

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TOBACCO AND VAPES BILL

Sixth Sitting

Tuesday 14 January 2025

(Afternoon)

CONTENTS

CLAUSES 5 TO 14 agreed to.

CLAUSE 15 under consideration when the Committee adjourned till
Thursday 16 January at half-past Eleven 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

Saturday 18 January 2025

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The Committee consisted of the following Members:

Chairs: PETER DOWD, † SIR ROGER GALE, † SIR MARK HENDRICK

- | | |
|---|---|
| † Ahmed, Dr Zubir (<i>Glasgow South West</i>) (Lab) | † Osborne, Tristan (<i>Chatham and Aylesford</i>) (Lab) |
| † Al-Hassan, Sadik (<i>North Somerset</i>) (Lab) | † Owatemi, Taiwo (<i>Lord Commissioner of His Majesty's Treasury</i>) |
| † Barros-Curtis, Mr Alex (<i>Cardiff West</i>) (Lab) | † Rankin, Jack (<i>Windsor</i>) (Con) |
| † Bool, Sarah (<i>South Northamptonshire</i>) (Con) | † Stafford, Gregory (<i>Farnham and Bordon</i>) (Con) |
| † Chambers, Dr Danny (<i>Winchester</i>) (LD) | † Stainbank, Euan (<i>Falkirk</i>) (Lab) |
| † Cooper, Dr Beccy (<i>Worthing West</i>) (Lab) | † Whitby, John (<i>Derbyshire Dales</i>) (Lab) |
| † Dickson, Jim (<i>Dartford</i>) (Lab) | |
| † Foy, Mary Kelly (<i>City of Durham</i>) (Lab) | |
| † Gwynne, Andrew (<i>Parliamentary Under-Secretary of State for Health and Social Care</i>) | Chris Watson, Kevin Candy, Sanjana Balakrishnan,
<i>Committee Clerks</i> |
| Jarvis, Liz (<i>Eastleigh</i>) (LD) | |
| † Johnson, Dr Caroline (<i>Sleaford and North Hykeham</i>) (Con) | † attended the Committee |

Public Bill Committee

Tuesday 14 January 2025

(Afternoon)

[SIR MARK HENDRICK *in the Chair*]

Tobacco and Vapes Bill

Clause 5

AGE OF SALE NOTICE AT POINT OF SALE: ENGLAND

2 pm

Question (this day) again proposed, That the clause stand part of the Bill.

The Chair: I remind the Committee that with this it will be convenient to discuss clauses 6, 55 and 72 stand part.

Jack Rankin (Windsor) (Con): At first sight, the clause can appear to follow on naturally from the rest of the Bill, and in some sense it does, but I think it is important. We heard from shopkeepers in the evidence session last week, from the British Retail Consortium, and in the representations to us made in writing that it can be difficult for younger shopkeepers to hold the line on this, and they might be at the wrong end of unacceptable verbal abuse. In my view, the Bill will increase that risk.

With younger people often manning retail stands, in the future we might have 18 or 19-year-olds having to refuse to sell tobacco products to people a decade or so older than them. That will be increasingly challenging, even compared with the existing situation. I have spoken about being opposed to the principle of the Bill and finding it somewhat unworkable, but putting that to one side, I think that if we are to proceed with it, we have a particular obligation to make things as easy as possible for shopkeepers. I am sure that everyone agrees.

The language used, or proposed to be used, in the age of sale notice in subsection (2) is quite legalistic, being presented as:

“It is illegal to sell tobacco products to anyone born on or after 1 January 2009”.

That is a statement of fact. It mirrors what we see today, but it is very legal. I think it would benefit from being a bit more practical. For example—I think my hon. Friend the Member for Sleaford and North Hykeham made this point—it is illegal to sell herbal smoking products, cigarette papers and not just cigarettes, but cigars. We might help our shopkeepers if we made the list a bit more practical, so that the shopkeeper could turn around to say, “Sorry, guvnor, but this is the law,” whereas with the Bill saying “tobacco products”, the verbal altercation might include, “These are not cigarettes, though.” Perhaps we should move away from legalistic language to help staff, especially younger members of staff. That is particularly necessary, given what seems to be a general coarsening in our society, I am afraid to say.

Dr Caroline Johnson (Sleaford and North Hykeham) (Con): The regulations will need to be enforced not just in a large supermarket, where the shop assistant has the benefit of a security guard and other—

The Chair: Order. Will the hon. Lady speak through the Chair, please?

Dr Johnson: I am sorry, Sir Mark. The regulations will need to be enforced whether one is a shop assistant in a small shop or in a large shop. In a large shop that sells tobacco, such as a large supermarket, one might have the benefit of a security guard, additional staff and many more people around. Alternatively, a 19-year-old might be trying to enforce the regulations on a Saturday evening in a rural shop many miles from the local police station, with no security guard or anyone else around.

Jack Rankin: That is exactly the kind of situation I am thinking of. The language could be a bit more practical, less legal and it might aid that shopkeeper to point to an external source for validation.

I have two further points. One is a point of ignorance for me as a new Member, for which I apologise. I do not know what subsection (5) means when it says that

“Regulations under subsection (4) are subject to the negative resolution procedure.”

I hope someone can help me with that. Clause 6 is being taken together with clause 5, because clause 5 applies to England and clause 6 applies to Wales. To me, they appear to be exactly the same, apart from the age of sale notice described in clause 6(2) and the fact that clause 6 obviously also includes the Welsh version. I am going to take at face value that it says the same thing in Welsh, although I do not speak Welsh. It would be nice to clarify whether it is either/or whether it is both together. That is of interest.

Sarah Bool (South Northamptonshire) (Con): I want to follow up on the points made on clause 5(3) and clause 6(3) in particular. Both specify that

“The notice must be displayed in a prominent position”.

I agree with many of the points my hon. Friend the Member for Windsor made about what that means in practice. In the information pack that we have been given, there is a quote from the Scottish Grocers’ Federation, which I want to read for the record. It explicitly states:

“In most convenience stores, space is at a premium and the suggested wording set out in UK Government proposals will require a significant surface area in order to be legible and accessible to all customers. The complexity of a moving ban will require very clear public messaging. Appropriate and mandatory signage is essential for good practice and the sale of age restricted items, SGF is concerned that multiple messages throughout the store relating to various product ranges and items could potentially create confusion and lead to challenging interactions between customers and staff.”

To protect our retailers, we must ensure that we enforce these regulations correctly. When making the regulations, the Secretary of State should take into account the voice of the retailers.

The Parliamentary Under-Secretary of State for Health and Social Care (Andrew Gwynne): It is a pleasure to serve under your chairmanship, Sir Mark. In responding to points that have been made, I want first to reiterate that these two clauses do not relate to enforcement; they concern the nature of the signage that will be required to be displayed. We can come to those other matters later in the Bill’s proceedings. I remind Opposition Members of what has been said in previous debates: we

will use the very long lead-in time to engage fully with the retail sector to ensure that we get the delivery in shops right and to ensure that the Bill's provisions can be implemented without any hiccups.

I also reiterate that we abhor any violence and abuse towards retail staff—or anybody else—and it is the intention of this Labour Government to introduce a new offence in this respect. Given the comments that have rightly been made in the course of this and earlier debates, I hope that it will command full support from all parts of the House.

The hon. Member for Windsor asked what is meant by “negative resolution procedure”. It is the procedure for the statutory instrument that will be made to introduce these regulations. The fact that it is “negative” means purely that it will not require a parliamentary debate. It will be done through the usual secondary legislation processes.

There were questions about the nature of the clauses relating to different parts of the United Kingdom, and why we are approaching this with slightly different methods. I must say politely—particularly to the shadow Minister—that we have to respect the devolution settlement. These matters are entirely within the legislative competence of the devolved Administrations. Some things remain reserved for the UK Government, but for a lot of the measures in the Bill, the legislative competence rests with the devolved Administrations and their Parliaments.

Dr Johnson: I have at no point suggested that I do not respect the devolution that is in place. I made two remarks that reference devolution. One was about the different penalties that apply for the same offence in different parts of the United Kingdom. While I recognise that Ministers in other parts of the country have the competence to change the penalties to make them different from those that apply in England, it is clearly the Minister here who decides what the draft legislation should say with regards to the penalty in England. My questions focused on why he has chosen to make it different in England from other parts of the United Kingdom. Clearly, if the Northern Irish had chosen a higher penalty, it is up to him if he wishes to join them, or to have a lower penalty.

The other issue I have raised regarding devolution was in relation to clause 5. The Bill as drafted says that tobacco cannot be sold to people born on or after 1 January 2009, and much effort has gone into ensuring that that is replicated in Scottish legislation all the way through, even though the Scottish Parliament could do that itself if it wanted to. It makes sense to do it in one go here because that is more efficient in terms of both time and financial expenditure for civil servants across the country. So my question was why the Minister has chosen not to include in the Bill the change to the notice in clause 5, saying that tobacco cannot be sold to people under 18. Why not change that now?

The Chair: This is a very long intervention.

Dr Johnson: I am defending myself, as the Minister has accused me of something, Sir Mark.

The Chair: I know, but please wind up.

Dr Johnson: I am merely suggesting that changing the notice in clause 5 to

“born on or after 1 January 2009”

instead of “under 18” now would be more efficient, and help our Scottish colleagues, rather than implying they are not capable of doing so.

Andrew Gwynne: Sir Mark, the hon. Lady protests too much here, because while it is true that she was questioning why, for example, the English fines could not be the rate of the Northern Irish fines, she was also pretty much calling for us to legislate for Scotland and Wales to bring consistency across the whole United Kingdom. Likewise with clause 5, she asks why we in this place are not legislating for Scotland in respect of the notices that will be displayed in Scotland. It is not our job to legislate where the Scottish Government do not want us to do so.

Dr Johnson: Will the Minister give way?

Andrew Gwynne: No, I will answer the hon. Lady. My officials and I have been in contact throughout the production of this Bill with officials and Ministers in the devolved Administrations. I have had umpteen meetings personally with my counterparts in Scotland, Wales, and Northern Ireland, and there is an open offer. They are genuinely excited, Sir Mark, that we are able—as far as possible—to legislate with their consent to make smoke-free UK a reality, and we have sought to design this Bill in co-production with the devolved Administrations. None the less, there are some things that the devolved Administrations do not wish this Parliament to legislate on. For example, in respect of clause 5, on the notices, the Scottish Government have made it very clear that this is something they wish to do in their own way, in their own time, notwithstanding the fact that they have given us assurances that the measures will be in place to give enough time for retailers north of the border in Scotland to implement them. It is not for me to overrule the will of Scottish Ministers, who have the legislative competence to do this, if they do not wish this Parliament to do it on their behalf.

I hope that that answers future similar questions about the differences in different parts of the United Kingdom. We are legislating with the permission and consent of the three devolved Administration Governments, and we are not going to overstep. I have already said to my ministerial colleagues in other parts of the United Kingdom that if, during the course of the Bill through this House and the other place, they think, “That is not quite right and we need it to be amended,” or, “You know, it does make sense for Westminster to do it all in one go and do it for us,” we will respect that.

I have given Ministers my promise that if, as an afterthought, they want us to do some of this for them on their behalf during the Bill's progress through its stages in both Houses, we will facilitate that. However, I am not going to overstep the powers given to me by the Scottish, Welsh and Northern Irish Ministers to legislate on their behalf and to ensure that we have a United Kingdom-wide Bill that meets the separate and different needs, ambitions and expectations of our devolved settlement.

Dr Johnson: I am grateful to the Minister for making clear that the reason that the text contained within the age of sale notice is not being amended at this stage is because Scottish Ministers have told him they would prefer to amend it themselves at a later date.

Andrew Gwynne: I am grateful for that, and if any offence was caused by my earlier comments, I apologise to the hon. Lady. We need to set out clearly that we are doing something quite ingenious, and that is only because of the goodwill and the desire of Ministers from different political backgrounds in Scotland, Wales and Northern Ireland to get this legislation through the United Kingdom Parliament with the ability for them to then differ on consultations and other matters once the legislation is on the statute book. That would have been unheard of in years gone by, when relationships were not necessarily as good as they currently are between the devolved Administrations and the Westminster Government.

The same argument applies to clause 6. The sign will be a matter for Welsh Ministers. Although the framework of the sign is set down in the Bill for Wales, because that was how they wished us to approach it, any changes would be a matter for Welsh Ministers. The hon. Lady asked the hypothetical question whether, if we changed the notices again, there would be adequate consultation or time for retailers. We are not planning on making life difficult for retailers. We think that the wording here is the right wording. I do not take it to be legalistic and technical in the way that the hon. Member for Windsor seems to think it is. It is the same wording that applies now, with the exception that rather than talking about people “under the age of 18”, it will say “anyone born on or before 1 January 2009”.

I think that is pretty clear.

The wording on the signage was tested during the public consultation in January, and more than 70% of respondents supported it. Many respondents noted that we need to mirror the existing wording to ensure accessibility. Other products are more niche and were not deemed to be necessary on the sign, but I think most people understand what a tobacco product is, and a cigar is certainly a tobacco product. I commend the clauses to the Committee.

Question put and agreed to.

Clause 5 accordingly ordered to stand part of the Bill.

Clause 6 ordered to stand part of the Bill.

Clause 7

BAN ON MANUFACTURE OF SNUS ETC

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

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

Clause 8 stand part.

Amendment 60, in clause 9, page 5, line 10, at end insert

“, save if it is a first offence.”

See explanatory statement to Amendment 62.

Amendment 61, in clause 9, page 5, line 12, at end insert

“, save if it is a first offence.”

See explanatory statement to Amendment 62.

Amendment 62, in clause 9, page 5, line 12, at end insert—

“(3A) A person who has admitted guilt of a first offence under this section is liable to a fine not exceeding level 3 on the standard scale or a caution.”

This amendment, together with Amendments 60 and 61, prevents penalties for a first offence under section 9 being a fine beyond level 3 and provides for a discretionary caution.

Clause 9 stand part.

Clauses 56 and 57 stand part.

Amendment 70, in clause 58, page 29, line 19, at end insert

“, save if it is a first offence.”

See explanatory statement to Amendment 72.

Amendment 71, in clause 58, page 29, line 21, at end insert

“, save if it is a first offence.”

See explanatory statement to Amendment 72.

Amendment 72, in clause 58, page 29, line 21, at end insert—

“(3A) A person who has admitted guilt of a first offence under subsection (1) is liable to a fine not exceeding level 3 on the standard scale or a recorded police warning.”

This amendment, together with Amendments 70 and 71, prevents penalties for a first offence under Section 58 (pertaining to restrictions on the possession of snus with an intent to supply in Scotland) being beyond level 3 and provides for a discretionary recorded police warning.

Clause 58 stand part.

Clauses 73 and 74 stand part.

Amendment 77, in clause 75, page 39, line 19, at end insert

“, save if it is a first offence.”

See explanatory statement to Amendment 79.

Amendment 78, in clause 75, page 39, line 21, at end insert

“, save if it is a first offence.”

See explanatory statement to Amendment 79.

Amendment 79, in clause 75, page 39, line 21, at end insert—

“(3A) A person who has admitted guilt of a first offence under this Article is liable to a to a fine not exceeding level 3 on the standard scale or conditional caution.”

This amendment, together with Amendments 77 and 78, prevents penalties for a first offence under Section 75 (pertaining to restrictions on the possession with an intent to supply of snus in Northern Ireland) being beyond level 3 and provides for a conditional caution.

Clause 75 stand part.

Andrew Gwynne: I am grateful for the opportunity to open this debate. Amendments 60 to 62, 70 to 72 and 77 to 79 would create a more lenient penalty regime for the offence of possessing the relevant oral tobacco product, for example snus, with intent to supply it to another person in the course of business in England, Wales, Scotland and Northern Ireland, by creating an exception to the maximum penalty that a person can face for committing that offence if it is their first offence.

The amendments would establish that someone who admits to committing an offence for the first time would be liable on summary conviction or indictment to a fine not exceeding level 3 on the standard scale, which is £1,000, or provide instead for a discretionary caution in England and Wales, a recorded police warning in Scotland or a conditional caution in Northern Ireland. That is lower than the current maximum penalties, which are,

on summary conviction, imprisonment for up to six months in England, Wales and Northern Ireland and 12 months in Scotland, a fine, or both; or, on conviction on indictment, imprisonment for up to two years, a fine, or both.

The amendments would remove the distinction between summary conviction and conviction on indictment for first-time offenders, meaning that the severity of the offence committed would not be taken into account in those cases as it would under current provisions. In creating a first-time offence, the amendments would have a similar effect to amendments that we have already discussed, so, if the Committee is content, I will not repeat myself, as my rationale for asking the shadow Minister to withdraw her amendment remains the same.

Dr Johnson: This group of clauses and amendments all apply to snus, which we are trying to ban, so the first question is: what is snus? Snus is a tobacco product predominantly used in Sweden and, to an extent, in the USA. When the Health and Social Care Committee, which I was a member of in the last Parliament, visited Sweden at around the time the previous Tobacco and Vapes Bill was introduced, we saw shops with massive displays of different types, brands and flavours of snus, which came in small round pots similar to those that we see nicotine pouches in; they were mostly kept in the refrigerator.

Snus is produced using tobacco leaves, salt and alkalis such as sodium bicarbonate or sodium carbonate. The alkali is there to help the nicotine to be absorbed more easily into the mouth and therefore into the bloodstream of the person using the product. Producers also potentially add a flavouring. As we have seen in cigarette papers, flavourings are used to improve the palatability of tobacco products. The mixture of tobacco leaf, salt, alkalis and flavouring is ground up, steam-pasteurised to inhibit the growth of bacteria, and then supplied loose or in small pouches.

The loose form is a moist, powdery product, which I understand is rolled between one's fingers to create a sort of cylinder shape known as a pinch. It is placed under the upper lip, where it is held for about 30 minutes while the nicotine is absorbed into the bloodstream. Its moist nature helps to facilitate the absorption of nicotine and makes the nicotine hit faster; it is absorbed more quickly than it would otherwise be.

The second way that snus can be supplied is in a small pouch resembling a very little teabag, which comes in two formats: original and white. The original version is a sachet of material that is kept moist and is brown in colour. Again, the moistness allows a quick release, but the tobacco product does not need rolling and pinching; it just needs putting into one's mouth, and it stays in its little pouch. The white version is not in all cases white, but the genre is known as white snus. It has a milder taste and a slower release because the powder in the pouch is dry. The dryness means that one needs to get it moist in the mouth before it will dissolve across the membrane and give the nicotine hit, which means that the dry snus is a slower-release product than the original. The American snus is a lower moisture product, again provided in a variety of flavours to suit the customer.

Why did I and others not know what snus was? I am sure you are familiar with it, Sir Mark. This specific form of tobacco product has been banned in the UK for

some time. It was banned by the Tobacco for Oral Use (Safety) Regulations 1992—I was still at school—and then EU tobacco products directive 2014/40 created a European-wide ban, which was incorporated into UK law by the Tobacco and Related Products Regulations 2016. The Committee might be interested to know that Sweden has a derogation specifically for snus under that EU regulation, so snus is still sold there, as I described.

Advocates of snus believe it is less harmful and causes less respiratory disease and less cancer than does an inhaled form of tobacco. They try to market it as an alternative to smoking that is less harmful. However, the evidence shows a risk of cancer, particularly of the cheek and gums. Perhaps that is not surprising, given where it is placed to be used. Oral squamous cell carcinoma, a form of cancer of the mouth, often occurs in the site at which snus is commonly placed. It has also been shown that snus causes increased blood pressure, particularly in females, and despite not being inhaled it can contribute to an increased rate of asthma.

Aside from all that, snus contains nicotine, which we know is addictive. Regardless of the form in which it is taken, it creates the addiction and cravings that rob people of the choice not to use the product, which the Minister spoke about so powerfully last week. It is important that we consider this carefully, because otherwise people will become addicted to snus as another form of nicotine.

Jack Rankin: The shadow Minister is a doctor, so she is learned in this area, and she makes the case that snus is harmful in the same way as tobacco. What does she know of the relative harm? I am concerned that, in taking quite a studs-up and puritanical approach, we are taking away things that might not be as bad as cigarettes that could allow people to effectively tier down. Does she have any thoughts on that?

2.30 pm

Dr Johnson: That was the second question I considered when preparing for the debate on this clause. My first question was: what is snus? My second was: if it is a tobacco product, why is it treated differently? We have talked about all sorts of different tobacco products—cigarettes, cigars, snuff—yet this one has particularly robust regulation and a robust legal framework. The only reason I could find was that it is new, trendy and coming forward very quickly, and there were concerns that it would quickly take over the children's market in the same way as vaping. That is the only suggestion I was able to find. I am sure the Minister will be able to help us to understand why snus is treated so robustly, although I am not sad to see that.

Clause 7 makes it an offence to manufacture oral tobacco products. Oral tobacco products are defined quite particularly as those that are for oral use but not intended to be inhaled or chewed, so they do not include chewing tobacco, which would be included under clause 1. They also have to be in either powder or particle form—as I said, they are in the form of ground tobacco. Currently, the Tobacco and Related Products Regulations 2016 define “tobacco for oral use” similarly, as tobacco “intended for oral use”, not to be inhaled or chewed, and

“in powder or particulate form or any combination”,

[Dr Caroline Johnson]

whether presented in a

“sachet portion or a porous sachet, or in any other way”.

Regulation 17 provides for a UK-wide ban on the production and sale of snus. Schedule 6 to the Bill, which we will come to, will repeal that measure and replace it with clause 7.

I want to ask the Minister why it is an offence to manufacture oral tobacco products in the UK, and not an offence to manufacture other tobacco products. He has talked about the need for a smoke-free generation and his worries that smoking tobacco harms individuals’ health, wellbeing and ability to choose, but he has not chosen to ban the production of other tobacco products. I found that the last time an English-produced cigarette rolled off the production line was at the Horizon Imperial Tobacco factory in Nottingham in May 2016, and the last UK-made cigarette was produced at Japan Tobacco International’s plant in County Antrim in October 2017. He may feel that such a ban is unnecessary because we are not producing any tobacco products, but I am interested in his thoughts on the matter.

The penalty here is the most severe so far. We have had some debate about different clauses containing fines at levels 3, 4 and 5 on the standard scale, but this clause contains a much more severe penalty for a product that may or may not be less harmful than cigarettes, although it has not been suggested that it is much more harmful. The fine for breaching clause 7 on the ban on manufacture of snus is, on summary conviction, imprisonment of six months, a fine or both. Six months is based on the current upper limit in a magistrates court, but the Lord Chancellor announced in October last year a plan to increase the maximum penalty for a magistrates court to 12 months’ imprisonment, which would presumably apply to this Bill. I will be grateful if the Minister could clarify whether that is the case and whether there have been any convictions under the existing legislation. The penalty for conviction on indictment would be imprisonment not exceeding two years, a fine or both—again, quite severe penalties when compared with other aspects of the Bill and other tobacco products. I am interested to understand why.

Sarah Bool: Will my right hon. Friend give way?

Dr Johnson: I am happy to give way—and to be promoted.

Sarah Bool: I apologise to my hon. Friend. I might have misunderstood, so may I clarify the intended purpose here? If snus is illegal under earlier regulations, what is this further provision? Is it to ensure that nicotine pouches are also caught? The UK has already banned the sale of all oral tobacco products, including snus, under the Tobacco for Oral Use (Safety) Regulations 1992, which implemented European Union directive 92/41. I am hoping for some clarity about that, but perhaps it will come from the Minister.

Dr Johnson: My understanding—I am sure the Minister will leap to his feet to correct me if I am wrong—is that the Bill does not apply to nicotine pouches per se, because nicotine pouches do not contain tobacco. As I understand it, the brands we see in our local supermarket in similar round pots contain nicotine, and they are put

in the mouth and absorbed in a similar way, but they are not tobacco products. As I read the Bill, clause 7 will not apply to them, and obviously they are not currently illegal, because they are widely sold.

Andrew Gwynne: I can easily clarify that point. The clause applies to relevant oral tobacco products, which are defined as tobacco products intended for oral use, not intended to be inhaled or chewed, and that consist wholly or partially of tobacco. It does not apply to tobacco-free nicotine pouches, which are sometimes informally referred to as snus; the Bill classes nicotine pouches as nicotine products.

Dr Johnson: I thank the Minister for clarifying that so comprehensively.

Clause 8 deals with the sale of snus. Clause 7 having made it an offence to manufacture snus, clause 8 bans the sale of snus, which it defines, in the same way as described by the Minister, as a “relevant oral tobacco product”. In wording that is slightly different from that in other clauses, clause 8 also describes the offence as not only to sell, but to “offer or expose...for sale”.

I had to look up what that meant. To help the Committee, apparently, to offer or expose something for sale means to expose it to attract an offer of purchase from the public. Something is put in the shop window—in the same way as the bongos the Minister described in a shop window the other day—to be visible to a customer and the customer may then choose to make an offer for the purchase of the product, and the product is thereby exposed for sale. In essence, this provision will make putting these products in a shop window an offence.

I am interested to understand why the wording in clause 8 is different from that for all the other tobacco and nicotine products in the Bill, where that wording is not used. If the Minister could explain that, I will be grateful. Again, the defence offered by clause 8 is “all reasonable steps”, but I am not sure what such steps would be, so I will be grateful for clarification on that, too, please.

The penalties for disobeying clause 8 are quite severe. The penalty on summary conviction is

“imprisonment for a term not exceeding the general limit”

in a magistrates court, which is six months, potentially rising to 12 months based on what the Lord Chancellor has said over the past few months, or a fine—of how much, the Bill does not state, so perhaps the Minister could help with that—or both. On conviction on indictment, the penalty is

“imprisonment for a term not exceeding 2 years, or a fine, or both.”

That means that we have a contradiction within the Bill. For virtually any other tobacco or nicotine products that may not be sold, but are sold by an offender, the offender is liable for a fine at level 3, 4 or 5, but clause 8—the sale of snus, as distinct from all other tobacco products—creates an offence that carries a penalty of significant imprisonment. I am not saying that that should not be the case, but I am interested to understand the rationale for the difference, because, notwithstanding any devolution differences, the decision on what to do in England and Wales is clearly for this Government and this Minister.

Clause 9 concerns possession with intent to supply in the course of business of a “relevant oral tobacco product”, as has been defined in clauses 7 and 8. I am interested in what is meant by “the course of business”. If one looks at section 4 of the Misuse of Drugs Act 1971, where possession with intent to supply is most readily thought of, it is the intent to supply it to another person. However, does “the course of business” imply that money must change hands? If one had the intent to supply to another without being paid, would that not be in “the course of business” and therefore be legal? Also, does the word “business” itself imply a properly regulated business? It could not be a properly regulated business in so far as it would be an illegal sale. Does the Minister therefore make a distinction between the product being sold from a business premises as opposed to being bought down the pub from an acquaintance?

Amendments 60, 61 and 62 to clause 9 basically look once again at the principle of proportionality. If, for example, we were to prosecute someone for the sale of cigarettes to a 19-year-old born on 1 January 2009, and it was that person’s first offence, we would give them a fine—so why would we wish to consider imprisoning somebody at the first offence for selling snus? The crime would appear to be somewhat similar but the penalty is very different. I do not intend to push the amendments to a vote, although other hon. Members may wish to, but they are designed to provoke debate on the proportionality of different offences, and the inconsistency between the penalties for different offences that may appear to be very similar. Amendments 60 and 61 insert the phrase

“save if it is a first offence”

and amendment 62 says:

“A person who has admitted guilt of a first offence...is liable to a fine not exceeding level 3 on the standard scale or a caution.”

I will be interested in the Minister’s comments.

Jack Rankin: I am sorry if this is my ignorance as a new legislator, but clauses 7, 8 and 9 applied to England and Wales. However, clauses 56, 57 and 58 apply the same measures to Scotland, and then we have the same for Northern Ireland. In previous clauses, we have also seen that replicated for Wales. Does that mean that clauses 7, 8 and 9 apply to both England and Wales, and how come that devolution is treated differently? Perhaps my hon. Friend the Member for Sleaford and North Hykeham knows the answer to that, or maybe the Minister could clarify.

Dr Johnson: I thank my hon. Friend for his point. I believe that the Bill specifies somewhere which clauses apply under which jurisdictions, but I cannot remember exactly which page that is on. I am sure the Minister in his summing up will be able to identify where my hon. Friend can look to review that, but some of the clauses will apply to different jurisdictions. Some will apply to the whole of the United Kingdom and others will apply to England and Wales, or England alone, depending on various different factors. My hon. Friend will be able to look at the relevant part of the Bill to find that out. My understanding is that clauses 7, 8 and 9 will apply in England and Wales, and I would be grateful if the Minister clarified that point in his summing up.

As my hon. Friend the Member for Windsor has identified, clauses 56, 57 and 58 apply to Scotland; they essentially replicate clauses 7, 8 and 9. Clause 56 prevents the manufacture of snus, clause 57 prevents the sale of snus and clause 58 prevents the possession with intent to supply of snus. Amendments 70, 71 and 72 to clause 58 replicate amendments 60, 61 and 62 and say that there should be proportionality in relation to penalties.

2.45 pm

I draw the Committee’s attention to the fact that, in Scotland, the penalty is currently set at 12 months, rather than being tied to the highest penalty in a magistrates court. With reference to the Lord Chancellor’s remarks in October to change the upper limit for a penalty in a magistrates court from six to 12 months, I am interested to understand why the Minister has chosen differently from his devolved counterparts, who have chosen a fixed amount of time for their penalty—six months in Northern Ireland and 12 months in Scotland—while he has chosen to tie it to a moveable feast: the upper limit of the magistrates court, which can go up or down. Has he considered future changes, which may be relevant to how severe he feels the penalties should or should not be?

Clause 73 provides for the banning of the manufacture of snus in Northern Ireland, clause 74 prevents the sale of snus in Northern Ireland, and clause 75 prevents possession with the intent to supply of snus in Northern Ireland. The penalty there is limited to six months. There is some consistency across the United Kingdom in saying that the penalties for selling, manufacturing or supplying snus should be more severe than those for supplying other tobacco products, although I am interested to understand why, but there is no consistency on the penalties. The Minister essentially had a choice between six months in Northern Ireland and 12 months in Scotland, and he chose the moving magistrates court upper limit. Why?

Finally, amendments 77, 78 and 79 invite the Minister to consider the proportionality of the penalties, particularly in relation to people committing a first offence. Is it proportionate to send someone to prison for a first offence of selling snus but only to fine them £1,000 or so for selling cigarettes?

Andrew Gwynne: I am grateful to the shadow Minister for her comments. Although I appreciate her intention to establish greater leniency for first-time offenders, these amendments are not appropriate. Tobacco and vape offences must be taken seriously. We do not want to weaken the penalty regime for these offences, including offences relating to snus, by creating exceptions for first-time offenders or anyone who has committed these offences. We do not want to remove the ability of the court to issue a higher-level penalty, where that is viewed as proportionate for a particular case, for anyone convicted of these offences.

I turn to the shadow Minister’s comments on clauses 7 to 9, 56 to 58 and 73 to 75. Those clauses make it an offence to manufacture, sell or offer for sale, or possess with the intent to supply, a relevant oral tobacco product, such as snus, in England, Wales, Scotland and Northern Ireland. A relevant oral tobacco product is something intended for oral use—the clue is in the name: it is not

[*Andrew Gwynne*]

intended to be inhaled or chewed and it consists wholly or partly of tobacco in powder or particulate form. That includes snus.

As the shadow Minister rightly pointed out, snus has been banned in the UK and the EU since 1992. Snus was banned as it was a novel tobacco product that is harmful to health. Snus contains harmful compounds that have been demonstrated to cause cancer, including cancers of the mouth. The manufacture of snus with a view to the product being supplied for consumption in the United Kingdom or through the travel retail sector is currently banned, as she rightly pointed out, under the Tobacco and Related Products Regulations 2016. These clauses re-enact that ban on manufacture but, unlike the 2016 regulations, do not limit it to supplying the UK or travel retail sector. In effect, that extends the ban to include manufacturing snus for export. That simplifies enforcement and reduces the possibility of such harmful products being available within the United Kingdom.

Dr Johnson: How many manufacturers in the UK are producing snus for export?

Andrew Gwynne: I will have to get back to the hon. Lady on that point. We will write to Committee members to update them, because I do not have that information to hand or in my mind.

As I was saying, the supply of snus for consumption in any part of the United Kingdom or through the travel retail sector is also already banned under the Tobacco and Related Products Regulations 2016, and these clauses recast the existing ban as a general ban on sale. The ban on possession of snus for intent to supply support the ban on sale, while preserving the current position under the Tobacco and Related Products Regulations 2016, which allows possession of snus for personal use.

Under these clauses, it will not be an offence to possess snus for personal use or for personal gifting to friends and family; this is not about criminalising individuals who possess snus for personal use. These clauses maintain and simplify the ban, in place since 1992, on the sale of a harmful tobacco product. The clauses also make the prohibition on snus more comprehensive and make the legislation clearer and more accessible. We have no intention of allowing a banned and harmful product into the United Kingdom market. I commend the clauses to the Committee.

The hon. Lady asks about “all reasonable steps”. As we have already discussed, it will be for the discretion of trading standards as to whether all reasonable steps have been taken. As we know, they take a proportionate approach to these matters, and we know that their current procedures work. There is no expectation that they will not work with the legislation before us.

What would prevent a retailer from just giving some of these products to a customer, rather than selling them, to get round the law? Well, there is “brand promotion”, which includes free giveaways anyway. That covers all tobacco products—so it covers that situation.

Dr Johnson: I thank the Minister for going through the questions thoroughly. I did not want to risk his getting to the end of his speech without answering the question of why snus is treated differently from other forms of tobacco. Is it merely a historical artefact?

Andrew Gwynne: The hon. Lady need not worry so much, because I have notes to clarify her points. Many people ask why we are banning snus but only gradually raising the age of sale for cigarettes, given that snus is less harmful than cigarettes. Consumption of any tobacco product is harmful. We heard that—[*Interruption.*]. We heard that very loudly and clearly from somebody upstairs, but also from the four chief medical officers. They made it very clear that there is no safe level of tobacco consumption and that tobacco is uniquely harmful as a product in whatever form it is consumed.

It is this Government’s policy to support people to quit all forms of tobacco. Snus has been banned in the UK and across the EU since 1992. It was banned because it was a harmful novel tobacco product at the time, and it still is. It was agreed to prevent this new harmful product from ever coming on to the market. Why on earth would we now decide to give the tobacco industry a get out of jail free card and allow a product that has never ever been allowed on the market in the United Kingdom to enter the marketplace, irrespective of the age of sale?

Dr Johnson: To be clear, I am not suggesting that it should be on the market, as the Minister well knows, because I support both helping people using tobacco to quit and preventing people from starting to use tobacco. I merely want to understand why there is a difference in treatment. On the basis of what the Minister has said, why not make the penalties for cigarette sales the same as the robust penalties that already exist for snus sales? It is his choice.

Andrew Gwynne: The hon. Lady teases me, Sir Mark, and I get her desire for scrutiny of the issue of fines and of the measures we will take to enforce these laws in England, where they stand at different rates to other parts of the United Kingdom. There are different rates for different products as well. If somebody wants consistency across the four nations and consistency of approach across all products, I get that—that is laudable—but we believe that the measures in the Bill are proportionate and workable. If they turn out not to be—if they turn out to be an incentive rather than a disincentive—Ministers can come back and can look at these things again.

On territorial extent, the earlier clauses refer to England and Wales and the later clauses to Scotland and Northern Ireland. As the shadow Minister pointed out to the hon. Member for Windsor, a full breakdown of the territorial extent of clauses can be found in the annexe of the explanatory notes to the Bill, which hopefully will then be able to clarify in his mind which bits are UK legislation, which bits are devolved legislation and which bits have territorial extent across England, England and Wales, Great Britain or the United Kingdom.

Question put and agreed to.

Clause 7 accordingly ordered to stand part of the Bill.

Clauses 8 and 9 ordered to stand part of the Bill.

Clause 10

Sale of vaping or nicotine products to under 18s

3 pm

Dr Johnson: I beg to move amendment 63, in clause 10, page 5, line 33, at end insert

“, save if it is a first offence.”

See explanatory statement to Amendment 66.

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

Amendment 64, in clause 10, page 5, line 33, at end insert—

“(4A) A person who has admitted guilt of a first offence under this section is liable to a fine not exceeding level 3 on the standard scale or a caution.”

See explanatory statement to Amendment 66.

Clause stand part.

Clause 59 stand part.

Amendment 80, in clause 76, page 40, line 9, at end insert

“, save if it is a first offence.”

See explanatory statement to Amendment 83.

Amendment 81, in clause 76, page 40, line 9, at end insert—

“(4A) A person who has admitted guilt of a first offence under this Article is liable to a fine not exceeding level 3 on the standard scale or conditional caution.”

See explanatory statement to Amendment 83.

Clause 76 stand part.

New clause 10—*Age verification requirement for online sales of vaping devices and products*—

“(1) A person commits an offence if the person—

- (a) carries on an online vaping product business, and
- (b) fails to operate an age verification policy in respect of online sales of vaping products and devices.

(2) An ‘age verification policy’ is a policy that steps are to be taken to establish and ensure the age of a person attempting to buy a vaping product (the ‘customer’) is not under 18 years of age.

(3) The appropriate national authority may by regulations amend the age specified in subsection (2).

(4) The appropriate national authority may publish guidance on matters relating to age verification policies, including, in particular, guidance about—

- (a) steps that should be taken to establish a customer’s age,
- (b) documents that may be used as evidence of a customer’s age,
- (c) training that should be undertaken by the person selling vaping products,
- (d) the form and content of notices that should be displayed on websites; and
- (e) the form and content of records that should be maintained in relation to an age verification policy.

(5) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(6) Regulations under subsection (3) are subject to the affirmative resolution procedure.

(7) In this section—

‘the appropriate national authority’ means—

- (a) in relation to England, the Secretary of State, and
- (b) in relation to Wales, the Welsh Ministers,

‘online vaping product business’ means a business involving the sale of vaping products by retail online.”

This new clause introduces a requirement on online vaping product businesses to operate an age verification policy covering steps to be taken to establish the age of persons attempting to buy vaping products online. It reflects provisions in place in Scotland.

Dr Johnson: The amendments in this group are similar to previous amendments and are designed to provoke debate on the proportionality of the offences. Like other such Opposition amendments, amendment 63 would amend clause 10 to add

“, save if it is a first offence”.

Amendment 64 would amend clause 10 by adding that if someone has admitted guilt of a first offence under the clause they are liable for a fine at level 3 of the standard scale of caution. We are making a suggestion that the Minister could consider more lenience for someone who commits such an offence for the first time as opposed to someone who recklessly and repeatedly flouts this important legislation.

Did you want me to discuss the whole of clause 10 at this point, Sir Mark?

The Chair: The debate includes clause 10 stand part.

Dr Johnson: Clauses 1 to 9 of the Bill have predominantly dealt with tobacco products of varying kinds. Clause 10 moves on to the sale of vaping or nicotine products to under-18s, distinct from the measures on a smoke-free generation and the date of birth of 1 January 2009.

The first question is what are the vaping products of which we speak. Clause 48 deals with the interpretation and definitions within part 1. It defines a vape as

“a device which...vaporises substances, other than tobacco, for the purpose of inhalation through a mouthpiece”.

That applies whether it vaporises tobacco as well or not. It excludes medical devices, although we heard in evidence that no vapes are medically approved in the United Kingdom, and medicinal products that vaporise, including any aerosolisers. The clause also refers to an item that is intended to form part of a device, including anything to be attached to a vaping device with a view to imparting flavour. As the Government have already brought forward legislation to ban single-use vapes, it is important that individual components of reusable vapes are covered by the Bill.

A “vaping product” itself means a vape or vaping substance. A vaping substance means a substance other than tobacco that is intended to be vaporised by a vape. Vapes themselves can either contain nicotine or not and work essentially by heating up a liquid that creates a vapour to be inhaled. A nicotine vape typically contains nicotine, propylene glycol or vegetable glycerin, and flavourings, which we will come to discuss because of their importance in enticing children.

Nicotine products are also relevant to clause 10, on the sale of vaping or nicotine products. Clause 49 defines nicotine products as

“a device which is intended to enable nicotine to be delivered into the human body”,

part of a device that does that, or anything that contains nicotine. That is important because we have heard again and again how the industry will continually evolve to entrap people in a lifetime of nicotine addiction. This wide definition of anything containing nicotine helps to future-proof this legislation such that it does not have to be revisited again and again as the industry continues to evolve.

[*Dr Caroline Johnson*]

The main type of nicotine product currently on the market, other than vapes, is oral nicotine pouches from brands such as Velo and White Fox. These are a tobacco-free product placed between the lip and the gum for oral nicotine absorption. They are similar to Swedish snus, which we have discussed; they are pre-portioned pouches and they are produced in a variety of flavours. We have seen flavours such as lemonade razz and others that are designed with childlike descriptions, perhaps to influence children to use them. Certainly, when I talk to teachers, they say that they starting to see them used in the classroom. They look to parents very much like a small square of chewing gum, and some parents may not be aware of the hazards that these items pose.

The nicotine content within oral nicotine pouches can vary and is typically between 4 mg and 18 mg of oral nicotine per pouch. That is important; I have seen amendments suggesting that they should be limited 20 mg, but 20 mg is a lot. When we look at the amount of nicotine in a cigarette, we have to look not at the amount contained within it in its packet, but at how much is absorbed by the end user, the customer, when actually smoking it. The amount absorbed by the end user is much smaller than the amount in the cigarette. When brands imply that the amount within a pouch is similar to what is in a cigarette, they are talking about the amount within the cigarette itself, not how much the person smoking it will absorb from the cigarette.

The difference is quite marked: people may only take 1.2 mg from a cigarette when they smoke it in the usual way, so 18 mg in an oral nicotine pouch is an awful lot of nicotine. Some online retailers will sell products containing up to 150 mg of nicotine per pouch, with examples of flavours including black cherry, citrus and coffee. The release of nicotine from oral pouches is similar to, or faster than, from smokeless tobacco products and, given the Minister's robust approach to snus and novel products designed to create addiction, I hope he will take a strong approach to these too.

Oral nicotine pouches sit alongside other novel nicotine products such as nicotine toothpicks and nicotine toothpaste that have emerged on the market. They are regulated under the General Product Safety Regulations 2005. Under those regulations, there is no age of sale requirement for retailers to impose. As such, individuals aged under 18 can legally purchase nicotine pouches, as opposed to tobacco and vaping products, which require all purchasers to be aged over 18. Clause 10 will help to deal with that.

Furthermore, oral nicotine pouches are not regulated by the Medicines and Healthcare products Regulatory Agency, since no medical claims are made, and they are not an alternative to an authorised medicinal nicotine product—something like Nicorette gum, for example. I should note that some supermarkets have a voluntary age of sale; some supermarkets and larger retailers, or even smaller retailers, will voluntarily not sell these products to under-18s, but there currently is no legal requirement for them not to do it.

There is also no restriction on the amount of nicotine contained in an oral nicotine pouch under the current legislation, as such new products sold within the UK can contain levels of nicotine exceeding other nicotine or tobacco-based products such as cigarettes. We have heard about the addictive nature of nicotine; the higher

amount transmitted so rapidly into the bloodstream is clearly stronger in its effect and therefore undesirable because it will remove people's choice not to have those products.

What about the health impact? The health impact of nicotine is another reason why we need to invoke clause 10. Some people say, "If you take the nicotine out of the tobacco, maybe that will be safer." However, it is safer but not safe. According to the impact assessment produced by the Government in response to the Bill, a recent scoping review found that oral nicotine pouches claimed to be less toxic than cigarettes and that they deliver comparable amounts of nicotine. However, the data for that review was mainly available from industry-funded studies. Despite potentially lower toxicity than cigarettes, oral nicotine pouches still contain nicotine, and that still has harmful effects.

Gregory Stafford (Farnham and Bordon) (Con): My hon. Friend is right to highlight all the problems of vapes, especially for children, and the lack of evidence out there, other than that produced by the industry itself. Is she aware of any independent studies, either in the UK or abroad, that have done any substantive investigation into how harmful vapes are, either for adults or for children?

Dr Johnson: I thank my hon. Friend for his intervention. Last Tuesday, we heard in evidence from various medical sources, and both the Select Committee and our processor Bill Committee heard in evidence that nicotine is, of itself, harmful, and that the chemicals added to vapes are harmful. In some cases, they are extremely harmful. I will talk more about vaping chemicals later. Indeed, sometimes the products do not contain what they are expected to contain, and that can be worse still. I will return to that subject later, too.

Nicotine is highly addictive and can permanently affect the development of the adolescent brain. We have heard how the industry targets young people, and that is because the adolescent brain is particularly vulnerable. Nicotine can permanently affect its development. Nicotine also fulfils all the criteria for drug dependence. Giving it up is very difficult, and withdrawal symptoms can include cravings, irritability, anxiety, trouble concentrating, headaches and other mental symptoms. Symptoms associated with nicotine and dependence are often not recognised by novice smokers, particularly if they are young.

Dr Danny Chambers (Winchester) (LD): On the subject of how nicotine affects the brain and brain development, one thing we have not really touched on—and we have touched on many physical health issues—is the incidence of smoking among people with mental health issues. One submission was from the Mental Health and Smoking Partnership, which said that 45% of people with a serious mental health issue smoke, and around 25% of people with clinical anxiety. It would stand to reason that the impact on a young person's brain could also start to lead to serious mental health issues, as well as all the physical health and development issues.

Dr Johnson: The hon. Gentleman is right to raise the importance of managing nicotine dependence for those with mental health conditions. We know that smoking, in particular, is more likely to take place among people

with mental health conditions or those who are in mental health in-patient units. I am sure we will go on to discuss the issue of vending machines.

Last May, in the previous Bill Committee, we heard evidence from the Mental Health Foundation about the myth that tobacco helps with anxiety, and how that myth needed busting. We also heard about the importance of giving extra support to people with mental health conditions to enable them to kick the habit of nicotine—whether that habit is smoking or vaping—because it will help both their physical and mental health. However, it can be more challenging for them to complete. I am grateful to the hon. Gentleman for raising that important issue.

Returning to clause 10, a study considering the effects in adolescents of nicotine dependence after the initiation of smoking cigarettes found that the symptoms of nicotine dependence can appear only a few days after initiation. Given that oral nicotine pouches contain similar or higher levels of nicotine, similar symptoms may appear following initiation of oral nicotine pouch use, which is why it is particularly important for children that we pass clause 10 and ensure that children are protected from these nicotine products.

3.15 pm

The industry, as we have heard many times, claims to self-regulate. Some larger shops and some of the more reputable smaller shops claim not to sell oral nicotine pouches to anyone under 18, but there is evidence that some retailers still do, and it is indeed legal to do so if they wish. There remains a threat of new entrants to the market who choose to allow those under the age of 18 to purchase them. That could create direct harm from the effects of nicotine and cause similar concerns around youth vaping.

Vapes—a bit like snus back in the day—have gained exponentially rapid popularity in global markets over the last decade. It is now estimated that the market for vapes is worth around £20 billion a year, up from £2.5 million in 2016—that is a really rapid rise. In the United Kingdom, there are now around 4.5 million regular vapers, or around 8% of adults. According to a 2024 article in *The Independent*, there are nearly 3,573 specialist vape shops in the UK, up from merely 105 in 2011, and a growing number of online retailers. If this is genuinely a product to help people stop smoking that one would take for a few weeks and then discontinue, why would we need more than 3,500 specialist shops selling nothing else all day? Vape shops are now more common on British high streets than Italian restaurants, shoe shops, dry cleaners, travel agents or book shops. They outnumber hotels, recruitment agencies and Indian takeaways. How on earth did we get to this point?

Vaping goes back further than people might think and certainly further than I thought. The true history of vaping started in India in the 1500s when the Jesuits introduced tobacco to the region. A doctor named Gilani—I cannot believe it was a doctor, and I say that as a doctor myself—decided it would be better to add water vapour to the mix, instead of burning and smoking leaves directly. He invented a way to vaporise the water with the tobacco in a glass water pipe. Meanwhile, others in India used coconut and straw, and over in Egypt they were vaping herbs on hot stoves. In 1600,

vape pipes became all the rage in the Ottoman empire and Persia, and vaping in a shisha glass bowl became part of social elite culture.

Moving forward, nothing much changed until 1927 when a man called Joseph Robinson in New York filed a patent for a device he called a medical butane ignition vaporiser. That never really made it off the drawing board, but it shows how the early idea of an e-cigarette first came into play as an alternative to smoking. Numerous patents for nicotine inhaler devices were filed throughout the 20th century and early 2000s by tobacco companies and individual vendors, with a flurry of activity in the 1990s. But the first commercially successful e-cigarette was invented by a smoker who wanted to quit, so it was initially conceived as a device in that regard. In 2004, a pharmacist in China called Hon Lik invented—

Jim Dickson (Dartford) (Lab): I applaud the hon. Lady for her admirable history lesson on the background of vaping. Can I ask how it is relevant to what we are discussing in terms of the penalties and the sale of products?

Dr Johnson: It is relevant because we are discussing a product in the UK that we are considering essentially doing away with, and banning completely for children. The hon. Gentleman may note that we discussed the history of tobacco when we debated clause 1, on tobacco, and no less than two Members of the hon. Gentleman's own party talked about how interesting and relevant that was—[*Interruption.*] At least one of those individuals appeared very genuine.

Let me go back to Hon Lik, who invented the first e-cigarette as a way to cure his own smoking addiction and to try to prevent deaths such as his father's from lung cancer—and we have talked much about the potential for smoking to cause lung cancer. The basic concept of mimicking smoking via vaporising liquids remains the same. The company he started was later bought as a subsidiary of Imperial Tobacco, which again demonstrates that the industry will continue to try, where it can, to be involved in nicotine addiction.

The World Health Organisation proclaims that it does not consider electronic cigarettes a legitimate smoking cessation aid. It demands that marketers immediately remove from their material any suggestion that it considers electronic cigarettes to be safe and effective. In 2011, the WHO released a report on e-cigarettes recommending that they be regulated in the same way as tobacco products. Clause 10 will do some of that, inasmuch as it will bring e-cigarettes in line with the legislation on tobacco products so that they cannot be sold to under-18s. However, it does not go so far as to bring it in line with the new smoke-free generation legislation. The Minister may wish to comment on why he has not done so.

In the last Bill, the hon. Member for York Central (Rachael Maskell) tabled an amendment that would have included nicotine products in the smoke-free generation legislation, banning them for those born after 1 January 2009 rather than just for under-18s. Her concern, as I understand it, was that the industry would pivot to other forms of nicotine that did not contain tobacco, hook a new generation on them and use similar marketing techniques to hook them on a lifetime of nicotine addiction, as it once did with tobacco. The

[Dr Caroline Johnson]

Minister could seek to avoid that by preventing non-medicinal products containing nicotine from being used by anyone born after 1 January 2009. That power is within his grasp. On a personal level—this is not necessarily my party's view—I would like him to seize that power.

The sale of vaping products to under-18s is addressed in clause 10. One of the reasons for restricting the sale is the range of pulmonary and coronary conditions—lung and heart conditions—that can occur for people who vape. To help us to understand why they are so damaging, it is important to understand what is in vapes per se. This is not just about nicotine products; it is also about vaping products.

As I say, nicotine is an extremely addictive substance that disrupts brain development in adolescence. Because adolescence is a critical time for neural development, it makes young people particularly vulnerable to the negative effects of nicotine. Adolescence is marked by substantial neurodevelopment, including synaptic pruning and the maturing of the pre-frontal cortex, the part of the brain that governs the decision making, impulse control and emotional regulation. Nicotine exposure during this period can disrupt those processes, leading to lasting cognitive and behavioural impairment. Research indicates that nicotine alters the neurotransmitter systems, noticeably those using acetylcholine and glutamate receptors, affecting the neural pathways essential for learning and memory development. Nicotine exposure during adolescence has been linked to deficits in attention, learning and impulse control. Studies have shown that adolescents using nicotine products exhibit diminished cognitive performance and are more prone to mood disorders, including depression and anxiety.

Another reason to get rid of these products, which relates to the point made by the hon. Member for Winchester, is that they can lead, in and of themselves, to problems with mental health. As hon. Members will know, these issues can adversely affect academic achievement—as we have heard from teachers' evidence in the past and evidence to this Committee—and social interactions, potentially leading to broader physical challenges.

The Chair: May I ask the shadow Minister to shorten her very interesting and detailed explanation of why nicotine and other substances are harmful and focus more on the legislation and less on the historical and scientific background?

Dr Johnson: You will be pleased to know that I have concluded my remarks on history for now, Sir Mark, but with your leave, I want to talk about a couple of the chemicals that are found in vaping products. It is important for hon. Members to understand the reason for banning vaping products per se, as opposed to just nicotine products. There is a reason why both are included, rather than just one. That is why I wanted to discuss nicotine and its effects, as well as the effects of some other chemical constituents of the vaping product.

Propylene glycol is another main constituent of vapes. It is used in antifreeze, paint solvents and artificial smoke for fog machines and helps the vape to carry the nicotine and flavours to the user. When used in small amounts it is considered safe, but when used in high

doses or over prolonged periods it can accumulate and cause lactic acidosis, depression of the nervous system and haemolysis, the destruction of red blood cells. When one's red blood cells are destroyed, one becomes anaemic, which makes one tired and can make one very unwell.

Another component in some vapes is diethylene glycol, a toxic compound found in antifreeze that is associated with lung disease. It can be used as a sweetener, but it has resulted in many epidemics of poisoning since the early 20th century, perhaps most famously when it was found in wine and many bottles of wine had to be recalled. Believe it or not, some vapes also contain formaldehyde, which is classified as carcinogenic by the International Agency for Research on Cancer, showing once again that the products that clause 10 seeks to ban are not as benign as some may believe or as their pretty colours and flavours may suggest. It can also cause respiratory and skin irritation on exposure.

The Chair: Order. May I ask the shadow Minister to cut down on some of the detail? Just tell us that it is harmful and give us the reason, without going through a full paragraph on every chemical.

Dr Johnson: I am grateful for your guidance, Sir Mark. Other chemicals found in some vapes that can be harmful are acrolein, which is a herbicide, and diacetyl, which is found in flavours such as chocolate milk and toffee because it has a buttery taste. Another is benzene, which is found in car exhaust fumes and is a carcinogenic chemical that can cause such things as acute lymphoblastic leukaemia, chronic lymphocytic leukaemia, multiple myeloma and non-Hodgkin lymphoma—all conditions that we certainly do not want children, or indeed anyone, to get.

It is also worth noting that, because e-cigarette heaters contain a coil and cartridge with a metal component, the vapour can contain some heavy metals, including cadmium, which can cause chest pain, shortness of breath and cancer; nickel, which is carcinogenic; lead, which we know causes health problems; and chromium. That is a non-exhaustive list. My speech originally contained such a long list that I feared it would take up all the Committee's time. I do not want to do that, Sir Mark, or to test your patience, but I want to emphasise that these findings come from the research that has been done on vapes so far. It took time for the scientific community to establish the fact that cigarettes and tobacco are harmful to health and the ways in which they are harmful. We are already finding the health challenges of vaping, so it is important for us to take these steps today.

On 8 February 2023, I presented the Disposable Electronic Cigarettes (Prohibition of Sale) Bill, a ten-minute rule Bill that highlighted the challenges that vapes pose to the environment and to children's health. I am pleased that the Government have now taken steps to ban them. Things have progressed, and I am personally delighted that this Bill is before the House. It is important to see the progression of legislation on vapes, which is so important not only to me but to Parliament and the country.

On clause 10, it is already an offence to sell nicotine vaping products to under-18s in all parts of the UK, but it is not an offence to sell nicotine products to them.

Currently, local authority trading standards in England can bring a prosecution under section 7 of the Children and Young Persons Act 1933 for the under-age sale of tobacco products or cigarette papers; magistrates courts can impose a fine of £2,500 on conviction and prevent the individual from selling those products for 12 months. Under the Proxy Purchasing of Tobacco, Nicotine Products etc. (Fixed Penalty Amount) Regulations 2015, trading standards officers can issue a fixed penalty notice of £90 to individuals for purchasing or attempting to purchase tobacco and nicotine products for someone under 18. However, it is the adult making or attempting to make the purchase who commits the offence, not the retailer.

3.30 pm

There are currently no restrictions on giving away free samples of nicotine or non-nicotine vapes—for marketing purposes, for example—to children and young people, meaning those under the age of 18. In contrast, the free distribution of tobacco products is banned for all ages under the Tobacco Advertising and Promotion Act 2002. Vaping companies have come to Parliament and given away free vapes to Members of Parliament and staffers who wanted to receive them.

Jack Rankin: We are talking specifically about under-18s. I disagree with some of the later regulations on vaping, but when it comes to under-18s being given vaping products, I am aligned with the Government. Does my hon. Friend agree that if companies are giving away free products to Members of Parliament and staffers who are over the age of 18—some of them may be smokers—they are actually supporting the Government’s aim of getting to a smoke-free generation, which is very different from what we see in clause 10? I agree with the Government’s aim.

Dr Johnson: I think my hon. Friend highlights something common across our party. Many members of our party are uncertain, as I understand my hon. Friend is, about the changes to tobacco legislation for adults with the competency to make risk-based decisions. I understand your points; I do not necessarily share them, but I understand them.

The Chair: Order. Speak through the Chair, please.

Dr Johnson: Sorry. Equally, I note that the vast majority of Members across the House, both in my party and in other parties, strongly agree with clause 10 and the other clauses that seek to ensure that children do not have access to these products. If someone sells a vaping or nicotine product to a purchaser who is under the age of 18, it is an offence. Under clause 10(2), the seller can defend themselves on the basis

“that they were shown what appeared to be an identity document belonging to the purchaser and it confirmed the purchaser’s age as at least 18 years old, or...that they otherwise took all reasonable steps to avoid the commission of the offence.”

The Minister has talked about the simplicity of the smoke-free generation and his view that it is easier for shop workers to look at a piece of identification and establish whether someone’s birthday was before or after 1 January 2009 than to establish whether someone was born 18 years ago by doing the mathematics in their head from the person’s date of birth. That brings me

again to the question of why we will not have a nicotine-free generation as well as a smoke-free generation. Would it be classed as a reasonable step? If a shop worker had asked for ID, taken the proper ID, as defined in clause 10(3), and done the mathematics wrong in their head, would they have taken all reasonable steps or would their arithmetic error mean that they were to all intents and purposes a criminal? I would be grateful for the Minister’s comments.

Acceptable identity documents for the purpose of buying nicotine or vaping products if one is over the age of 18 include a passport, a UK driving licence, a driving licence from the Channel Islands or the Isle of Man, a European photocard driving licence or a proof-of-age standards scheme card with a hologram. During the discussions of voter ID, there was a debate about how many people had access to different forms of ID. Passports are reasonably expensive and not everyone drives a car, so how would someone who did not drive a car or have a passport provide ID? When it came to voter ID, the previous Government looked at a number of reliable sources of identification that could be used, which included the veterans card, certain travel documents and the like.

Sarah Bool: Recent announcements from the Home Office have confirmed that businesses will be able to legally accept the use of digital proof of age for alcohol products. I would like to see that approach extended to these products, to make the life of retailers easier as far as identification goes. It would be good to have further consistency and an extension of the definition of identity documents to allow for digital forms.

Dr Johnson: Digital ID is not something that I am particularly familiar with, but nevertheless it sounds sensible, where ID is reliable, reproducible, not easily faked and easily identifiable by staff. Broadening the forms of acceptable ID would ensure that when somebody is old enough to legally purchase a product, it is not excessively challenging for them to obtain an ID to do so. Clearly the Minister would want people to be able to buy age-restricted products if they are old enough, so I am interested to hear his view not only on my hon. Friend’s intervention about digital identification, but on veterans cards, bus passes and other cards that demonstrate the age of the user and include a photograph for added reliability.

Clause 10(4) states:

“A person who commits an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.”

On a personal level, selling vapes and nicotine products to children is a dreadful thing to do, as I am sure the chief medical officer has said. I am more than happy for the Minister to increase that fine if he wants to, but I am interested to understand why he has set it at that level. Notwithstanding any changes across the four nations, it is important that we look at the choices that the Minister has made. That is what we are here to scrutinise.

The problem that clause 10 seeks to address is vaping among children. Are children vaping? Yes, I am afraid to say that they are, in large quantities. The biggest report of which I am aware that looked specifically at

[Dr Caroline Johnson]

rates of youth vaping was published in 2023 by Healthwatch Blackpool. It looked at over 4,000 children and found that just under a third of them—31%—said that they “currently vape or sometimes vape”.

Of those children, 65%

“expressed a preference for fruity flavoured vapes”,

which we will deal with later in the Bill. There is clearly an issue that vapes are being directly marketed to children with bright, attractive colours. Some of the most popular flavours include bubble gum, cotton candy, strawberry ice cream and unicorn milkshake. What does unicorn milkshake taste like? I have no idea, but it is easy to see the appeal to children.

An investigation by *The Observer* in 2022 found that ElfBar, a company that makes vapes, was promoting its products to kids via TikTok. The TikTok platform is apparently used by half of eight to 11-year-olds and by three quarters of 16 to 17-year-olds. When I found that out, I had a look at the screen time of my own children to establish that they were not getting on it.

Jack Rankin: I support my hon. Friend wholeheartedly on restricting flavours aimed at children, which I think is the Minister’s intention, but does she agree that vape flavours that are being advertised more generally, so long as they are straightforward and descriptive, can help people to shake smoking and can be firmly aimed at adults? The Government should not restrict the flavours so generally that the smoking cessation tool is weakened.

Dr Johnson: I am afraid that once again I have to disagree with my hon. Friend. I do not believe that those who advertise brightly coloured vapes shaped like highlighters or SpongeBob SquarePants, or flavoured as unicorn milkshake and green gummy bear, are advertising them for the consumption of adults. I do not doubt that there are some adult smokers in their 40s who enjoy the flavour of unicorn milkshake and green gummy bear—perhaps those flavours are nice—but I do not believe that adults are the target audience for that marketing at all.

Jack Rankin: Perhaps I explained myself ineloquently—or maybe my hon. Friend was being mischievously in her characterisation. I agree with her wholeheartedly, but I would say that raspberry is a perfectly legitimate flavour for an upstanding vape seller to sell to an adult smoker as a cessation device. I would not want to go too hard on that so that we do not cut off that legitimate smoking cessation route.

Dr Johnson: I thank my hon. Friend for clarifying his intervention but, again, I am not sure about that.

The Chair: Order. Flavours will come up later in the Bill. The question really is not pertinent to clause 10.

Jack Rankin: I will ask my hon. Friend about this point later.

Dr Johnson: My hon. Friend can ask me later, when we come to the colours and flavours.

To summarise, clause 10 is an important clause that seeks to stop children getting hold of vapes and nicotine products and, in so doing, aims to reduce the number of children who get hooked on nicotine, which has very harmful effects, and who may even damage themselves using vapes. In one school in my constituency, eight children collapsed after using vaping products. Lincolnshire police examined five of the vapes confiscated from the school and found that they contained antifreeze, poster varnish and other chemicals such as trichloroethylene, 2-methoxyethyl acetate, Steol-M and diethylene glycol diacetate—some very harmful chemicals that have no legal place in vapes at all. Some of those chemicals are banned, but are nevertheless being put into these products.

Clause 59 is similar, but, given the principle of devolution, applies to Scotland. It provides for the same principle of an extension of offences to vaping and nicotine products, but does so in recognition of the fact that Scotland has different laws by amending the Tobacco and Primary Medical Services (Scotland) Act 2010. It adds various substitutions to ensure that it is not possible to buy tobacco and vaping products in Scotland, in order to protect the children of Scotland.

Clause 76 provides continuity across the United Kingdom based on the principles of devolution in Northern Ireland and of working together to protect the interests of children. That is very important. The clause adds article 4H, on the sale of vaping and nicotine products, to the Health and Personal Social Services (Northern Ireland) Order 1978 after article 4G, which is itself inserted by clause 75. This provision essentially inserts the same provisions as those in clause 10, except that once again we see a higher penalty in Northern Ireland. Northern Ireland is clearly more concerned with punishing those who sell vaping and nicotine products to children than the Minister appears to be.

Amendments 63, 64, 80 and 81 look specifically at the proportionality of penalties and the balance in choosing them—whether they be as punitive as those in Northern Ireland, or those in place for snus for people who are reckless and do it often as opposed to those who have committed a first offence and do not do it so often.

3.45 pm

New clause 10 refers to the age verification requirement for online sales, which we touched on this morning. The Minister seems to have thought this through carefully. The legislation provides for what to do in the event that products are being sold in shops, and looks at signage and how to prevent shops from selling tobacco. We also talked about how the industry will try to get around the provision and the fact that people are looking to provide an app to get around vending machines; whereby people would not buy these products from the vending machines but would buy them online and then collect them from the vending machine, so it would not be a vending machine but really a collection machine. That is a technicality, but it could allow people to sell products in a way that we do not wish them to.

New clause 10 asks the Minister to consider how people are age verified when they buy these products online. An investigation by *The Observer* in 2022 found that they are being advertised to children on TikTok, and my office found TikTok screenshots advertising vapes for sale with no ID check. Why would somebody wish to market something without an ID check? The

implication is, “You don’t need to have an ID because we are going to sell it to you even if we suspect that you are under age.” That is the only reason why anyone would want to market the fact that they were going around the law by not asking for ID.

Under subsection (1) of new clause 10, a person would commit an offence if they carry on an online vaping product business and fail to operate an age verification policy in respect of online sales of vaping products and devices. This is clearly a sensible addition that I hope the Minister is able to accept and which we will push to a vote. Subsection (2) clarifies what we are asking people to do and explains that an age verification policy is

“a policy that steps are to be taken to establish and ensure the age of a person attempting to buy a vaping product (the “customer”) is not under 18 years of age.”

[SIR ROGER GALE *in the Chair*]

Under subsection (3), the

“appropriate national authority may by regulations amend the age specified in subsection (2).”

This may also be altered in future if need be. Under subsection (4), the appropriate national authority

“may publish guidance on matters relating to age verification policies, including, in particular, guidance about...steps that should be taken to establish a customer’s age”.

As we talked about when discussing clause 1 and new clause 3, which was tabled by the hon. Member for City of Durham, it is important that shops are aware of the requirements that they need to follow, whether they are online or in the real world.

Additionally, subsection (4) states that the national authority can publish guidance on what documents may be used as evidence of a customer’s age. Once again, we go back to the thorny issue of the small number of potential forms of ID that the Government have included in the legislation and to the request that further types of reliable ID are included at the get-go to avoid excluding people.

Subsection (4) also refers to the national authority publishing guidance on

“training that should be undertaken by the person selling vaping products”,

so that they are aware of the legislation in relation to what they are doing. It is important that that training is not too onerous in terms of the regulatory burden and therefore the cost to business, but clearly it is important that a staff member selling a product is properly trained by the company employing them, so that they do not inadvertently criminalise themselves by selling the wrong product to the wrong person. That is particularly important when we have different ages for so many different products and with the novel nature of the rolling, smoke-free generation provision being different from the vaping legislation.

Training is important particularly because we have heard about the effects on shopkeepers, and about the violence and abuse they can suffer. If they are trained and do not make any mistakes, that will help, although nobody should ever be abusive to anybody, nor should anyone ever be violent. I am not excusing that; I am just saying that training may benefit the employer. It would also benefit the employee, because they would be feel more confidence in managing more difficult customers, and would know who to call and what to do if a customer was behaving inappropriately.

Sarah Bool: I echo what my hon. Friend is saying, particularly in relation to online sales. I think we are all very aware that one aspect is being in the shop and physically trying to buy a product with ID; I take it from the ingenuity of our younger generation that they will always find ways around that, especially online, so we should perhaps give some further thought to how we can ensure that the companies are operating effectively—that there is robustness without over-regulation and that we have the methods to ensure that people are not following another loophole.

The Chair: Order. Before we proceed, let me explain that Sir Mark has had to leave the Chair and I am taking over for the duration—for as long as you choose to sit. I have, however, been briefed, so I am sure that nobody in the room will seek to take advantage of a change of Chairman to cover the same subjects all over again.

Dr Johnson: That is very kind of you, Sir Roger. It is good to see you in the Chair, and an honour to serve under your chairmanship again. As you have been briefed, we are discussing clause 10, the importance of banning the sale of vaping and nicotine products to children. We had just moved on to new clause 10, which is part of this group of amendments. It was tabled by the Opposition and looks at the online marketplace, because there is concern that the industry seeks every single workaround and loophole as creatively as possible. The new clause seeks to ensure that guidance is provided to prevent advantage from being taken in the online marketplace, particularly because we have seen adverts for “no ID” sales, which clearly are designed to entice children to buy products that they should not be able to get.

Subsection (4)(d) of the new clause talks about “the form and content of notices...displayed on websites”, so it looks at the messaging. I suppose that is the equivalent of clauses 5 and 6: “What should our billboard notice say?”

New clause 10(5) says:

“A person guilty of an offence under subsection (1) is liable...to a fine not exceeding level 2 on the standard scale.”

The Minister may wish to change that—it was the opening point for that offence—but again there clearly needs to be a penalty for people who do sell in the online marketplace.

Subsection (6) says:

“Regulations under subsection (3) are subject to the affirmative resolution procedure.”

We did talk about the negative resolution procedure—my hon. Friend the Member for Windsor is temporarily not in his place—but essentially the affirmative resolution procedure means that regulations would require, I believe, a vote in the House to push them forward.

Just to clarify, subsection (7) says:

“In this section... ‘the appropriate national authority’”,

which would be able to provide the regulations and produce the guidance, would be the Secretary of State in England and the Welsh Ministers in Wales.

The principle of this proposal is that vaping businesses that operate online should be subject to the same regulations, rules and laws, enforced with the same stringency and severity, as corner shops, supermarkets and the like.

Sarah Bool: I rise to speak in support of new clause 10, on banning those who are under 18 from vaping. Many know about the health risks of smoking. They see it as a bad habit and disgusting, as the children of my hon. Friend the Member for Farnham and Bordon noted, but vapes are seen as being new age and social. Parents are in danger of encouraging vaping by buying something that they think is safer than smoking or drugs. We must be very careful about that, so this ban will be important in restricting sales. Children fear being excluded, so, through peer pressure, they are forced into vaping. We need to stamp out this practice.

Children are often confused about vaping. The problem is that they get an accidental addition to nicotine and struggle to pay attention in school, which has a negative impact not just on them but on their classmates. Apparently, children vape to deal with stress and anxiety—they are almost self-medicating, which is appalling. It is right that we protect our children by introducing this offence.

Dr Johnson: My hon. Friend talks about children self-medicating, but are they not making the situation worse? The use of vapes and nicotine products may exacerbate, rather than ease, any mental health symptoms that they have.

Sarah Bool: Absolutely. Unlike my hon. Friend, I am not a medical professional, but I wholeheartedly agree that it is a self-perpetuating cycle, and we need to stop it as soon as possible to protect children.

Gregory Stafford: It is a pleasure to serve under your chairmanship, Sir Roger. I want to make two points about this part of the Bill. First, I support new clause 10, in the name of my hon. Friend the Member for Sleaford and North Hykeham. It is essential that we close off all avenues for children to purchase vapes. In the Bill, the Government have done a very good job of dealing with physical retailers, but there is a gap in relation to online retailers. I hope the Minister is minded to support the new clause, either when we come to a vote on it in a few moments, or by inserting something similar into the Bill on Report to ensure we close off online retailers.

In my opinion, online retailers are more dangerous than physical shops. A child—especially a very young child—has to depart from their guardian or their adult to go and buy something in a shop, whereas they can purchase products online on their phone or computer in the comfort of their own home, and it is very difficult for a parent or a senior person in their family to spot that. We know that that is where a number of children and young people are getting these products, so we have to close off that avenue.

My second point is about a more fundamental issue with the clause itself. My hon. Friend the shadow Minister has said this quite extensively, but it bears repeating so that we get some answers from the Minister. It does not seem obvious why the Government decided to ban vapes for anyone under the age of 18, whereas for other tobacco products it is for anyone born on or after 1 January 2009. I completely accept that vapes can be used as a smoking cessation tool; it is important that they are used in that way.

When we come on to vending machines, there are medical settings in which people require some form of intervention to help to stop smoking, and we should be

looking at that. However, it is not beyond the wit of the Bill's drafting to apply 1 January 2009 to tobacco products, and then to create an exemption specifically for smoking cessation. I want to understand why the Minister has decided to make this distinction. Does he not see the potential risks in doing so? Hopefully, we all want people not to be addicted to any products that are harmful to them, but both retailers and consumers, when faced with two sets of rules for very similar products, could become confused and accidentally fall foul of the law. Because of that confusion, the law might not be enforced as the Minister would like it to be. I very much hope the Minister addresses those two points in his closing remarks on these clauses.

4 pm

Jack Rankin *rose*—

The Chair: Order. Forgive me, I have only just taken over as Chair, but the hon. Gentleman was not in the room for a chunk of this debate. Is that correct?

Jack Rankin: It is, Sir Roger. I went to the toilet.

The Chair: In that case, I do not think it is quite appropriate for the hon. Gentleman to speak. I will allow him to speak very briefly, but I do mean brief.

Jack Rankin: I disagree with the Government on some of the clauses dealing with vaping, but I will come to those later, when it is more appropriate. I agree with what the Government are trying to do in clauses 10, 11 and 12 to toughen things up for under-18s. To that end, I encourage them to support new clause 10, tabled by the shadow Minister, which tries to make purchasing more difficult for under-18s online. We talked earlier about the principle of vending machines, which is addressed in clause 12 and by trying to ensure age verification when there is no one else present. It seems to me that new clause 10 is entirely in line with that, so I hope the Minister might consider supporting it.

Andrew Gwynne: It is good to see you back in the Chair, Sir Roger. Before addressing these amendments, the respective clauses and the proposed new clause, I want to make it clear that I will be using the generic term “vapes or vaping products” throughout to refer to vapes, e-cigarettes or nicotine vapour products. Likewise, I will use the term “nicotine products” to refer to consumer nicotine products, such as nicotine pouches. I am not referring to licensed nicotine-based medicines, which will not be further restricted by the Bill.

Under clause 10 it will continue to be an offence to sell a nicotine vape to a person who is under the age of 18 in England and Wales, and anyone who is found guilty of the offence will be liable to pay a fine of up to £2,500 if convicted. It is a defence if the person can prove they were shown what appeared to be an identity document belonging to the purchaser that showed they were over 18, or that they otherwise took all reasonable steps to avoid committing an offence. The clause also extends this age of sale restriction to consumer nicotine products and non-nicotine vapes, as we know that children are accessing those products. There are currently no age of sale restrictions on those products, and non-nicotine vapes can easily have nicotine solutions manually added to them.

Clause 59 refers to Scotland and extends existing offences in Scotland for selling vaping products to under-18s, proxy purchases on behalf of under-18s, and failure to operate an age verification policy related to vaping products, so nicotine products are also covered in those offences. By amending that legislation, we will align the approach across the United Kingdom, which is the wish of the devolved Administrations. The clause amends Scottish legislation by replacing the term “nicotine vapour products” with the term “vaping products”, thus aligning the definitions across the UK.

Another of the changes to Scottish legislation in this clause makes it an offence for any person managing or controlling a premises to have a prohibited vending machine available for use. This effectively maintains the existing prohibition in Scotland on vending machines selling vaping and tobacco products; indeed, it extends it to include machines from which nicotine products, herbal smoking products and cigarette papers can be purchased. Again, this aligns the approach across the UK.

Clause 76 applies similar measures in Northern Ireland to those in England and Wales, meaning that it will be an offence to sell a vaping or nicotine product to a person in Northern Ireland under the age of 18, thereby expanding current Northern Ireland legislation to cover all vaping products and nicotine products. Anyone convicted of the offence will be liable to pay a fine of up to £5,000. All these measures for England, Scotland and Northern Ireland will come into force six months after the Bill receives Royal Assent, to give retailers time to introduce them.

These clauses will play an important role in ensuring that we can tackle youth vaping successfully. They provide businesses with certainty as to who they may legally sell products to, and they reinforce our health advice that children should never vape.

However, the amendments tabled by the shadow Minister would undermine that approach by creating a more lenient penalty regime for the offence of selling vaping or nicotine products to someone under age. They would establish that someone who admits to committing an offence for the first time would either be liable on summary conviction to a fine not exceeding level 3 on the standard scale—that is, a fine of £1,000—or be given a caution instead. Level 3 is one level lower than the level 4 fine of £2,500 that someone who commits this offence is liable to under the current legislation.

Dr Johnson: The Minister knows me well enough to understand that I would never seek more lenient penalties for those selling vapes to children; there is no excuse for selling vapes to children. However, I am concerned that there may be sales in the online marketplace that are not adequately covered by the regulations as they are currently drafted. The principle of new clause 10 was to ensure that such offences are properly covered, so I would be grateful for his reassurance in that regard.

Andrew Gwynne: I will come to that; I am just spelling out why I am concerned about the consequences of the shadow Minister’s proposals in the amendment, because they would lead to more lenient penalties for those committing an offence for the first time than they are liable to under the current legislation. Again, like the amendments that we have already discussed, the effect would be to create a first-time offence, and if the

Committee is content, I will not repeat myself, as the rationale for my asking the shadow Minister to withdraw the amendment remains the same.

The shadow Minister’s new clause 10 would introduce an offence in England and Wales for businesses selling vaping products online without applying an age verification policy. It would therefore create a requirement for businesses selling vaping products online to take steps to establish and ensure that any customer attempting to purchase those products online was above the age of 18.

Although I am incredibly sympathetic to the shadow Minister’s intentions, as I said earlier, the Bill already makes it an offence in England and Wales to sell a vaping or nicotine product to anyone under the age of 18. As with in-person retail, online retailers must take all reasonable steps to avoid selling vaping products to anyone under age. Alongside the Bill, we are exploring how we can enhance online age verification to further tackle online under-age sales. The office for digital identities and attributes, which sits within the Department for Science, Innovation and Technology, is creating a framework of standards and governance, underpinned by legislation, which will enable the widespread use of trusted digital identity services. We are working closely with DSIT to consider how its work to enable the use of digital identities can best support retailers selling tobacco and vapes, whether online or in-person. It is for those reasons that I commend clauses 10, 59 and 76.

Gregory Stafford: I may have missed the Minister’s explanation, but why has he decided not to have the incremental increase for vapes when he has it for smoking? Does he feel that there is something fundamentally different about vapes, beyond the smoking cessation element, that could have been an exemption from the progressive age range that he has for tobacco?

Andrew Gwynne: The hon. Gentleman should panic not; I had not quite come to the end of my contribution. I was merely saying that it is for those reasons that I commend clause 10, clause 59 and clause 76 to the Committee.

Dr Johnson *rose*—

Andrew Gwynne: If the hon. Lady will allow me to first answer her hon. Friend, it may well be that I answer her thoughts in the course of answering him. The hon. Gentleman is absolutely right that there is a difference here between our approach to tobacco and to vapes. The hon. Lady—the shadow Minister—has, rightly, always been, and will continue to be, a doughty campaigner for a nicotine-free generation and for a smoke-free generation. That may well be where we end up at some stage in the future. However, we believe that the measures in the Bill are entirely appropriate and proportionate. We are not planning to raise the age of sale for vapes in a similar way to that for tobacco; let me explain why.

Tobacco is a uniquely harmful product. No other consumer product kills two thirds of its users. It is therefore entirely appropriate to create a smoke-free generation, as we are seeking to do in this legislation, and to gradually phase out tobacco so that it is a thing of history. Although vaping is not harm-free—I will come on to the harms in due course—it is less harmful

[Andrew Gwynne]

than smoking and, currently, we do not believe that a generational age of sale restriction on vapes would be an appropriate response to the current evidence in relation to health harms. Instead, the Bill contains strong measures to stop the promotion and the blatant advertising of vapes to children, and so bring about definitive and positive change to stop future generations from becoming hooked on nicotine.

It may well be, over the course of the coming years, that greater evidence emerges about the harms of nicotine. Lots of studies of vaping are taking place and it may well be that we have to take further action; that is why the measures in the Bill are permissive. The tobacco industry has often, after having one route closed off to it, sought an alternative route to maintain market share and market presence. It may well be that the vaping industry employs exactly the same tactics—all the evidence so far would suggest that it does. That is why the measures in the Bill are not just proportionate for the here and now but future-proof, so that Ministers can come back to Parliament, on a whole range of issues, and seek to close off other routes.

I would hope that, with that explanation, the hon. Member for Farnham and Bordon understands that there is a very big difference between tobacco and vaping. However, we reserve the right to return to Parliament and to utilise the powers in this Bill, should we be granted them, to ensure that, if there is evidence of harms, we can immediately respond to those.

4.15 pm

Jack Rankin: I commend the Minister on making the evidence-based point about the difference between a smoke-free generation and a nicotine-free generation. Does he agree—I think he does, given the comments he has just made—that there are some somewhat sweeping powers here, which could be used to come back and ask for more legislation against vaping companies? Does he agree that that potential lack of certainty for legitimate vaping businesses might impede investment in this space, which is actually contributing to the benefit of a smoke-free generation?

Andrew Gwynne: There is nothing in the Bill that we are proposing to do that will restrict the legitimate sale of vapes. As a Government, we recognise that vapes have been used, and continue to be used, as a stop smoking tool. Our advice remains very clear: vapes are not harm free. We do not yet know the full extent of the harm, but as we heard from the chief medical officers from the four nations, it is unlikely that they are harm free. Indeed, there is limited evidence showing some harms, and there are lots of studies and research taking place to ascertain what the long-term impacts of vaping might be.

Our advice remains clear: if a person has never smoked, not smoking, and not vaping, is the best thing. If a person has smoked, vaping is safer than smoking, but it is not risk-free, and as a smoking cessation tool, it has proven to be successful for some. We do not want children to ever take up vaping—ever, and not in adulthood, either. Vaping is for people who have been smokers who want to give up; vapes are a safer product than tobacco.

Dr Johnson: I thank the Minister for clearly explaining that children should never vape. In fact, if children are smoking and wish to quit, they can get support from their GP and others, but they should not use vaping, because vaping is bad for children.

To take the Minister back to my question about new clause 10, before he took the two previous interventions, he said that he is working with DSIT to provide regulations and legislation that would cover new clause 10 and ensure that online sellers of age-restricted products are obliged to check a person's age before selling them. Will he advise when he expects such regulations to be available? Will they be in time for his smoke-free generation in a couple of years' time?

Andrew Gwynne: I absolutely hope that the measures will be worked on at pace and will be available for that. Officials from the Department of Health and Social Care are working closely with colleagues in DSIT to ensure that these matters are included in the online age verification legislation that it is seeking to introduce.

A couple of other points were raised in the course of the debate. On the issue of fines and why there are inconsistencies, I do not wish to over-labour the point, but the maximum fines that the shadow Minister quoted are consistent with existing tobacco and vapes legislation. We believe they are proportionate to the severity of the offences. There is a bit of a pushmi-pullyu argument here, because on the one hand we have had amendments that seek to have more lenient penalties, and on the other, arguments for harsher penalties. We believe that the current fine levels in England are appropriate, which is why we are remaining with them. It is for trading standards to take a proportionate approach to enforcement, deciding the appropriate action to take for a given case to achieve compliance based on the evidence before it.

On TikTok and advertising, I understand that the Advertising Standards Agency has issued an enforcement notice to vaping companies and brands instructing them to stop any advertising on TikTok. To date, it has reported around 300 posts, approximately 80% of which predated the notice to TikTok for removal.

On the issue of enforcement with physical sales, and online sales with age verification, it was interesting that in the evidence session we heard from National Trading Standards that it has undertaken test purchasing both in brick and mortar premises and online and that the failure rate in brick and mortar premises was 26%, compared with 10% online. We do not want any breaches of the law, but that puts into context that the current issues tend to be on the ground rather than online—although we need to cover all bases. I ask the shadow Minister to withdraw her amendments and proposed new clause.

Dr Johnson: I am grateful to the Minister for providing the extra information. Amendments 63, 64, 81 and 80 were designed once again to provoke debate on the coherency of the penalties across the different clauses of the Bill. Sometimes the penalties are different for the same offence and, inexplicably, sometimes they are the same for different offences that perhaps one would expect them to be different for. However, I will not press those amendments to a vote, and I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 10 ordered to stand part of the Bill.

Clause 11

PURCHASE OF VAPING OR NICOTINE PRODUCTS ON BEHALF OF UNDER 18S

Dr Johnson: I beg to move amendment 65, in clause 11, page 6, line 5, at end insert

“, save if it is a first offence.”.

See explanatory statement to Amendment 66.

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

Amendment 66, in clause 11, page 6, line 5, at end insert—

“(3A) A person who has admitted guilt of a first offence under this section is liable to a fine not exceeding level 3 on the standard scale or a caution.”.

This amendment, together with Amendment 63, 64, and 65, prevents penalties for a first offence under sections 10 and 11 being beyond level 3 and provides for a discretionary caution.

Clause stand part.

Amendment 82, in clause 77, page 40, line 22, at end insert

“, save if it is a first offence.”.

See explanatory statement to Amendment 83.

Amendment 83, in clause 77, page 40, line 22, at end insert—

“(3A) A person who has admitted guilt of a first offence under this Article is liable to a fine not exceeding level 3 on the standard scale or a conditional caution.”.

This amendment, together with amendments 80, 81, and 82, prevent penalties for a first offence under sections 76 and 77 (pertaining to age of sale restrictions for vaping and nicotine products in Northern Ireland) beyond level 3 and provides for a caution.

Clause 77 stand part.

Dr Johnson: Amendments 65 and 66 apply to clause 11. In line with other Opposition amendments tabled to various clauses of this Bill, they seek to provoke debate on the coherency of the penalties. They encourage the Minister to look in detail at those penalties before Report—specifically, to consider the differences between the shop worker, the shopkeeper and the shop owner in terms of the level of fine required, and also to consider the individual who inadvertently commits an offence on one occasion versus the person or company that deliberately and repeatedly flouts the law and require different handling.

Amendment 65 amends clause 11 to add at the end of page 6, line 5,

“, save if it is a first offence.”,

while amendment 66 inserts:

“A person who has admitted guilt”—

that is, a person who has owned up—

“of a first offence under this section is liable to a fine not exceeding level 3 on the standard scale”.

I think I have explained what those are for.

Clause 11 makes it a criminal offence for a person aged 18 or over to purchase, or attempt to purchase, a vaping or nicotine product on behalf of someone who is under the age of 18—essentially stopping adults from buying vapes for kids. Clearly, buying things for children that are so potentially harmful to them is not the action of a responsible adult.

If a person is charged with this offence, they can defend themselves by saying that they had no reason to suspect that the person they were buying for was under 18. It is not really clear to me when that sort of a situation would occur. If someone is under 18, it should be fairly obvious that they are quite young. Any responsible adult who knew the child would have an idea of how old they were, and any responsible adult who did not know the child would surely guess that there was a risk in buying something for someone who looked young, in case they were under 18 and incriminated themselves. I understand why the defence is there, but I am not really sure how it would be used. The Minister may be able to enlighten us further.

A person found guilty in relation to this offence is liable to a fine up to level 4 on the standard scale, which amounts to £2,500. This clause is very important, because we must stop children getting access to vapes. Popular culture tells us that vapes are very accessible to children. For example, we were all glued to our screens—I know we were in the Johnson household—watching Luke Littler, the recent BBC young sports personality of the year, win the PDC world darts championship. It was fabulous to see someone so young achieve such an amazing feat.

Luke Littler won half a million pounds, which is a wonderful thing for that young gentleman, but he reportedly said that he would celebrate by vaping. Of course, he is actually a 17-year-old young man, despite his great achievements. He is a sports prodigy, a national hero, and a wonderful example to young people of what can be achieved at a young age, but presumably, until he turns 18 very soon, he will need someone else to buy vapes for him. That will be illegal under the new law.

On a more serious note, we know through the various different reports that on county lines, where people are selling drugs, they are often giving vapes to children as a way of enticing them into feeling that they are favoured by those adults. They are using children’s addiction to nicotine and desire for further vapes, and for access to further vapes, as part of a grooming process to get them into dreadful situations with county lines. Clause 11, which prevents children’s access to vaping and nicotine products via a proxy adult, is a very sensible measure that I will support.

Andrew Gwynne: I am grateful to the shadow Minister for her support. Clause 11 means that it will be an offence for a person aged 18 or over to buy, or attempt to buy, a vaping or nicotine product on behalf of a person who is under the age of 18 in England and Wales. The clause replaces the existing restrictions, which only apply to nicotine vapes.

Similarly, for Northern Ireland, clause 77 means that it will be an offence for a person aged 18 or over to buy, or attempt to buy, a vaping or nicotine product on behalf of a person who is under the age of 18 in Northern Ireland. The clause replaces the existing restrictions that only apply to nicotine vapes and extends them to non-nicotine vapes and nicotine products such as nicotine pouches. Anyone convicted of the offence would be liable to a fine of up to £5,000. Both of these clauses contain the defence for those charged that, if they can prove they had no reason to suspect the person they were buying the product for was under 18, that would be considered.

4.30 pm

Vaping is less harmful than smoking, and can be an effective quit aid for adult smokers, but vapes are never recommended for children. The active ingredient in most vapes and all consumer nicotine products is nicotine, which when inhaled is a highly addictive drug. Nicotine in vapes can cause addiction, and this is particularly acute for adolescents while their brains are still developing. It can also increase the risk of developing other conditions such as respiratory disease.

Giving up nicotine is very difficult, and withdrawal symptoms can include cravings, irritability, anxiety, trouble concentrating—it sounds like this Committee, Sir Roger—headaches and other mental symptoms. The long-term health harms of colours and flavours when inhaled are unknown, but they are very unlikely to be beneficial. Enforcement is a vital part of protecting children from these harms.

I turn now to the amendments, which would create a more lenient penalty regime for purchasing vaping or nicotine products on behalf of someone under age, known as proxy purchasing, in England and Wales and in Northern Ireland. It would create an exception to the maximum penalty a person can face for committing this offence if it is this person's first offence. It would establish that someone who admits to committing an offence for the first time would be liable on summary conviction to a fine not exceeding level 3 on the standard scale—£1,000—or be given a caution instead. That is one level lower than the fine that someone who commits this offence is liable to under the current legislation, which allows a level 4 fine of £2,500. This has a similar effect to amendments we have already discussed. Therefore, if the Committee is content, I will not repeat myself, as the rationale for asking the shadow Minister to withdraw the amendment remains the same.

It is for these reasons that I commend clauses 11 and 77 to the Committee, and ask that the hon. Lady withdraw her amendments.

Dr Johnson: Amendments 65, 66, 82 and 83 were specifically there to provoke debate on the coherency of the penalty portfolio across the Bill. The Minister has clarified his position on that. It is very important that we see those who are selling vapes to children or, in the case of clause 11, buying vapes for children, appropriately deterred from doing so or appropriately punished. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Clause 11 ordered to stand part of the Bill.

Clause 12

VAPING AND NICOTINE PRODUCT VENDING MACHINES

Sarah Bool: I beg to move amendment 96, in clause 12, page 6, line 8, at end insert—

“(1A) The offence set out in subsection (1) does not apply to vending machines that are located within specialised mental health units that provide care for mental health patients.”

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

Clause stand part.

Clause 78 stand part.

Sarah Bool: This amendment states:

“The offence set out in subsection (1) does not apply to vending machines that are located within specialised mental health units that provide care for mental health patients.”

I tabled this amendment on the basis of the evidence provided to us. I put on record that the Committee received a letter by Peter Terry, a

“Smoke Free lead in a large Mental Health Trust in the North West of England”.

In his letter, he says,

“As you may be aware the success of hospitals and Trusts becoming smokefree environments (especially Mental Health units) is particularly challenging. Mental Health service users due to their conditions have little or no motivation to stop smoking. On the units of my trust the prevalence of smoking is consistently between 70-77%.”

He goes on to say:

“To ensure we allow service users who are hospitalized a safer way to manage their nicotine addiction...my Trust would require Vending machines. These would allow service users to purchase a closed pod system device, which is a lot less harmful than tobacco smoking. On admission they would be offered either free NRT products or to purchase a vape as described above.”

He is asking that we make an exemption.

The exemption was also supported in another submission from the Cambridgeshire and Peterborough NHS foundation trust. Ben Kingsbury, the tobacco dependency lead in that trust, wrote to express his concerns over the ban on the sale of vapes from vending machines. He indicated that his trust had installed vending machines back in May 2024

“to ensure that vapes are available to staff and patients at all times.”

He stated:

“Since installation of the vending machines in our Trust we have had over 2400 individual vends. Each vend represents a staff or service user making a positive decision to improve their health. 2400 individual vends in just 6 months represents a saving to the Trust of around £12,000.”

He argued:

“Removing the machines will reduce patients' independence in buying their own devices while in hospital and will have a financial implication to our Trust, as wards would be expected to fund more vapes.”

He was also concerned that

“a lack of vape provision on our Trust premises may result in patients returning to smoking”,

which I am sure we all agree we do not wish to be the result. He also asked that we consider the financial implications, as well as health and wellbeing of service users, by implementing the exemption.

We can all empathise with those who are admitted to mental health units. They may have difficult and complex conditions that they need to work through, and coping with a potential addiction may be too much for them. There may be a logic to listen to the voices of the experts—especially if we end up having smoke-free places around hospitals and how that will work out—asking us to allow a mechanism to help someone with smoking cessation.

The Minister himself has just said that vaping can be good to help someone quit, but if they do not have access to a vape they may face difficulties such as cravings, anxiety, trouble concentrating and all the other elements that go with it, including potentially going back to smoking tobacco in its pure form. Taking away the option from those in mental health units will only

make their recovery harder, longer and more expensive for the NHS. I heartedly commend to all members of the Committee that we all consider this amendment thoroughly, to ensure that we are not doing additional harm by taking an aggressive approach in this regard.

Gregory Stafford: I thank my hon. Friend the Member for South Northamptonshire for moving the amendment. One thing we have seen across the debate thus far, and indeed during oral evidence, is that we have been led by the evidence—the Minister has clearly said that. The evidence that my hon. Friend has provided is from medical experts. These are not vape peddlers or people from the industry, or people who want to make a quick buck out of those who are addicted to nicotine. These are health professionals who are trying to ensure that there is a balance between what is absolutely right—we do not want to see people vaping—and the reality of the situation in medical settings, especially in mental health settings, where the ability for patients to have a certain amount of autonomy is often vital to their mental recovery.

My hon. Friend also made the valid point that if we remove smoking and tobacco products from in and around hospitals, which is a suggestion in the Bill that I think I support, we must ensure that those who are addicted—and we accept that it is an addiction—are dealt with appropriately. Obviously, in most regular acute trusts, that would be dealt with through a nicotine patch, but for mental health services, as I said, the requirement for autonomy should sometimes outweigh the functional nature of a nicotine patch. Indeed, my understanding is that nicotine patches do not work for everyone, because some of the addiction is in the holding as well as the imbibing.

I welcome the Minister's response. As I have said to him on previous amendments, even if he is not happy with the precise wording my hon. Friend the Member for South Northamptonshire has put forward, I hope that he can bring in some kind of exemption on Report, so that the medical professionals who have written to us are satisfied that their concerns have been heard?

Dr Johnson: Amendment 96 and clause 12 relate to vaping and nicotine product vending machines. I support the clause; indeed, if one looks at proceedings on the previous, Conservative iteration of the Bill from earlier this year, one will see that new clause 4, which was signed by just under 40 Members proposed a ban on vaping product vending machines, and the lead name was mine. I was concerned that vending machines would be used by children to obtain vaping and nicotine products. That loophole in the law that would make it easy—as we have seen with cigarettes in the past—for youngsters to circumvent the age-restricted product legislation designed to protect them, by allowing them to buy things from a machine that was not checking how old they were. I am therefore clearly supportive of this legislation.

Clause 12 makes it an offence for a person who manages or controls a premises to have a vending machine that sells vaping or nicotine products—

“an automatic machine from which”

vaping or nicotine products “may be bought”. Again, I ask the Minister to look at the principle of machines “from which” these products “may be bought” and to

reconsider the wording to ensure that the industry cannot sell products using an app or online platform that can then be collected from a dispensing machine, in the same way as someone might buy something off a retailer and collect it from another retailer or a lock box collection point.

Banning the sale of vaping products, nicotine products and cigarette papers from vending machines would, by virtue of the various clauses in the Bill, including clauses 12 and 17, be a UK-wide provision. That would be beneficial because it would have consistency across the UK in a positive direction. The clause introduces a new offence, as there are currently no restrictions on the use of vaping or nicotine product vending machines in the UK, in the way that there is with tobacco vending machines. This is a new offence, and in my view a welcome one.

Self-service vending machines provide an anonymous, unregulated environment where individuals under the legal age could otherwise purchase vaping or nicotine products without any face-to-face interaction with a retailer, clearly increasing the risk of under-age sales. The offence will come into force six months after Royal Assent, which means that premises that currently contain a vape or nicotine product vending machine will have time to remove it or to stock it with a product that can legitimately be sold to younger people.

The primary rationale behind the restriction on vape vending machines is to reduce vaping rates, particularly among minors and children. The Government's aims, as I understand them, are to protect young people from the harmful effects of vaping by limiting their access to vaping and nicotine products. Vape or nicotine product vending machines, which may also be used for pouches, are seen as a mechanism to bypass the responsibility of retail staff in ensuring that restrictions are met, contributing to increased sales.

The fine is level 4 on the standard scale, which is similar to that for selling over the counter. That makes sense to me, but I want to ask the Minister who qualifies as a person who manages or controls a premises? If it is a tenanted property, does that mean the landlord or the tenant who has control of the premises? If it is a larger retailer, such as a large supermarket, who controls those premises? Who takes the blame there? Is it the person who was on shift as the supervisor? Is it the store manager? On a more general basis, is it the regional manager or the managing director of the company? Who is responsible for managing and controlling those premises? The Minister needs to provide guidance on that so that people understand their responsibilities and so that, in the event a crime is committed and a vending machine is put in place, fingers are not pointed in every direction, making it impossible to work out whose responsibility and fault it was, such that nobody is held to account for the breach.

The Department of Health and Social Care has produced an impact assessment for the Bill, and paragraph 477 says:

“Regulating vape flavours, packaging, and presentation, as well as point of sale displays, and banning vending machines which sell vapes and nicotine products is expected to reduce the number of people taking up vaping, and therefore it is expected that there will be environmental benefits from reduced litter from vaping products.”

The clause will therefore benefit the health of not just our children but the environment in which they live and grow.

[Dr Caroline Johnson]

Paragraph 781 of the impact assessment highlights the following information about vending machines and under-age sales:

“A survey conducted by ASH”—
which gave evidence to our Committee last week—
“found that 6.6% of 11–17-year-olds who currently vape used machines as a source of vapes.”

Given that vaping vending machines are not currently that common, that seems quite a high figure. Without a ban and the implementation of the clause, that figure will surely increase.

Tristan Osborne (Chatham and Aylesford) (Lab): I appreciate the point that the hon. Lady is making and those that other Members have made. As I understand it, we already have a law that bans people from purchasing vapes from a customer-managed vending machine. The only vending machines that should be selling vapes are managed by someone else. Can I just clarify that that is the case, because I think there is some confusion about how people are getting these vapes at hospitals and particularly in mental health settings? I have a concern about that because it puts vulnerable people, in a sense, with an addictive product. Can I just clarify that vending machines for vapes are currently not allowed in this country, except where they are not individually customer operated?

Dr Johnson: I thank the hon. Member for his intervention. I will come to amendment 96 and the mental health aspect shortly, but I will deal with the clause first, which makes sure that these vending machines are not available. At the moment, one can buy nicotine products in a vending machine where those exist. As I said, the ASH survey showed that 6.6% of 11 to 17-year-olds who currently vape have access to vapes through a vending machine, so this is happening in the UK already. The hon. Gentleman will have heard me say earlier that, until this Bill passes, it is not illegal to sell nicotine products to children. Some responsible retailers have a voluntary scheme for not selling to under-18s, but it is not a legal requirement. Some irresponsible sellers do sell vapes to children.

Paragraph 782 of the impact assessment says:

“There is limited evidence presented on the number and locations of vape vending machines, however it is suggested by online retailers that they are currently predominantly placed in locations such as nightclubs, bars and pubs. It is anticipated that”

without this legislation

“the market will develop further and vape vending machines will become more prevalent in other locations such as supermarkets, train/bus stations and other locations accessible to under-18s.”

In my mind’s eye, I remember recently seeing a vape in a vending machine alongside sweets; I just cannot quite remember where it was, but it was certainly somewhere that was easily accessible to people.

The aim of the clause is to protect children and to ensure that vending machines—commonly found dispensing food and drink in child-friendly establishments such as canteens and leisure centres, and easily used by young people—are not available. The machines protect anon—
anonymity; I might have to put my teeth in, Sir Mark—

Andrew Gwynne: It is catching!

Dr Johnson: It is catching—it is the time of day, I think.

Paragraph 787 of the impact assessment says:

“We know that one of the main reasons children take up vaping is due to peer pressure...It is therefore worth considering that instances of vape vending machines in easily accessible areas might be an enabler for those who would not otherwise seek out a vape or who would be deterred by having to speak to an adult”.

Children would have to seek out an adult to make a purchase, because they have to go to a till or counter to get the vapes. Under the new legislation, that adult would look for ID, while a vending machine would provide a circumnavigation, so this is a sensible clause.

Most of us recognise that the vending machines currently selling disposable vapes have a finite lifetime, because this Government have banned them in the future under a statutory instrument in the competence of the Department for Environment, Food and Rural Affairs. However, British American Tobacco has already stated that it is working on a product to sell the Velo brand—one of its nicotine pouches—via “age-gated vending machines” and is hiring for the product. Again, that is taken from the impact assessment.

That further highlights the need for a blanket ban on vending machines, particularly given that, as things stand, they are clearly advertising tools for vaping. Wherever the machines are placed, they are visible to the consumer, and the consumer needs to know what is in the vending machine in order to choose what to buy. Given the regulations appearing later in the Bill, we will be looking at the display of such products. It therefore seems nonsensical to have restrictions on the display of products, but to allow vending machines, which allow the display of products, in contravention of that. One aim of the Bill is to ensure that non-smokers do not begin vaping and get hooked on nicotine. These provisions strengthen that through age verification and on the marketing front.

I will now deal with some of the issues to do with mental health hospitals. My hon. Friend the Member for South Northamptonshire said that the 2,400 vends were evidence of 2,400 positive choices. I am not sure that that is necessarily the case. The evidence is that 2,400 vapes were bought, but not that those individuals had ever smoked. We do not know whether the vending machines are being used by people who smoke or people who do not—[*Interruption.*] My hon. Friend the Member for Windsor comments from a sedentary position; if he wants to intervene, he is welcome to do so. A proportion of people out there smoke, and a proportion do not.

Sadik Al-Hassan (North Somerset) (Lab): It is a pleasure to serve under your chairship, Sir Mark. Based on the behaviour of vape companies now, which is similar to that of tobacco companies previously, this proposal would allow further expansion of vending machines and further display on vending machines in more and more places. Is that the point that the hon. Member is making?

Dr Johnson: In essence, in relation to clause 12, yes. I do not think that vending machines including tobacco and nicotine products or vapes are a good idea, and I moved a new clause for inclusion in the previous Bill

because a ban on nicotine and vaping products in vending machines had not been included at the outset. Without such a measure, we will see an expansion of vending machines as a way of selling products to children and getting children addicted. It will be done as a way of making products more available to adults, but its effect will be that the products are more available to children. I do not want to see such products available to children, because they are clearly harmful for them. All the medical evidence we have had states that clearly.

With regard to individuals in mental health hospitals, some may be there as voluntary patients, and some under a mental health section. When someone's liberty has been taken from them because they are being treated for a mental health condition, we need to be careful that we are not restricting them in other ways in which we would not restrict other people. That is a fair point to make.

We also have to be mindful of the staff. As we go through the Bill, the Minister will rightly be looking at exposure to vaping inside hospitals and at extending the tobacco regulations that limit smoking in public indoor places to cover vaping in indoor public spaces. Indeed, he and you, Sir Roger, will have seen the signs placed in the Tea Room by the Speaker, who rightly wants to see that we do not have vaping there. The public do not want vaping in their tea rooms or in the public domain either, so that is the right thing to do. We need to consider that there are staff and other patients in mental health hospitals who may not wish to vape and should not be inadvertently and unnecessarily exposed to vaping products.

I do not support the idea that 2,400 vends means that this is a positive choice. For some of these people, vaping may have been a positive change from smoking, but for others it may have been a decision to vape.

Sarah Bool: I appreciate that; those were the words of the NHS trusts themselves when they talked about positive decisions. We cannot always be sure exactly why someone made that decision, but we have to hope in the first instance that that move away from smoking would turn into vaping and, ultimately, into a smoke-free generation.

I am minded to tighten the wording of my amendment on Report to ensure that the vending machines are in those mental health units for the purpose of facilitating smoke-free policies and smoking cessation, because I do not necessarily want nurses and those working in those units to be exposed to any unnecessary products. When we are dealing with addiction, we all appreciate how difficult it is, and I want to ensure that a process is in place that means that we deal with both the mental health issues patients are dealing with and the addiction in a suitable and balanced fashion.

Dr Johnson: I know my hon. Friend's heart is in a good place when she thinks about how we can protect individual mental health patients who also have an addiction to nicotine. She said that having no vapes on the hospital site could lead to patients taking up smoking, but there are of course no cigarettes on the hospital site either. I do not support the idea that the removal of one product will automatically lead to the use of another unavailable product.

If a member of the Committee, for example, wanted to leave the room now and go and get some vapes, they would need to leave the House, go and find a shop, and purchase them, and the same is true of an average patient: they would have to leave their home, find a shop, buy their vapes and come home again. The availability of a vaping vending machine on a ward in a mental health hospital would make vapes much more available to an individual and much more proximal than they would be under normal circumstances, which may lead to a greater consumption of nicotine than would be the case if the vapes had to be accessed elsewhere.

As we have mentioned repeatedly, nicotine is a very addictive drug, and I will not reiterate that beyond saying that if one is in a hospital unit and unable to leave because one is on a section, and one is used to using nicotine, the cravings would be extremely unpleasant and the withdrawal could be very nasty indeed. With that in mind, we wish to ensure that those individuals are cared for, and I know that the Minister wants to ensure that they are cared for too, but I remind the Committee that other nicotine replacements are available.

Several treatments are available from shops and pharmacies to help to beat the addiction, and those are available on prescription to individuals currently residing in a mental health unit, voluntarily or otherwise. Essentially, they are nicotine replacement therapies, by which I mean a proper medicine, as opposed to a consumer product, that provides somebody with a low level of nicotine without the tar, carbon monoxide and other poisonous chemicals present in tobacco smoke. They help to reduce unpleasant withdrawal effects, such as bad moods and cravings, and may affect mental health treatment too. They can be bought from pharmacies and shops, but a doctor can prescribe them and NHS stop-smoking services can provide them, and they are available in a whole range of forms. There are skin patches that provide a slower release, chewing gum and little inhalators that look like a small plastic cigarette. There are tablets, oral strips, lozenges, and nasal and mouth sprays.

There is a huge variety of different nicotine replacement therapies. Some, such as the inhalators, gums and sprays, act quickly to provide nicotine, and some, such as the patches, release nicotine slowly. The treatment depends on the stage of craving and the stage of giving up that somebody is at, and on what is most suitable for them. Sometimes patients find that the best way to use nicotine replacement therapy is to have a low-dose patch that is worn all the time, with top-ups from a gum, inhalator or nasal spray if they have particular cravings. Treatment with such nicotine replacement therapy usually lasts eight to 12 weeks before the dose is reduced and eventually stopped.

5 pm

That is different from vaping, which seems to be a swap, rather than a swap to stop. A stop is less likely to occur with a vape that has cherry flavours and such like than it is with proper medical nicotine replacement therapy, which does not contain those added enticements. Nicotine replacements are available for children as well as adults, if there are paediatric patients, and also for pregnant and breastfeeding women. A doctor can advise on which is most suitable.

[Dr Caroline Johnson]

The chief executive of the Mental Health Foundation, Mark Rowland, gave evidence to the previous Bill Committee on the issue of mental health patients and the effects of nicotine. He said:

“I was saying earlier on that this myth about smoking appeasing the symptoms of anxiety and stress does not come about by accident. It has been purported by the tobacco industry. The tobacco industry has deliberately commissioned research into the proposed impacts of smoking, looking for some sort of consequence for relieving long-term stress. You are absolutely right that it is not just a myth, but a pernicious myth, because it does exactly the opposite. The only thing that smoking does is relieve the immediate symptoms of nicotine withdrawal, deepening the addiction. We know now that it exacerbates the symptoms of poor mental health across the population, particularly for common mental health disorders, as well as serious mental illness. We now see that there is a causal relationship between smoking and mental health.”—*[Official Report, Tobacco and Vapes Public Bill Committee, 1 May 2024; c. 114-115, Q176.]*

On the basis of that and other evidence, I would say that individuals who have mental health problems need, if anything, greater protection from the nicotine and tobacco industry rather than exemptions and fewer protections. I will therefore not support my hon. Friend’s amendment 96, however well intentioned it is, but I will support the vending machines clause and the associated clause 78, which makes similar provision for Northern Ireland.

Jack Rankin: I supported clauses 10 and 11 because I agree with the Government that under no circumstances should children be taking up vaping. I was heartened by the Minister’s comments on the principle of clause 10, the general point about evidence and balance when it came to vaping, and treating vaping differently from cigarettes and tobacco products.

However, I cannot quite go along with the Government on clause 12, because there they have the balance slightly wrong. I accept that vape vending machines should be prohibited, for the same reason that tobacco and cigarette vending machines were prohibited: vending machines cannot provide for age verification. That balance is well struck. However, I do not support the related measure for nicotine product vending machines. The Minister may seek to correct me, but I am not aware that any of the products described by the shadow Minister, such as nicotine patches and gum, is used recreationally or is attractive to children.

Sadik Al-Hassan: Does the hon. Gentleman not think that, if other items are restricted, people will end up buying those items? We are going to restrict what is available, and that will surely open them up as an avenue if we do not close it now.

Jack Rankin: I do not think that nicotine products are attractive to children in any way, shape or form today. My concern is that, as the Government are seeking to stop children using them by restricting them in vending machines—I do not think they should be using them—

Dr Johnson: May I clarify the point that my hon. Friend is making? When he says that he does not think nicotine products are attractive to children, does he mean the medical nicotine replacement therapy products, as opposed to other nicotine products such as nicotine pouches or vapes?

Jack Rankin: I mean the former: nicotine patches and gum. The stated intention of the Bill, supported by the House on Second Reading, is to move to a smokefree generation, so it would seem sensible to make nicotine products pretty widely accessible, in so far as they do not attract children. We should largely welcome a vending machine selling nicotine patches or gum if the intention is to move to a smokefree generation. I do not think the Government have the evidence and the balance quite right on that point, so I cannot support clause 12 as it is currently written.

I would make a similar case in support of the amendment in the name of my hon. Friend the Member for South Northamptonshire. She has read to us evidence from a relevant professional, who has a legitimate concern. It might be sensible, in the interest of broader public health, to have such a vending machine. If the Government are concerned about evidence and balance, those are exactly the kinds of voices they should be listening to, and they should accept the amendment, which is very much in line with their intent.

Sadik Al-Hassan: Does the hon. Gentleman have any evidence that there is a restriction on access to stop smoking products now? In my experience as a pharmacist, I have not seen that.

Jack Rankin: I do not think I can talk to that point, but I thank the hon. Gentleman for making it.

We have to find a balance. The Government can use their majority in the House to cast aside my hon. Friend’s amendment, but it seems to me that it is in line with the principle of the Bill, so it is a sensible thing to do.

Dr Johnson: I understand that my hon. Friend thinks that the amendment is sensible, but Dame Andrea Leadsom, the public health Minister in the previous Government, asked Mark Rowland, the chief executive of the Mental Health Foundation, the “chicken-and-egg question”, as she put it:

“Does smoking make you depressed, does depression cause you to smoke or is it both?”

He said:

“it is difficult to disaggregate exactly for many people, but we know that both are a real issue. We talk about this cycle of smoking increasing the risk of poor mental health and poor mental health increasing the chances of smoking and the number of cigarettes someone smokes. People with mental health problems smoke far more, and that addiction then exacerbates psychiatric symptoms. Those psychiatric symptoms also then lead to increased poverty and increased chances of being unemployed, and that leads to poorer mental health. It is a complex picture, but we are really starting to see the causal drivers of mental ill health.”—*[Official Report, Tobacco and Vapes Public Bill Committee, 1 May 2024; c. 116, Q179.]*

Does my hon. Friend agree that one should not say that those in mental health hospitals need access to vapes or nicotine in the form of pouches from vending machines to ease their mental health? In actual fact, it may do quite the opposite.

Jack Rankin: I had not heard that remark, but I thank my hon. Friend for putting it on the record. To add to that theme, I would make the point that these things are multifaceted. The point that my hon. Friend the Member for South Northamptonshire, who is the

successor to Dame Andrea, was making is that people have quite a lot to be getting on with, so they do not need this added stress.

Dr Johnson: Does my hon. Friend see it as an added stress or an added opportunity to add in-patient support to quit smoking to further benefit the individual's mental and physical health?

Jack Rankin: Perhaps it is an added thing that doctors in mental healthcare can try to address, but my hon. Friend the Member for South Northamptonshire read out a letter from someone at the coalface, who takes the opposite approach from that of the shadow Minister.

Sarah Bool: I will say a little about the intention behind the amendment. We have obviously stressed throughout this debate how addictive nicotine is, but I want to ensure that if we are trying to deal with mental health issues, we are not creating an extra burden. The intention was not to encourage people to smoke, vape or take up other bad habits, but to make sure that we offer the best possible healthcare in the round, which means giving support.

Nicotine is addictive and so stresses are associated with it. Perhaps there are alternatives to give patients, but if they are not suitable for a particular patient or they do not work as well for them as nicotine, they will effectively be going cold turkey, which has its own issues. The intention behind the amendment was purely to encourage us to listen to the evidence from trusts themselves, to try to come up with a practical solution to enable this transition and allow us to get to a smokefree generation.

Jack Rankin: I thank my hon. Friend for her intervention and I agree with everything she has just said.

I will just finish my remarks to my hon. Friend the shadow Minister. She talked about this measure being a further opportunity; I would suggest that the easy availability of nicotine products in certain instances would be an aid on that journey.

We should be working pragmatically on amendments such as this in Committee, to ensure that the evidence is considered and that the right balance is struck. I will support the amendment tabled by my hon. Friend the Member for South Northamptonshire. Because the nicotine product vending machine measure is part of clause 12, I will vote against clause 12 stand part.

Andrew Gwynne: Clauses 12 and 78 prohibit vape and nicotine product vending machines in England, Wales and Northern Ireland, and similar provisions are made elsewhere for Scotland. However, it is really important that the Committee understands that Scotland already specifically prohibits vape vending machines.

Clause 12 makes it an offence for any person managing or controlling a premises to have a vaping or nicotine product vending machine available for use, which effectively prohibits the sale of vapes and nicotine products from vending machines. I will try to clarify this point for the shadow Minister. She asks, "Who is responsible? Who is that person?" The offence is linked to the person with management control of the premises, as that is the most appropriate mechanism; they have control over whether the vending machine is present. That is the answer to her question.

This Government will stop the next generation from becoming hooked on nicotine. To do that, it is essential that we stop children from accessing harmful and age-restricted products. Prior to the prohibition of tobacco vending machines, we know that children who smoked regularly used those machines as their source of cigarettes. We cannot allow the same thing to happen with vapes.

Vending machines do not require any human oversight, so it is much easier for determined individuals to bypass age-of-sale restrictions and, crucially, to undertake proxy purchases on behalf of individuals under 18 because there is a much lower chance of their being challenged about such a purchase. Additionally, by their very presence vending machines advertise their contents and the Bill will ban the advertising of vapes. We need to ensure that children are protected from harmful and addictive products. Ensuring that we remove the ability of children to access age-restricted products is an essential part of that approach.

I turn to amendment 96, regarding the exempting of mental health units from the vending machine prohibition. I am grateful to the hon. Member for South Northamptonshire for bringing this important issue before the Committee today for discussion. Her amendment would allow vape and nicotine product vending machines to be available for use in specialised mental health units in England and Wales.

I am very sympathetic to the needs of adult smokers and vapers in mental health facilities, and I know that this topic came up during the evidence session. However, we do not currently believe that there is a need to exempt mental health settings or other healthcare settings from these requirements. Scotland did not exempt mental health units from its vape vending machine ban, and it has had no issues. I want to be clear, because it is really important that I make this point: we are not banning the sale of vapes and nicotine products in mental health settings. We are only prohibiting their sale from automatic machines that provide no means to prevent proxy purchasing. Facilities that contain shops will still be able to sell vapes to patients and staff. Additionally, patients in mental health settings may be able to benefit from stop smoking services and the swap to stop scheme.

The majority of in-patient trusts, both acute and mental health, successfully deliver stop smoking support to smokers. As part of the swap to stop scheme, localities can request free vaping starter kits to provide to adults engaging with their local stop smoking services. Awards have now been made to individual services in a range of settings, including NHS and mental health settings, and to specific populations. It will still be legal and possible for vending machines to dispense medicinally licensed nicotine replacement therapies such as gums, patches and inhalers. These important medicines will still be available to patients who are looking to quit smoking or who are struggling with their nicotine addiction.

Dr Beccy Cooper (Worthing West) (Lab): I thank my hon. Friend for making the arguments on vending machines. From a public health consultant point of view, I have listened and think there is a reasonable debate to be had. I am convinced by the arguments that my hon. Friend the Minister has given, but I would ask that following the debate the conversation continues as the Bill progresses and that the Department of Health and Social Care continues to have these conversations.

Andrew Gwynne: I am grateful to my hon. Friend for that. This debate will not stop here at Committee stage; I am almost certain it will be raised on Report. If it is not concluded to the satisfaction of those who wish to see such provisions in the Bill, I have no doubt that it will be raised in the other place, too.

However, it is really important that we do not end up with unintended consequences. We have to get this legislation right. The smoking cessation services available are far-reaching in these settings, and I see no reason for an exemption, given that nicotine replacement therapies such as gums, patches, inhalers—important medicines—will still be available to patients with a nicotine addiction in mental health settings. It is for that reason that I ask the hon. Member for South Northamptonshire to withdraw her amendment.

Sarah Bool: I would like to press my amendment to a Division.

Question put, That the amendment be made.

The Committee divided: Ayes 3, Noes 12.

Division No. 3]

AYES

Bool, Sarah
Rankin, Jack
Stafford, Gregory

NOES

Ahmed, Dr Zubir
Al-Hassan, Sadik
Barros-Curtis, Mr Alex
Cooper, Dr Beccy
Dickson, Jim
Foy, Mary Kelly
Gwynne, Andrew
Johnson, Dr Caroline
Osborne, Tristan
Owatemi, Taiwo
Stainbank, Euan
Whitby, John

Question accordingly negated.

Clause 12 ordered to stand part of the Bill.

Clause 13

DISPLAYS OF PRODUCTS OR PRICES IN ENGLAND

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

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

Clause 14 stand part.

Clause 61 stand part.

Clause 79 stand part.

Before we embark on this debate, because there is a series of stand-part debates coming up, I will make the point that it is not actually de rigueur to speak in every stand-part debate if you have no desire or need to do so—you do not have to read things into the record.

My second point is that we may be coming to a conclusion of the business on the Floor of the House fairly shortly, although I do not think we have yet got on to the winding-up speeches. I must make the point to the Committee that if a Member is on their feet when a Division is moved—and there will then be a sequence of Divisions, so we could be talking about an hour or an hour and a half—I shall have no choice but to suspend the Committee, unless the adjournment has already been moved. I call Dr Caroline Johnson.

Dr Johnson: In the provisional grouping provided by the Clerk, you have clauses 13, 14, 61 and 79 together. Would you like to—

The Chair: Order. I do beg your pardon; I am wrong. I am never wrong! But this time I am. I call the Minister to speak first.

Andrew Gwynne: Thank you, Sir Roger. I was doubting my officials, but perhaps I should have had more trust in the notes that they gave me, which say “AG to open”—heaven forbid that you, in the Chair, would ever be wrong.

Clauses 13, 14 and 79 provide a power for the Secretary of State, Welsh Ministers, and the Department of Health, Social Services and Public Safety in Northern Ireland, to regulate the display of relevant products, including prices and empty retail packaging, within retail establishments in England, Wales and Northern Ireland. Tobacco product displays are currently regulated under the Tobacco Advertising and Promotion Act 2002. This Bill repeals and replaces that Act, so tobacco display regulations will be made under this new power for when the repeal takes effect.

Clause 61 provides Scottish Ministers with powers to regulate the display of herbal smoking products, vaping products and nicotine products, and their prices, in retailers in Scotland. The powers also allow regulation of the display of empty retail packaging or anything that represents the products. It is slightly different to the equivalent clauses for England, Wales and Northern Ireland, which also cover tobacco products. Tobacco products are not included in clause 61, because Scotland has made its own provision on tobacco displays under the Tobacco and Primary Medical Services (Scotland) Act 2010.

Evidence shows us that vapes and nicotine products are currently too easily accessible to children within shops. Vapes are sometimes displayed alongside sweets and confectionery in retail environments, and often promoted in shop-front windows. These products are too easily seen and too readily available for children. That is unacceptable. We must reduce the visibility and the accessibility of vaping and nicotine products to protect children from getting hooked on nicotine.

These clauses provide each of the devolved Governments with the power to regulate such displays and ensure that they are proportionate to the risks that these products pose to the audiences within retail establishments. They also ensure that the Secretary of State, Welsh Ministers, the Department of Health, Social Services and Public Safety in Northern Ireland, and Scottish Ministers, will be required to consult before making regulations. I commend the clauses to the Committee.

The Chair: Let me just explain: the clause stand part is Government business, so it is absolutely correct that the Minister is entitled to move it. He is allowed to move it formally if he chooses to do so. He does not have to speak to it, but by moving it formally, he can then open the debate and come back later if he so chooses. He has chosen to take the path he has gone down and he was absolutely right to do so.

Dr Johnson: Thank you, Sir Roger. I am grateful for your guidance as Chair on the order of doing things. It has been, at times, quite confusing.

Clauses 13, 14, 61 and 79 regulate the display of products in England, Wales, Scotland and Northern Ireland. It does not take much to realise why that is necessary. Simply take a drive down a high street in any small town across the country, and one will come across a shop with an entire front window blocked out with pictures of sweets, other confectionery and chocolate, usually an energy drink or two thrown in, and a whole host of brightly-coloured vaping devices. The clear message is that these are fun and exciting products—not stop-smoking devices, but recreational products—and is clearly designed to entice children into purchasing them.

I had cause to go to a major service station on the A1-M25 junction, and as I came out of the bathroom I noticed that, at the eye level of about a six-year-old, there was a whole pile of coloured vapes in a shop front. Going into a major newsagent to purchase a newspaper, one will also find a whole load of pictures behind the counter. I have even seen electronic video displays advertising a vaping product in WHSmith—I think it was a *Lost Mary*—so one cannot get away from the advertising of those products even if one wishes to. It is clearly necessary for the display of those products within stores to be regulated to ensure that children are not enticed—the industry would say inadvertently, while others would suggest very deliberately—into wanting to buy them.

Clause 13 provides the Secretary of State with powers to regulate the display of tobacco products, herbal smoking products, cigarette papers, vaping products and nicotine products. It also regulates their prices. I wonder if the Minister could comment on what that means, and how the prices of all those products will come under some sort of Government control. Will the Government fix the prices and therefore the profit, or will they apply additional taxation to the product—something that they seem to like to do, although it would not necessarily be as unwelcome in this case as some of the other taxes they have applied recently—so that they create an overall price? How does the Minister intend this price fixing, as it were, to work?

Clause 13 also gives the capacity to regulate the display of empty retail packaging or anything else that represents the product, whether that be putting up a video display or large versions of the products at an entrance, so that the products can be kept away from children. Under the Tobacco Advertising and Promotion Act 2002 and regulations made under it, there are already restrictions on the display in the course of business of tobacco products and pricing, but not specifically nicotine and vaping products. Given all we have heard about the addictive nature of nicotine, the enticement of children into taking such products, and the harm they may cause children particularly in adolescence, this is a welcome change.

Clause 13(6) confirms that before making regulations, the Secretary of State must consult who he or she considers it appropriate to consult. I am interested to understand whether the Minister believes that such a consultation should include the tobacco industry and/or the vaping and nicotine product industry, whether that be medical or otherwise, and whether he sees a distinction between the two.

Clause 13 creates an offence for failure to comply with the regulations, and anyone convicted of an offence under this clause on indictment can be subject to

imprisonment of up to two years, or a fine, or both. If they are convicted of a slightly lesser offence on summary conviction, they can be subject to imprisonment for a term not exceeding a general limit in a magistrates court, or a fine, or both.

I refer the Minister to my previous remark that the general limit in a magistrates court is apparently going to double after the Lord Chancellor's statement in October. As such, is the Minister content to have a fluctuating limit or would he prefer a fixed one? Perhaps that is something to consider before Report. Clearly, deliberately advertising vapes in a way that may be attractive to children requires a reasonably stiff penalty.

Under clause 13(1), the legislation explicitly allows for the regulation of physical displays of these products, including empty packaging and pricing information, which are often used to draw attention to them. Subsection (2) defines the “relevant products” pretty comprehensively, encompassing not just tobacco and vaping items but accessories such as cigarette papers and herbal smoking products. The broad definition ensures that the regulations cover a wide array of potentially harmful products. Subsection (3) further strengthens that by extending the rules to include representations of these products, such as promotional materials or images that might signify them at the point of sale, which is again welcome.

Currently, vaping products are often displayed prominently in retail settings, frequently at checkout counters or in bright, attention-grabbing displays. That placement encourages impulse purchases and can make those products more appealing to young people. Unlike tobacco products, which have strict display restrictions, vaping and nicotine products remain accessible and visible in shops, and the standard packaging laws for cigarettes do not apply, for example, to their shape and colour. Clause 13 aims to address that disparity by introducing measures to regulate the visibility and presentation of the products.

The collaborative approach to the consultation will hopefully strike the right balance between public health objectives and the interests of businesses, but I urge the Minister to give further information on how we can strike that balance while maintaining that the important thing is to protect the health of the public, particularly children, from vaping products. Both nicotine and non-nicotine vaping products, unlike tobacco, are currently allowed to be displayed at the point of sale in shops on countertops, in eye-catching displays on the shop floor, and in the windows. It is somewhat ironic that sweets and chocolate have been banned at the till because of the pester power of children, only to be replaced in some shops by vapes. I suggest that, if any parent were given the choice, they would rather their children were having sweets than vapes, which are clearly addictive and much more harmful. There is much to be considered on the nature of unintended consequences, as well as the nature of the industry with which we are dealing.

Jack Rankin: My hon. Friend is making an eloquent case that we should not be advertising vapes, or their pricing and products, to children. What she is not doing is making a case for banning the display of products or prices of vapes to adults. Does she think it is incongruous to treat tobacco products and vaping products in the same way in this clause?

Dr Johnson: I thank my hon. Friend for his intervention. Part of me wants to say, “Well, what do you do when the child goes into the newsagent? Put a blindfold on them?” If the displays are visible to adults, they will be visible to the children who are walking beside them. It would be helpful if my hon. Friend has any ideas on how we can ensure that, when walking into an average newsagent, children cannot see something that grown-ups can.

Jack Rankin *rose*—

Dr Johnson: If my hon. Friend has a suggestion, I shall let him back in.

Jack Rankin: I suggest to my hon. Friend that advertising a vape with Mickey Mouse is obviously aimed at a child, but it would be very much aimed at an adult, and not attractive to a child at all, to advertise a vape with, “This is what smoking 40 cigarettes a day costs you over a year. This is what our product costs. This is what you would save.” That would very much be in line with the aims of a smoke-free generation.

Dr Johnson: I thank my hon. Friend for his intervention, which goes to the principle of advertising, and whether there needs to be an exemption for medical advertising of vaping as a stop smoking tool by health professionals, for example in doctors’ surgeries, where it may also be visible to child patients. That is not really the aim of clauses 13 and 14, which focus on the display of products in shops. They are less about how the products are advertised and more about where they are displayed and how visible they are to someone shopping.

To some extent, my hon. Friend has a point about how we convey the message to smokers that vaping devices are items they can use to help them quit smoking—a message given by the chief medical officer—and about the distinction between that advertising and the sort of advertising that sees sports stadiums and sports shirts emblazoned with the brands of vaping companies, such that young children watching their heroes on the pitch, playing football or rugby, see vaping as a good thing. We will come to that later, but it is distinctly different from clauses 13 and 14.

At the moment, the legislation most relevant to where products are displayed is probably the Tobacco and Related Products Regulations 2016, known as the TRPR, which brought EU tobacco products directive 2014/40 into law. The regulations, which are now in the form of retained EU law, set standards for nicotine vapes, including limits on nicotine strength, bottle and tank sizes, and rules on packaging and advertising. But when it comes to the display of vape products, there are no specific regulations. They are openly displayed in stores, in large and small shops, both household names and individual retail outlets. They are also displayed in outlets that we might not expect. I noticed that the place I took my son for a haircut was selling both haircuts and vapes, and that a shop in the local town that repairs mobile phones and sells second-hand devices also sells vapes. The number of places that sell vapes and display them in their shop window is remarkable.

The Department of Health and Social Care has expressed concern about the lack of regulation, warning that children can easily see and pick up vapes due to them being displayed within aisles close to sweets, and on accessible shelves and display towers on the shop floor close to children’s eye level. A particular concern to me—and no doubt to many others in the Committee—is the visual similarity between a vape display and a shelf of sweets. Vapes are often displayed in an array of eye-catching colours. It is not uncommon to see them in a rainbow, with a range of sweet and fruity flavours on offer, including specific sweet brand names like Skittles, Starburst and Sour Patch Kids. The way they are sometimes presented as a safe alternative to smoking—which we understand that they are for smokers—can mislead consumers into thinking they are risk free, which is concerning considering that they contain nicotine and other harmful chemicals. I have also noticed a fashion for an increasing number of products to be advertised as pure, fresh, natural and organic, potentially to give the impression that they are less damaging than they are.

Finally, I have not seen this raised before, but I would like the Minister to consider that the fact that these highly addictive products are so easily accessible on the shop floor and at children’s height makes it easy for children to pick them up and walk out with them, particularly if they want to avoid being asked for ID by the shopkeeper. Putting them behind the counter where they are less accessible to children may reduce that temptation.

Clauses 14, 61 and 79 relate to similar regulations in Wales, Northern Ireland and Scotland. I do not intend to go through them and repeat my arguments.

Andrew Gwynne: I reassure the shadow Minister that the measures in clauses 13 and 14 will regulate only the display of pricing, not the actual prices. We are not yet in the realms of fixing prices for products—I hope that reassures the hon. Member for Windsor, too.

On engagement with the tobacco industry and the vape industry, the UK is party to the World Health Organisation framework convention on tobacco control, so we have an obligation to protect the development of public health policy from the vested interests of the tobacco industry. We take that commitment incredibly seriously and, in line with the requirements of article 5.3 of the FCTC, we summarise the views of respondents with disclosed links to the tobacco industry when responding to consultations.

With respect to the display of vapes, we know—and the shadow Minister has expressed very powerfully—that research on vape packaging has shown that reduced brand imagery can decrease the appeal to young people who have not previously smoked or vaped, without reducing the appeal of vapes to adult smokers. That is why I believe the measures in clauses 13 and 14 are appropriate and measured, and will have the outcomes that both the shadow Minister and those of us on the Government side of the Committee desire. I commend the clauses to the Committee.

Question put and agreed to.

Clause 13 accordingly ordered to stand part of the Bill.

Clause 14 ordered to stand part of the Bill.

Clause 15

FREE DISTRIBUTION AND DISCOUNT OF PRODUCTS

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

The Chair: With this it will be convenient to discuss clauses 62 and 80 stand part.

Jack Rankin: I have supported the Government so far on the principle of not allowing under-18s to vape, but I am concerned that, as we get to these clauses relating to distribution and discount—we have just talked about display, and I will not talk about flavours and marketing in depth, because I know they will come later—we are at risk of moving away from the evidence, and from the balanced approach that the Minister talked about when he delineated between vaping and tobacco.

These clauses give quite wide scope to Ministers on all of these products together, but I think the products should be treated differently. There should be scope for legitimate, responsible vaping companies to offer free distribution and discount of products, in aid of the Government's stated aim. We do not want to create new vapers, but vaping is a powerful tool to realise the aim of a smoke-free generation. As with most products, it is possible to promote price savings in a responsible way.

We have received a huge weight of correspondence on this topic and I cannot say that I have had the time to read everything that has come across our desks, but I read the letter from VPZ, which I understand is a vaping company. It talked about its partnership with the NHS in Essex, which had put out to tender for a process to help people successfully quit. There was a £55 voucher from the NHS associated with that partnership. As I understand the letter—perhaps the Minister knows more about this than I do—VPZ used that voucher to offer a cashback scheme such that that money came off the price of vapes. VPZ did not benefit directly, because it did not think it should be doing so from a public source, but it passed that saving on, and I suppose that counts as a discount on a product.

I might contend to the Minister that that is exactly the kind of thing we want responsible, legitimate vaping companies to do. I understand that he wants, through this mechanism, to strictly limit advertising to, and targeting of, children and new vapers, but—

Gregory Stafford: I accept the point that my hon. Friend is making: there might be an argument for some kind of promotion around the use of a vape for cessation from tobacco products. However, the reality is that there are thousands, if not tens of thousands, of medicines that we do not advertise in this country, because they are generally prescribed by a medical professional, and those that are not—those that can be bought over the counter—are generally harmless so long as they are taken according to the instructions. We would not want

a situation like that in America, where specific drugs are promoted to the general public, because I think that would send us down a very difficult route. Does my hon. Friend not think that what he is suggesting on vapes is something like that, and that for products prescribed by a doctor for smoking cessation, or at least for over-the-counter products, we should not have advertising, marketing or promotional products?

5.45 pm

Jack Rankin: It will not surprise my hon. Friend that I do not agree with him. The last thing we need is more people going through our GP surgeries. We should allow legitimate use of these discounts in a public health manner. Some of the problems I have with the structure of some of the clauses from here on in is that they give quite sweeping regulatory power to Ministers, perhaps through secondary legislation. The Minister might say that the Government do not necessarily want to restrict those things, but the lack of certainty may result in a chilling of investment by legitimate vaping companies. If we want genuinely to move to a smoke-free generation, I do not think that is something we should encourage; we should be advocating such responsible investment.

Dr Johnson: My hon. Friend is talking about the availability and visibility of products, and my hon. Friend the Member for Farnham and Bordon talked about the availability of vaping products as medical products. However, the Committee heard evidence from the MHRA that there are no medically approved vaping devices currently registered in the United Kingdom. While it continues to encourage vaping companies to come forward with a vaping product for regulation and medical assessment, that so far has not come to fruition.

Jack Rankin: I take the shadow Minister's point, but I think the Minister said in summing up the clause 10 stand part debate that while vaping potentially was not harm-free, given its harm compared with cigarettes, that was something that the Government would want to see.

Clause 15 does not say that there should not be discounts on products for children or products for recreational use; it leaves the scope quite broad. I think the Government have got that wrong, and that it might have a direct adverse effect on the kinds of partnerships I described. I saw some polling recently that showed that the general public thought vaping was as dangerous as smoking, and this is the kind of messaging that gives that wrong impression, which is against the Government's stated aim.

Ordered, That the debate be now adjourned.—(*Taiwo Owatemi.*)

5.48 pm

Adjourned till Thursday 16 January at half-past Eleven o'clock.

Written evidence reported to the House

TVB45 Public Health, Wakefield Council

TVB46 Yorkshire Cancer Research

TVB47 Tor Imports

TVB48 National Fire Chief Council's (NFCC)

TVB49 Association of Convenience Stores

TVB50 Mitchell Orchant, Founder and Director of C.Gars Ltd

TVB51 Priyesh Vekaria, OneStop—Carlton Convenience

TVB52 Gurpal Jhutti, Nisa Local, Leamington Spa

TVB53 British Medical Association (BMA)

TVB54 Tobacco Control Research Group, University of Bath

TVB55 Helen and Ross Starkey (High street news Rhyl)

TVB56 Japan Tobacco International (JTI)

TVB57 Dr Emily Peckham

TVB58 Freedom Organisation for the Right to Enjoy Smoking Tobacco (FOREST)