they act as a deterrent? We do not want lots of people just paying £100 because it is manageable. The thought that they may have to find £200 on the spot could be more of a deterrent. The reason we have these fines in the first place is that they act as deterrents, is it not?

Dame Andrea Leadsom: I completely agree; the hon. Lady makes a good point. What people would see as a deterrent is an open question. I would see a £100 fine as a deterrent; I do not have £100 in my purse, so I would have to go to the cash point. I would not be keen to do that, and Members of Parliament earn quite a bit more

than most retail workers. That is the truth of it. I actually think that setting the fine in line with the £90 fine for the offence of selling alcohol to someone under age is quite a material deterrent.

Rachael Maskell: I think the Minister is making slightly the wrong comparison. A retail outlet will have a till, and that till will have money in it. Therefore, it will be the business, not the shop worker, paying the fine. She makes the point that for one person, £100 could be incredibly steep, but for someone working in a venue that sells products out of the scope of the legislation, paying £200 out of a till is not really out of the ordinary, and these businesses make extortionate profits out of these things. I wonder if she could address that point.

Dame Andrea Leadsom: The hon. Lady makes a good point. There is an open question as to what the right level is, but it is for trading standards to decide whether the individual member of staff or the business pays the fine. So this is a very relevant point, but it is not just about taking the money out of the till. That is not necessarily the choice that trading standards would make; the fine may well be imposed on the individual.

Kirsten Oswald: I wonder whether looking at what an individual person may have in their purse is the right way to think about this. The Minister is right that I do not have £100 in my purse, but I am fortunate enough that I do have £100. It strikes me that in these situations, there would be a more modern way of paying the fine than expecting people to have it on their person at that moment. That puts a whole layer of obligation on them. I am slightly agnostic about what the level should be, but I wonder if we could look at what is reasonable rather than what people might have about their person.

Dame Andrea Leadsom: The hon. Lady makes a good point. Of course, most of us do not carry £100 in cash, because we do not need to these days. My point was more that if the fine is £200, an individual might say, “Well, you’ll have to take me to court over it.” That creates a huge administrative burden that will slow down justice.

I will turn to the other clauses, because I think that will help in this debate. Clauses 24 to 26 relate to fixed penalty notices in England and Wales. Clause 24 introduces fixed penalty notices for the under-age sale of tobacco and vaping products and for the free distribution of vaping products to under-18s in England and Wales. The current penalty regime requires trading standards to prosecute an individual or business, and they must be convicted in a magistrates court. The new fixed penalty notices will allow trading standards to take swifter action by issuing on-the-spot fines to retailers, instead of escalating to a court process. Fixed penalty notices are already in place in Scotland and Northern Ireland.

Fixed penalty notices offer an individual the opportunity to avoid prosecution for an offence if they make a payment within a specified period. They are already in place for proxy purchases of tobacco and vape products. A strong approach to enforcement is vital to ensure the smoke-free generation policy, and that our approach to tackling youth vaping has real impact. Fixed penalty notices will complement the existing sanctions and

[*Dame Andrea Leadsom*]

strengthen the toolkit available to trading standards officers, allowing them to take swifter action to fine those selling to anyone under the age of sale.

3.30 pm

Dr Johnson: Will the Minister give way?

Dame Andrea Leadsom: I will make progress, if that is all right—I will give way before I finish. I just want to ensure that hon. Members are aware of the facts.

Clause 25 states that funds received from fixed penalty notices issued in relation to the offences in the Bill will be retained by local authorities and must be used in connection with their functions under the Bill. That means that if trading standards issue a fixed penalty notice, the local authority will retain the funds from the fixed penalty notice, and those funds must be used by the local authority to support the enforcement of tobacco and vape legislation. That allows local authorities to cover the enforcement costs of issuing fixed penalty notices, and to reinvest any remaining funds in enforcement regimes.

Clause 26 provides the Secretary of State for Health and Social Care and Welsh Ministers with the power to change the amount of a fixed penalty notice and the percentage discount for early payment as set out in clause 24. The power provides flexibility for Ministers to adapt the amounts specified and will future-proof fixed penalty notices, ensuring that they remain an appropriate and proportionate enforcement tool to deter offenders.

Dr Johnson: I thank the Minister for giving way. The purpose of the penalties is presumably to punish those who have deliberately acted against the rules, and to be a deterrent against those who consider doing so. I am satisfied that the Minister has thought very carefully—I know she has—about the level at which the fines should be set. She has come up with £100, but can she reassure me that the Government will monitor to see whether that is sufficient and, if it is not, that they will increase it accordingly using the regulations provided for under the Bill? Secondly, when an individual is deciding to break the rules and to sell an age-restricted tobacco product to a child, could they know whether they would be dealt with under the fixed penalty notice or under clause 1, which carries a much bigger and more deterring fine?

Dame Andrea Leadsom: I can give my hon. Friend the reassurance that she seeks. With regards to the issuing of fines and whether the shopkeeper would know, it will be for trading standards to have the total range of enforcement tools that are available to them, including being able to impose a fine of up to £2,500 upon conviction in a magistrates court, as well as the other, potentially unlimited fines that we have discussed—for breach of a restricted premises order—or, indeed, this on-the-spot fine, which hon. Members will appreciate is a much faster way to provide swift and immediate punishment of offenders. Its escalation has already been set out—two offences in two years leads to the restricted premises or sale order.

Bob Blackman: I always seek a spirit of compromise in such circumstances. At the moment, the Bill states:

“The amount specified in a fixed penalty notice must be £100.”

I am concerned about how that could be altered by regulation. Clearly, a consultation or other measures might be needed. A relatively simple amendment could have the clause state that the fixed penalty must be a minimum of £100 and can be varied by regulation. Will the Minister consider that as not necessarily an amendment today, but as something she might consider taking forward so that we can satisfy all sides?

Dame Andrea Leadsom: My hon. Friend makes an excellent suggestion, and I will certainly take that away to reflect on it. My initial thought is that we could, unfortunately, end up with a situation where a particular individual or premises felt that they were being unfairly penalised, because they got £100 and I got £200. We can imagine that. Nevertheless, I think it is a really good idea and a very good proposal for compromise, so yes, I will reflect on it.

I think, Dame Siobhain, we have come to the end of the discussion, so I commend clauses 24 to 26 to the Committee.

The Chair: I apologise, Minister, but as this is the shadow Minister’s amendment, she in this case gets an opportunity to respond.

Dame Andrea Leadsom: Indeed.

Preet Kaur Gill: I thank the Minister, although of course I am disappointed at her rejecting the arguments that she has heard today. I welcome the suggestion from the hon. Member for Harrow East. I think that that would be a fairly reasonable way forward. Of course, we do not know whether the Minister will make those amendments.

The Minister talked about a fixed penalty notice of £100, but actually, that is not true, because people have 14 days and it is reduced to £50. I do not see £50 as a deterrent. I think that if it were £200, for example, and people therefore had to pay £100 within 14 days, that would be more likely to be a deterrent. I would therefore like to press the amendment to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 8.

Division No. 1]

AYES

| | |
|----------------------|---------------------|
| Charalambous, Bambos | Maskell, Rachael |
| Gill, Preet Kaur | Oswald, Kirsten |
| Glindon, Mary | Wakeford, Christian |

NOES

| | |
|------------------|-------------------------|
| Baker, Duncan | Johnson, Dr Caroline |
| Bell, Aaron | Leadsom, rh Dame Andrea |
| Blackman, Bob | Richardson, Angela |
| Cameron, Dr Lisa | Tuckwell, Steve |

Question accordingly negated.

Clause 24 ordered to stand part of the Bill.

Clauses 25 and 26 ordered to stand part of the Bill.

Clause 27HANDING OVER TOBACCO ETC TO
UNDERAGE PEOPLE IN WALES

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss schedule 1.

Dame Andrea Leadsom: Clause 27 provides that schedule 1 amends aspects of the Public Health (Wales) Act 2017. It amends the existing provision relating to the handing over of tobacco to under-age people to align to the new age of sale. It also extends the offence to cover the handing over of vaping products to those under 18. The schedule updates definitions in the Public Health (Wales) Act to align to the definitions set out in the rest of the Bill, including the definitions for herbal smoking products and nicotine products. These are needed to ensure that the law in Wales is correct and accurate and aligns with the provisions that the Bill is introducing across the rest of the UK. I therefore commend the clause and schedule to the Committee.

Preet Kaur Gill: We support the clause, which introduces schedule 1 to ensure that provisions on age of sale in the 2017 Act align with the new age of sale restrictions that we have discussed. Our colleagues in the Welsh Government have welcomed this Bill and pledged to work jointly with the Westminster Government to take collective action to tackle the harms caused by smoking and youth vaping across the United Kingdom. Wherever practicable, we support consistency of the law across all four nations, which will greatly aid public understanding and acceptability, support consistent enforcement and ensure that there is a level regulatory playing field for us to work towards a smoke-free future.

Question put and agreed to.

Clause 27 accordingly ordered to stand part of the Bill.

Schedule 1 agreed to.

Ordered, That further consideration be now adjourned.
—(Aaron Bell.)

3.40 pm

Adjourned till Tuesday 14 May at twenty-five past Nine o'clock.

Written evidence reported to the House

TVB 30 Nottingham Centre for Public Health and Epidemiology, University of Nottingham

TVB 31 Jordon Anderson

TVB 32 UCL Tobacco and Alcohol Research Group (UTARG)

TVB 33 Public Health Scotland

TVB 34 The Campaign for Children's Lung

TVB 35 The Grassroots Campaign Against the Tobacco Ban

TVB 36 The Incident Response Group

TVB 37 Ann McNeill, Professor of Tobacco Addiction, Institute of Psychiatry, Psychology & Neuroscience, King's College London (supplementary)

TVB 38 ASH Scotland (supplementary)

TVB 39 Dr Matthew Rimmer, Professor of Intellectual Property and Innovation Law, Faculty of Business and Law, Queensland University of Technology, Brisbane, Queensland