

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TOBACCO AND VAPES BILL

Fifth Sitting

Tuesday 14 January 2025

(Morning)

CONTENTS

CLAUSES 1 TO 4 agreed to.

CLAUSE 5 under consideration when the Committee adjourned till this day
at Two o'clock.

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 Becca (<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

(Morning)

[PETER DOWD *in the Chair*]

Tobacco and Vapes Bill

Clause 1

SALE OF TOBACCO ETC

Question (9 January) again proposed, That the clause stand part of the Bill.

9.25 am

The Chair: I remind the Committee that with this we are considering the following:

New clause 3—*Age verification policy*—

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

- (a) carries on a tobacco, herbal smoking product, vaping product or nicotine product business, and
- (b) fails to operate an age verification policy in respect of premises at which the person carries on the tobacco, herbal smoking product, vaping product or nicotine product business.

(2) Subsection (1) does not apply to premises (‘the business premises’) from which—

- (a) tobacco products, herbal smoking products, cigarette papers, vaping products or nicotine products are, in pursuance of a sale, despatched for delivery to different premises, and
- (b) no other tobacco, herbal smoking product, vaping product or nicotine product business is carried on from the business premises.

(3) Before the specified date, an ‘age verification policy’ is a policy that steps are to be taken to establish the age of a person attempting to buy a tobacco product, cigarette papers, a vaping product or a nicotine product on the premises (the ‘customer’) if it appears to the person selling the tobacco product, cigarette papers, vaping product or nicotine product that the customer may be under the age of 25 (or such older age as may be specified in the policy).

(4) After the specified date, an ‘age verification policy’—

- (a) in relation to a tobacco business or herbal smoking product business, is a policy that steps are to be taken to establish the age of a person attempting to buy a tobacco product, cigarette papers, herbal smoking product or cigarette papers on the premises (the ‘customer’) if it appears to the person selling the tobacco product, cigarette papers, herbal smoking product or cigarette papers that the customer may have been born on or after 1 January 2009 (or such earlier date as may be specified in the policy);
- (b) in relation to a vaping product business or nicotine product business, is a policy that steps are to be taken to establish the age of a person attempting to buy a vaping product, or a nicotine product, on the premises (the ‘customer’) if it appears to the person selling the product that the customer may be under the age of 25 (or such older age as may be specified in the policy).

(5) In relation to times before the end of 2033, the reference in subsection (4)(a) to the customer being born on or after 1 January 2009 (or such earlier date as may be specified in the policy) has effect as a reference to the customer being under the age of 25 (or such older age as may be specified in the policy).

(6) The appropriate national authority may by regulations amend the age specified in subsection (3) or (4)(b).

(7) 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 shown to the person selling a tobacco product, cigarette papers, herbal smoking product, vaping product or nicotine product as evidence of a customer’s age,
- (c) training that should be undertaken by the person selling the tobacco product, cigarette papers, herbal smoking product, vaping product or nicotine product,
- (d) the form and content of notices that should be displayed in the premises,
- (e) the form and content of records that should be maintained in relation to an age verification policy.

(8) A person who carries on a tobacco, herbal smoking product, vaping product or nicotine product business must have regard to guidance published under subsection (7) when operating an age verification policy.

(9) 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.

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

(11) 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,
- ‘herbal smoking product business’ means a business involving the sale of herbal smoking products by retail,
- ‘nicotine product business’ means a business involving the sale of nicotine products by retail,
- ‘the specified date’ is 1 January 2027,
- ‘tobacco business’ means a business involving the sale of tobacco products by retail,
- ‘tobacco, herbal smoking product or vaping product business’ means a business which involves any one or more of the following—
- (a) a tobacco business,
 - (b) a herbal smoking product business, or
 - (c) a vaping product business,
- ‘vaping product business’ means a business involving the sale of vaping products by retail.”

This new clause introduces a requirement on businesses to operate an age verification policy covering steps to be taken to establish the age of persons attempting to buy tobacco, herbal smoking, vaping/ nicotine products, or cigarette papers. It reflects provisions in place in Scotland to be amended by the Bill.

Amendment 68, in clause 50, page 25, line 38, at end insert—

“(2A) In section 4A (Sale of nicotine vapour products to persons under 18) insert—

(a) in subsection (5), at end insert ‘, save if it is a first offence.’

(b) after subsection (5) insert—

“(5A) A person who has admitted guilt of a first offence under subsection (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale or to a recorded police warning.”

This amendment prevents penalties for a first offence pertaining to the sale of nicotine vapour products to persons under 18 in Scotland being a fine not beyond level 3 and provides for a discretionary recorded police warning.

Amendment 69, in clause 50, page 26, line 26, at end insert—

“(ba) in subsection (7), at end insert ‘, save if it is a first offence.’

(bb) after subsection (7) insert—

‘ (7A) A person who has admitted guilt of a first offence under subsection (1) is liable to a fine not exceeding level 2 on the standard scale or a recorded police warning.’”

This amendment prevents penalties for a first offence pertaining to a failure to operate an age verification policy in Scotland being a fine not beyond level 2 and provides for a discretionary recorded police warning.

Clause 50 stand part.

Clause 68 stand part.

The Parliamentary Under-Secretary of State for Health and Social Care (Andrew Gwynne): Before we were rudely disturbed by the weekend—I hope that all Members had a good one—we were coming to the conclusion of the debate on this grouping. I thank all hon. Members for their valuable contributions to discussions last week; I will continue to respond to the outstanding points raised in the previous sitting.

On the Windsor framework, we are proud to say that the Bill is UK-wide and has been developed in partnership, in full, with the Scottish Government, Welsh Government and Northern Ireland Executive. This Government, and I hope this House, intend the smoke-free generation policy to apply to all four nations.

Dr Caroline Johnson (Sleaford and North Hykeham) (Con): I have a quick question for the Minister about some of his answers last week about the clause. He said that tobacco products would include bong, and was quite passionate about that. But clause 48, which is meant to be read in relation to clause 1, defines “tobacco product” as something that contains tobacco. I have seen bong made of glass, ceramics and various other things, but I have never seen one that contains tobacco. It is certainly easy to make one that does not contain tobacco. I am therefore interested in why the Minister believes that the Bill equates bong and tobacco products.

Andrew Gwynne: I am grateful to the shadow Minister for that. We will come on to those issues in more detail when we eventually reach those clauses, which given the rate of progress so far may be in the early hours of tomorrow morning, if Members decide so. The only reason why such paraphernalia is on display and legally sold is to consume tobacco, but we will get more information on that for her when we get to clause 45, which covers that issue.

I was talking about the Windsor framework. We believe that this policy is in accordance with our international obligations. In terms of what products are in scope, the Bill captures all tobacco products, including shisha, cigars and heated tobacco. That is because all tobacco products are harmful. There is no safe level of tobacco consumption. For example, tobacco smoke from cigars leads to the same types of disease as the smoke from cigarettes. In England alone, around five times as many people smoke other tobacco products, such as cigars, as did a decade ago, and children are a part of that increase. Shisha, to which the hon. Member for Windsor referred, also causes the same diseases as cigarettes, including cancer, respiratory diseases and cardiovascular diseases. The volume of smoke produced

in the average 45-minute shisha session is estimated to be the same as around 25 cigarettes’-worth of tar, 11 cigarettes’-worth of carbon monoxide and two cigarettes’-worth of nicotine.

Finally, there is clear evidence about the toxicity of heated tobacco. The aerosol generated by heated tobacco also contains carcinogens, and there will be some risk to the health of anyone using those products. The crucial point is that, unlike with vapes, there is no evidence that heated tobacco supports smoking cessation. We must ensure that the Bill is future-proofed to include new or novel products, such as heated tobacco, to protect the public from the harms of tobacco use.

Although cigarettes are the most used form of tobacco, we do not want to create loopholes in the Bill so that the tobacco industry can pivot and continue addicting people to tobacco. As I said previously, the issue is about saying, “The market share you’ve got now is it. We are stopping the conveyor belt.” As we know, if we block one road, the tobacco industry finds another route through. We are making sure that the Bill is as watertight and future-proof as possible so that the tobacco industry can no longer continue to trade with another product that harms and addicts future generations.

Sarah Bool (South Northamptonshire) (Con): I want to look specifically at clause 1(3), which relates to identity documents. In the previous sitting, the Minister said that he would have powers to change the list of identity documents; I think he was referring to clause 46. But at the moment the definition of identity documents is very tight; only the six listed are permitted. My hon. Friend the shadow Minister mentioned veterans cards, and this would be an ample opportunity to include those, as was the intention, because the definition is very strict—people will be able to use only the listed documents.

A further question that has been raised is that the list rules out digital forms of identification, as those listed are physical. I want to understand how retailers can best enforce the measures in practice.

Andrew Gwynne: I do not want to go over the arguments that I have already put to the Committee in an earlier sitting, but there is an ability to use other forms of identification, as I set out. We will be working with the retail industry during the long lead-in time to get in place procedures that retailers are confident with. They will be able to ask for veterans cards, for example.

Sarah Bool rose—

Andrew Gwynne: Can the hon. Lady let me finish answering the point she put to me? In fact, I have now forgotten the point she put to me—[*Laughter.*]

Sarah Bool: I was talking from a legal perspective. Clause 1(3) is about what “identity document” means, which obviously means that those listed are the six that people are allowed to use. I take the point that later the Minister could introduce regulations to allow for veterans cards, but legally a retailer’s defence would have to be that they were shown what appeared to be an identity document, which means:

“(a) a passport,

(b) a UK driving licence,

[Sarah Bool]

(c) a driving licence issued by any of the Channel Islands or the Isle of Man,

(d) a European Union photocard driving licence, or

(e) an identity card issued by the Proof of Age Standards Scheme”.

The clause is very specific. Whatever the intention, the retailer would not technically be able to use having been shown a veterans card as a defence. Hence I am asking whether we should consider the issue at this point, rather than relying on the regulations mentioned in clause 46.

Andrew Gwynne: I stand by what I have already said. The intention is to work with the retail industry during the long lead-in time to get the mechanisms in place that allow them to adequately enforce the measures in the Bill. We do not want to get this wrong. I politely say to the hon. Lady, however, that in the first instance it is highly unlikely that a veteran born before 1 January 2009 will seek to purchase cigarettes or other tobacco products and be queried about their age. I will take on board what has been said and, if what I said earlier is incorrect, we can perhaps come back to the issue.

I want to come back to tobacco products because the point is crucial. We want to ensure that the tobacco industry has that conveyor belt cut-off. It is therefore rational for all the products that I have mentioned to be included in the smoke-free generation legislation. That will prevent anyone from taking up use of the products in the first place.

As I stated in my opening speech, I am grateful to the hon. Member for Windsor for bringing the discussion before the Committee, but while I appreciate his intention, it is not something the Government support. In relation to the amendments, I say to the Committee that the Government do not believe it is appropriate to establish a more lenient penalty regime for the offences, or to introduce a mandatory age-verification policy.

The clause seeks to change the age of sale for tobacco products, herbal smoking products and cigarette papers in England, Wales, Scotland and Northern Ireland so that no one born on or after 1 January 2009 will legally be sold those products. The Bill will be the biggest public health intervention in a generation, breaking the cycle of addiction and disadvantage, and putting us on track towards a smoke-free UK. For those reasons, I commend the clause to the Committee.

Question put and agreed to.

Clause 1 accordingly ordered to stand part of the Bill.

Dr Johnson: On a point of order, Mr Dowd. May I ask a procedural question? I heard some Members shout, “Aye”, and some Members shout, “No”. In the previous session we recorded what Members said, but we have not done so this time. Can I inquire as to what the reason for that is? Last time there was a vote that was then recorded for *Hansard*, but that has not happened this time.

The Chair: That is because a Division was not called. I made the decision that the Ayes had it in this particular case and that the Noes did not. If a Member wished to challenge that at the time and call a Division, they were free to do so. They did not—

Dr Johnson: How would they do that?

The Chair: They would just indicate that they wished for a Division—keep shouting, in effect.

Jack Rankin (Windsor) (Con): Further to that point of order, Mr Dowd. I would like the chance to put my No on record, so I would appreciate a Division.

The Chair: Regrettably, we have moved on.

Clause 2

PURCHASE OF TOBACCO ETC ON BEHALF OF OTHERS

Dr Johnson: I beg to move amendment 58, in clause 2, page 2, line 23, at end insert

“, save if it is a first offence.”.

See explanatory statement to Amendment 59.

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

Amendment 59, in clause 2, page 2, line 23, 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 provides for a discretionary caution.”.

This amendment, together with Amendments 56, 57, and 58, prevents penalties under sections 1 and 2 beyond level 3 for a first offence and provides for a discretionary caution.

Amendment 75, in clause 69, page 36, line 31, at end insert

“, save if it is a first offence.”

See explanatory statement to Amendment 76.

Amendment 76, in clause 69, page 36, line 31, 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 a conditional caution.”

This amendment, together with Amendments 73, 74, and 75, prevents penalties for a first offence under Sections 68 and 69 being beyond level 3 and provides for a cautionary warning.

Dr Johnson: Amendments 58 and 59 seek to amend clause 2. Will we get the chance to debate clause 2 later, Mr Dowd?

The Chair: Yes.

Dr Johnson: Amendments 58 and 59 go back to the principle of proportionality. I know the Minister gave his views on that last week, so I will not go on at length. But there is a difference between the individual shop assistant who may make an intentional error, and a shop that continues to repeatedly and recklessly sell to children or people who are too young to buy an age-restricted product. That is the principle of the amendments—[*Interruption.*]

The Chair: Order. Can we be clear? If Members want to speak in the debate they should bob, just like in the Chamber. If you wish to intervene, Ms Jarvis—I assume you do, but I do not know—you could bring your request for the intervention to the person who is speaking.

Liz Jarvis (Eastleigh) (LD): Mr Dowd, I was just going to ask the shadow Minister to speak up because I cannot hear her at all.

The Chair: Okay. I am sure the shadow Minister will note that.

Dr Johnson: My apologies. I was explaining the principle behind Opposition amendments 58 and 59, which are in my name. I do not know whether the hon. Member for Eastleigh was present on Thursday afternoon. Clause 2 refers to a “person” but does not specify who that person is, and there is as yet no guidance. The Minister said that the person could be the shopkeeper, the shop worker, the chief executive officer or whoever trading standards decided was the right person.

The fines to deter or punish illegal behaviour would necessarily need to be significantly larger for a large corporation than for a young chap of 19 working a few hours in the corner shop on a Saturday afternoon, for whom some fines would be quite punitive. The amendments allow for first offences to be treated leniently, in comparison with repeat offences, and their aim is to encourage the Government to think more carefully about guidance. When the previous Bill was introduced last Easter by the Conservative Government, with very similar wording in many cases, that Government produced guidance on how those charges would be applied. I am trying to encourage the Government to do the same thing. That is the purpose of the amendments.

I will endeavour to speak a bit louder. I do not know whether the hearing loop is working—

Andrew Gwynne: It is not.

Dr Johnson: I apologise again for not speaking loudly enough.

Andrew Gwynne: I am grateful to the shadow Minister for bringing this discussion to the Committee. As we have already argued, the amendments would create a more lenient penalty regime for the offence of purchasing tobacco, herbal smoking products or cigarette papers on behalf of someone under age—commonly known as proxy purchasing. In England, Wales and Northern Ireland, the amendments would create an exception to the maximum penalty that a person could face for committing that offence, if it was the person’s first offence. The amendments 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”, which is £1,000, or liable instead to a discretionary caution in England and Wales or to a conditional caution in Northern Ireland. That is one level lower than the fine for which someone who committed that offence would be liable under the current legislation in England and Wales—level 4, which is £2,500. It is two levels lower than in Northern Ireland, where the fine would be at level 5, which is £5,000.

The amendments would have a similar effect on first-time offences as amendments that we have already discussed. 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 as that for amendments that we have already covered.

Dr Johnson: Amendments 75 and 76 have the same principle behind them, so I will not repeat myself. They relate to clause 69; as hon. Members will recall, clause 69

amends Northern Ireland legislation that is similar to the legislation in clause 2. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

The Chair: There is a technical hitch with the sound. We will suspend to sort it out.

9.45 am

Sitting suspended.

On resuming—

9.54 am

The Chair: We are considering amendment 59 to clause 2, which was debated with amendment 58 to clause 2. Dr Johnson, have you decided whether you want to press amendment 59 to a Division?

Dr Johnson: I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Dr Johnson: On a point of order, Mr Dowd, I just wanted to understand. In this morning’s groupings, which were sent by the Clerks, it appeared that not only amendments 58, 59, 75 and 76, but amendments 19 to 21 and 34 to 37 were to be debated before clause 2 stand part. Why were those latter amendments not called?

The Chair: As I indicated, the point had already been debated, so it was my decision that we would move on.

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

The Chair: With this it will be convenient to consider clause 69 stand part.

Andrew Gwynne: These clauses make it an offence in England, Wales and Northern Ireland for someone over the age of 18 to buy or attempt to buy tobacco products, herbal smoking products or cigarette papers for someone born on or after 1 January 2009. That is called proxy purchasing. Clause 2 replaces the current offence under the Children and Families Act 2014 of someone aged 18 or over buying or attempting to buy tobacco products or cigarette papers on behalf of someone who is under 18 in England and Wales.

Clause 69 amends the offence of proxy purchasing in Northern Ireland to align to the change in the age of sale. That applies to tobacco products, herbal smoking products and cigarette papers.

Gregory Stafford (Farnham and Bordon) (Con): The Minister said that this measure was to prevent people from buying cigarettes, cigarette papers or tobacco products for people under the age of 18. Obviously, when the Bill is first passed, that will be true, but with every progressive year, it will prevent buying for people aged 19, 20, 21 and 22. Why has the Minister not made a differential in law to ensure that, once the Bill is in place, there is a separate and more serious offence of buying tobacco products for someone under 18, however far in the future, and a separate offence of buying them for an adult who is ineligible to have them?

Andrew Gwynne: The hon. Gentleman makes a reasonable point. The Bill ensures that no one over the age of 18 is legally able to purchase tobacco products on behalf of someone under the legal age of sale, and there is a differential over time there. The age of 18 was chosen as it avoids criminalising children. This measure applies to all adults, and it does not allow for any ambiguity in law in the future. For example, it captures a situation in which someone over the age of 18, but under the legal age of sale for tobacco, attempts to buy products for a child. This action would be restricted, and the liability would not only be on the person selling the tobacco product, but also on the adult attempting to buy that product for the child.

These clauses align proxy purchasing offences with the new age of sale restriction for England, Wales and Northern Ireland. They provide a defence if a person charged with this offence can prove they had no reason to suspect that the person was born on or after 1 January 2009 or they can prove that they had no reason to believe that the other person intended to use the cigarette papers for smoking, which is in line with existing defences. These clauses are essential to ensure that there are no loopholes in the age of sale legislation, and they build on what works in the current age of sale legislation. I therefore commend the clauses to the Committee.

Dr Johnson: Clause 2 makes it an offence for a person aged 18 or over to make a proxy purchase of tobacco products, herbal smoking products or cigarette papers for a person born on or after 1 January 2009. It essentially stops an older person going in and buying those products for a younger person, which we are aware has been happening for many years with both tobacco and alcohol. If found guilty, the person committing the offence faces a level 4 fine on the standard scale, which hon. Members will recall is £2,500.

The clause replaces the current offence under section 91 of the Children and Families Act of someone aged over 18 buying or attempting to buy tobacco products or cigarette papers on behalf of someone aged under 18 in England and Wales. In many ways, that seems a sensible consequence to clause 1. If we want it to be illegal for people born after a set date to have tobacco, it makes sense to ensure that people cannot buy it for them.

However, I have some questions, particularly in relation to cigarette papers. I did not particularly talk about cigarette papers in our discussion of clause 1 because they are more rightly talked about in relation to clause 2, which treats cigarette papers differently, in so far as it makes them illegal unless a person can prove that they are using them for something else. I looked into what that something else might be. I naively thought that cigarette papers were essentially just bits of paper of a particular thinness that could be rolled up and stuck together with a little gum arabic once somebody had rolled whatever they wanted to roll inside them; in fact, that turns out not to be the case because of the law.

The papers contain ethylene-vinyl acetate, which makes them more fire-resistant. The sad situation is that every year people smoke in bed or in their armchair, fall asleep and cause themselves burns, and sometimes even cause death or house fires. The ethylene-vinyl acetate—a sort of plastic—added to cigarette papers helps them to self-extinguish and reduces the risk of fires; we know

that some particularly dreadful fires, such as the Kings Cross fire, are believed to have been caused by loose cigarettes.

The cigarette papers are essentially made from plant fibre, such as bamboo flax and rice, but they can be flavoured and coloured. In the evidence given to the Committee last Tuesday, we heard about the tobacco industry's aim of ensuring that younger people are enticed by colours and flavours. A quick look at Amazon—other sellers are, of course, available—reveals that people can buy cigarette papers in a whole range of bright colours. People can also buy cigarette papers with pictures of cherries, apricots, bubbles and all sorts of things on them. I thought it was interesting that that has not been covered in relation to cigarette papers. Why give an exemption allowing them to continue to be sold when the reality is that they will continue to be used for rolling either illegal tobacco or other forms of illegal drug?

Gregory Stafford: Is my hon. Friend saying that cigarette papers have a specific definition in law and therefore that the papers she talks about, which have chemicals to make them fire-resistant and so on, will be banned, or is she saying that the clause will ban anything that could be used as a cigarette paper within the law? If she does not know the answer, perhaps the Minister can pick that up when he responds.

Dr Johnson: Clause 48, which we obviously have not come on to yet, gives the interpretation of part 1 and all the definitions. The definition of cigarette papers in the Bill includes

“anything...to be used for encasing tobacco products or herbal smoking products for the purpose of enabling them to be smoked”.

Different chemicals are put in, believe it or not, to make the ash whiter—people are concerned, when they have burnt their cigarette, with the colour of the ash that has fallen from it, which seems remarkable to me. Calcium carbonate, magnesium carbonate and titanium oxide can be added to affect the colour of not just the paper, but the ash produced. Seignette salts—sodium potassium tartrate and sodium citrate—are also added to make it burn faster, so that people go through cigarettes slightly more quickly. Then there is the glue of the acacia gum.

As far as I can tell, it is impossible to find out what is in the cigarette papers that one might wish to purchase; if one looks online, it is very hard to work out what is in them. I have seen medical reports of people allergic to the ingredients having: cheilitis, or inflammation of the lips; circumoral—around the mouth—inflammation; and finger dermatitis. If one is selling a ham sandwich, it is important to include the ingredients so that people know what it is in it, but it seems that for cigarette papers that is not the case and I am not entirely sure why. It is also the case that some commercially available papers contain copper, chromium and vanadium. As they burn, the pigments can lead to very high levels of exposure. These are not inexpensive; Amazon sells a random choice of eight flavours for £9.99. The issues are worth considering. It has been proposed that individual cigarette papers have on them a message saying “Smoking is bad for you” or something along those lines, but does that not involve adding further chemicals to the paper and therefore further risk?

Clause 2(3) states:

“It is a defence for a person charged with an offence”
of proxy purchasing
“to prove that they had no reason to suspect that the other person intended to use the papers for smoking”.

To which the somewhat obvious question is, “What on earth else would one use cigarette papers for?” With some trepidation, I asked Mr Google. Initially, all I could find was that they are used for smoking joints of cannabis, which did not seem to me a particularly good reason—the smoking of another illegal substance—for the Government to exclude them. Then I found out that some people use them for woodwind instruments. They place them underneath the key and press the key down, which allows extraneous water to be soaked up. They then release the key and pull the paper out. That helps to dry the instrument, prolong its life and prevent damage. Clarinet players—I did learn the clarinet but I did not know this; maybe that is why I was not so good at it—or players of the oboe, bassoon, flute or saxophone can buy cigarettes papers for that purpose.

The question of whether the Government need to provide an exemption for cigarette papers hinges on whether there is an alternative for the public to use for their woodwind instruments—and there is, of course. It is obvious in some respects that the market would provide one were cigarette papers banned. Connoisseurs of such instruments tell me that cigarette papers are not ideal to use for this purpose because of the additional, potentially toxic chemicals they contain—one is potentially inhaling bits of the chemicals back in—and because it is not ideal to get traces of the gum on one’s instrument. It is possible buy Superslick Pad and Yamaha cleaning papers. As far as I can tell, they do not contain toxic chemicals, because nobody would be interested in whether the ash burnt from them was white or otherwise since no one is going to set fire to them. Is it therefore really necessary to have a specific exemption for the use of cigarette papers for instruments, when in practice that is unlikely to be what they will be used for? There is an alternative and the most likely use—I think the Minister will understand this—is that they will be used for smoking joints.

Sarah Bool: I agree with everything my hon. Friend says. My first question was, “Well, what else they would be using cigarette papers for?” The second question—which maybe the Minister can answer—is about the level of proof. This comes up not only in clause 2(3), but elsewhere in clause 2. I know that the Minister will say, in relation to clause 2(3), that this is in line with legislation as it currently stands, but if we are tightening up on the whole, perhaps this is an area that we should consider tightening up further?

Dr Johnson: Indeed, it does seem contradictory, if not counterintuitive. It also leaves us with a bizarre situation where, were someone to be a bassoon player, for example, and they wished to buy these products to use for the alternative purpose of drying their keys, then they would have to get someone else to buy them because they would not be able to buy them themselves. For a child born after 1 January 2009 and learning to play such an instrument, either the market will need to provide another opportunity to buy such a product, or the child will need someone else to buy the product for them. That does not make sense. The rolling age of sale

that we discussed in clause 1 means that, over time, the number of individuals wanting to buy the product for their instruments but not allowed to, compared to the number of people allowed to, would inevitably diminish. We would have a larger group of people trying to find an ever smaller group of people to buy their cigarette papers for them for that purpose. To some extent, it would be more sensible to remove subsection (3) all together because it creates a loophole that will be used almost entirely for illegal uses of these papers. There is a market already providing a reasonably priced alternative for people to use for their instruments—which in practice are better for instruments in any case.

The final point is on the burden of proof. As a defence, someone purchasing the product on behalf of another has to prove they have no reason to suspect that the person was born on or after 1 January 2009. What does that really mean? Is that a reversal of the burden of proof? Is it saying a person has to prove their innocence rather than the state having to prove them guilty? In what circumstances would it apply? In what circumstances is it necessary for someone to buy cigarette papers, other than the oboe player or the saxophone player? I guess if someone in his or her 70s attends a corner shop but has forgotten their ID, they could ask somebody older to buy the papers for them; I guess that would be okay. They may find that they have come with a veterans card, thinking that they can use it because it is usable for voter ID, but that particular type of ID is not included; we have discussed widening the scope of those documents.

Tristan Osborne (Chatham and Aylesford) (Lab): I understand that the term “cigarette paper” clearly indicates that the primary use for such an item is likely to be tobacco usage. However, it is not exclusive. As a model maker, I use cigarette papers in model making. I understand they are also used in art and in other activities. Although I am not suggesting that there are no alternative products to cigarette papers, it is not 100% exclusive. With respect, I think the clause refers to a person buying cigarette papers for another individual for a purpose other than smoking—if that can be proved. I accept what the hon. Lady is saying, but think she is stretching the point quite a lot.

10.15 am

Dr Caroline Johnson: I searched quite extensively for other uses of cigarette papers and had not come across that one; that is very interesting. I do not know whether the hon. Gentleman thinks they need to have pictures on them—perhaps that helps with the art. I think there is still a difference in a cigarette paper that contains extra toxic chemicals to help it burn a particular colour, for example. I am not sure whether there is any particular art or model making application for having the cigarette paper with all the chemicals in, as opposed to any other type of paper that is produced for the purpose. Inevitably, the market would produce a non-cigarette paper for the purpose, which would reduce the amount of toxic chemicals that are used and therefore also the amount of toxic chemicals in our environment—given that, inevitably, once they finish being used, they get wasted.

The point stands that the papers themselves contain toxins that would not be required for any other uses, whether that be for models, art or music. Therefore,

[Dr Caroline Johnson]

since such products are available on the market to buy separately from cigarette papers, though they may currently be slightly more expensive, the Minister may want to consider removing that exemption, because it inevitably creates a loophole for these products to be used for the smoking of illegal tobacco or a joint.

Gregory Stafford: It is interesting—now that we have moved on to the alternative uses—to note that anyone who has ever had children knows that pipe cleaners are an essential part of any craft kit. Obviously, they can be used for cleaning a pipe, as well as making a spider or whatever else. The Minister has not sought to ban pipe cleaners in the same way. I wonder why he has picked out cigarette papers, which have alternative uses, but not pipe cleaners, which clearly have alternative uses as well.

Dr Johnson: The hon. Gentleman is bringing back painful memories of trying to create things with pipe cleaners for my children, and trying to make them stand up straight when they simply are not quite that stiff—but some fun memories, too. Yes, I do see that they are used in art. That suggests another question. The Minister can correct me if I am wrong, but I presume that the Government have chosen to ban cigarette papers because they want to reduce the amount of people smoking illegal tobacco; it is also an opportunity to reduce the amount of availability of papers for smoking cannabis and other illegal products, but why have they not included filters?

For many years, the tobacco industry has implied that smoking through a filter is safer and many in the population believe that smoking through a filter is safer, but it is a single-use plastic—and I am sure the Minister is very worried about the environment and the use of single-use plastics. The previous Government banned quite a lot of single-use plastic items to reduce waste. The cigarette filter is the most littered item globally every year and it is a single-use plastic. It contains a cellulose acetate filter, which I am told is a plastic pollution. It also increases the risk of a particular form of lung cancer, because the tiny little itty bits of plastic are inhaled into the individual who is smoking. They also increase the way that people draw on a cigarette, which means they could take in more of the toxins when there is a filter than when there is not. Will the Minister discuss whether he plans to include filters on Report?

Let us look at international examples. In 2011, the United States said that all cigarette papers should have Food and Drug Administration approval for their ingredients. Is the Minister considering publishing the ingredients on the packet here in the UK, so that if they are to continue to be sold, people are aware of the toxins they contain? Further, where these products are being used for modelling or art purposes, perhaps such steps will start to reduce the number of toxins contained in them.

As part of clause 2 we are also going to discuss clause 69 stand part. Clause 69 substitutes for article 4A of the Health and Personal Social Services (Northern Ireland) Order 1978. That is, essentially, identical to clause 2, except for the fact that subsection (4) states someone guilty of an offence under the article is liable

to a fine “not exceeding level 5”, whereas clause 2 says “not exceeding level 4.” As the Minister is looking for consistency across the four countries of the United Kingdom, could he explain why he has chosen to have a lower level of fine for the proxy sales offence here than he has in Northern Ireland?

It should be noted that, although we have already discussed clause 50, that part of the Bill provides for legislation for proxy sales in Scotland, where the fine threshold is also set at level 5. I understand that the Minister is a fan of devolution, and wants devolved nations to be able to have different fines, so why has he chosen the fine level for this particular part of the country to be at level 4, which is lower than in Scotland and Northern Ireland? Additionally, section 5 of the Tobacco and Primary Medical Services (Scotland) Act 2010 says that it is illegal to buy, or attempt to buy, for oneself if under 18. Is it the Minister’s intention to amend that? That is my final question on clause 2.

Jack Rankin: I do not intend to go over the scope of the clause in great detail, because I think the principles largely flow from the principles of clause 1, but I will pick up on the cigarette paper point that my hon. Friend, the shadow Minister made, and talk about clause 2(3):

“It is a defence for a person charged with an offence under this section in respect of cigarette papers to prove that they had no reason to suspect that the other person intended to use the papers for smoking.”

I commend the shadow Minister’s researchers, because I can feel her thoroughness—I know a lot more about cigarette papers than I did an hour ago, and much more about cigarette papers than I thought there could possibly be to know, so she has answered some of my question.

Dr Johnson: I am pleased that my hon. Friend has found today interesting. Does he also find it interesting that some of these papers that can currently be bought legally from major retailers in the United Kingdom are not just coloured and have designs on, but flavoured? That is clearly not necessary for someone using them for a model or artwork. They may make people smoke more, because they disguise the taste of the tobacco and make smoking more pleasant.

Jack Rankin: I believe that is the case, and it is something I did not know before today. My questions were along the lines of: is this not just paper, and, if so, why is it excluded in some sense? I was racking my brain for legitimate reasons, and, in her speech, the shadow Minister gave some legitimate reasons, whether that is the woodwind instruments, or the model making mentioned by the Member for Chatham and Aylesford. It seems to me that—even though I disagree with the principle of the Bill—those extra properties would not be necessary for those legitimate uses in this instance.

As my hon. Friend the shadow Minister said, the market should be able to make a difference. Clause 2(3) should be struck from the Bill, because it does not seem that there is a legitimate use for cigarette papers that would not be picked up in another way, shape or form if that subsection were removed. I understand from the guidance I received as a new Member on my first day here that I have to three days to table an amendment before discussion, but I would suggest the removal of

subsection (3). Perhaps the Government will consider whether the provision should remain fully in the next iteration of the clause later in this process.

I also want to speak to the term “no reason to suspect”, because I am not clear where the burden of proof sits. If someone goes into a newsagent to order cigarette papers, the overwhelming likelihood is that they will use them to smoke cigarettes. I accept that other reasons exist, but is the shopkeeper supposed to ask? The Bill says “no reason to suspect”; I would expect shopkeepers to have every reason to suspect that people who buy cigarette papers smoke cigarettes. It seems a little woolly. What would the Minister expect the shopkeeper to do in those instances? Is he supposed to ask? If the person says, “I am using this for a woodwind instrument,” is that sufficient? If I were a person who wished to get around the law, I could pretty easily work out that that would get me around the clause.

Andrew Gwynne: I shall answer some of the points made, which were valid. To answer the shadow Minister, cigarette papers are within the scope of the existing legislation. They are included because burning them adds to the volume of smoke and because, with their bleaches and dyes, as she rightly set out, the range of toxicants in the smoke contributes to the additional risks to smokers.

On filters, I am sympathetic to the shadow Minister’s premise. Although cigarette filters have historically been marketed to make smoking safer, there is no evidence of that whatsoever. All tobacco products are harmful. However, as with all regulations, it is important that measures are considered fully and that the evidence base is there, with no unintended consequences. I do not want to give the tobacco industry the opportunity to greenwash and to say, “Not only are filters healthier for you, but they are healthier for the environment.” We absolutely do not want that. We have powers in part 5 of the Bill to restrict the flavours in cigarette papers, so the argument set out by the shadow Minister is covered. On single-use plastics, it is for the Department for Environment, Food and Rural Affairs to legislate, and it already has powers that enable it to consult on single-use plastics in cigarette filters.

As we have heard, a number of relevant products—for example, pipe cleaners and cigarette papers—can be used for musical instruments, as well as for crafting, art, model making and a whole range of other uses. We do not want to restrict those uses; we want to make it more difficult for people to access such products for the provision of smoking. As we said when we discussed clause 1, we are not making the smoking of tobacco illegal; we are preventing the next generation from getting hooked. The restrictions therefore strike a proportionate balance. A current smoker will be able to smoke until the until the day they die. Although we will do everything we can to give them the opportunity to give up, they will be able to access the products legally, but the Bill will introduce restrictions on them.

We think we have got the balance right, but we will take away the arguments and consider them, because they are valid arguments about how a musician, or someone who wants to use them for crafting and modelling, will still be able to access these products if they want to use them.

10.30 am

Dr Beccy Cooper (Worthing West) (Lab): I have quick and pragmatic point about the different uses of cigarette papers. I am a mum and a saxophone player myself, and I suggest that other materials can be used in the place of cigarette papers. I appreciate the debate, but I do not think this is about a pragmatic use.

Andrew Gwynne: That is precisely the point I was coming to. We will take the argument away because it is a reasonable argument, and we will perhaps consider returning to this issue on Report.

I know that the shadow Minister has every sympathy with the fact that cigarette papers are dangerous when used for the consumption of tobacco, which is what we want to bear down on. As I have said, there are powers in part 5 to restrict the flavours of cigarette papers, but we want to get the balance right so we will take the argument away and consider it.

Dr Danny Chambers (Winchester) (LD): I am reticent to extend the discussion about cigarette papers; I was unaware it was possible to discuss something to such an extent. I am not legally trained, so I ask this for my own understanding as someone who is not a learned Member. If the exact same product was renamed and rebranded as model paper or musical instrument paper, would this law still apply to it?

Andrew Gwynne: That is a good question. Of course, if it was to be used for the consumption of tobacco, it would come within the scope of the Bill. We have to be clear that many of these products have dual uses, as we have heard. I am as guilty as anybody of making pipe-cleaner characters for my children and grandchildren—grandchild, rather, because I have only one so far.

We want to make sure that those who want to continue smoking are able to do so, but that obvious restrictions and boundaries are put in place regarding the accessibility of these products, so that no child born after 1 January 2009 will ever legally be sold them.

Dr Caroline Johnson: I thank the Minister for engaging in this discussion, because although it is somewhat technical to discuss cigarette papers, it is important. The hon. Member for Worthing West made the key distinction, which is that it is about the ingredients that are in a product. It would be possible for the Minister to devise legislation that sought to ban cigarette papers, without preventing a market in a similar product that would be ineffective as a cigarette paper but useful for the average modeller.

Andrew Gwynne: Perhaps we will return to that on Report. I have every sympathy with what the shadow Minister says. We do not want to prevent the legitimate use—indeed, a whole variety of uses—of these products, which is why we have the exemption in the Bill. If we are able to do what she suggests under the powers in the Bill, that would be great; if we can do only some of what she asks for in respect of flavours, that would go part of the way, and we will need to look at how we can strengthen that. If the shadow Minister can be a little patient, I think we can come back to this on Report.

Dr Johnson *rose*—

The Chair: Order. I do not mind Members seeking clarification, but when the Minister has sat down we need to leave it at that.

Question put and agreed to.

Clause 2 accordingly ordered to stand part of the Bill.

Clause 3

TOBACCO VENDING MACHINES

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

The Chair: With this it will be convenient to discuss clause 70 stand part.

Andrew Gwynne: The clauses restate the ban on tobacco vending machines in England, Wales and Northern Ireland and extend it to include vending machines that sell cigarette papers. The prohibition came into force in 2011 in England and in 2012 in Wales and Northern Ireland. Under the amendments made by the Bill it will be an offence for a person with management or control of a premises to have a vending machine available for use from which tobacco products, herbal smoking products or cigarettes may be bought.

The prohibition was originally introduced because tobacco vending machines were largely unsupervised and allowed under-age access to tobacco. In 2010, 8% of 11 to 15-year-olds who regularly smoked said that vending machines were a usual source of cigarettes. The policy has successfully contributed to reducing smoking rates in young people and has been effective at enabling the age-of-sale restrictions to be implemented and enforced properly.

The existing legislation is consolidated in the Bill to replace the regulations that cover an automatic machine from which tobacco products, herbal smoking products or cigarette papers may be bought. With all the restrictions that apply to such products covered in one Act, those who are affected by and who apply the legislation will find it easier to access them. I commend the clauses to the Committee.

Dr Johnson: As the Minister says, clause 3 outlaws the use of vending machines that sell tobacco or tobacco products, as well as herbal smoking products and cigarette papers. I note that there are no amendments to clause 3, presumably because it is somewhat settled and established law.

In the same way as vapes and other nicotine products, which we will come to later, vending machines make it much easier for people under the age of 18—or, under clause 1, those born after 1 January 2009—to buy age-restricted products that they are not legally allowed to purchase. They are self-service machines, so it is difficult to prove age and easy to get around if it is machine led. Historically, such machines have often been unsupervised by staff in a shop, thereby providing easy opportunities for younger people to buy from them.

It was coalition Government legislation—the Protection from Tobacco (Sales from Vending Machines) (England) Regulations 2010—that banned the sale of tobacco products from vending machines from 1 October 2011. That statutory instrument was made under section 3A

of the Children and Young Persons (Protection from Tobacco) Act 1991, which was inserted by section 22 of the Health Act 2009. That is a complex chain to follow, so having this clause where everything is in one place is much simpler. The clause also adds herbal smoking and cigarette paper vending machines to the legislation—on a personal level, I welcome that, for the reasons I have given already—and clarifies the penalty, which was more difficult to establish when looking at the previous trail of legislation.

However, the clause does change the terminology. Previously, it was illegal on the basis of sale “from an automatic machine”; the Bill talks about an “automatic machine from which” products “may be bought”. It seems that they are the same thing, but of course we heard repeatedly in evidence how the tobacco industry tries to get round these things.

I found a trail of people discussing online how to get round the vending machine legislation, which raised various questions. If I buy a product from a major retailer online, I can choose to get that delivered to my home, I can collect it from one of its stores, and I can also pick it up from our local Co-op, the local post office, or from a box with a keypad door, at the garage and in other locations. If one were to buy tobacco products, herbal smoking products, or cigarette papers using an online app, and collect them from a dispensing machine—an automatic machine that dispenses cigarettes—in a pub, would that be covered by this legislation, or is that a loophole that could be exploited? I would be interested in the Minister’s comments on that, because we have heard how inventive the industry is. Would it be possible for people to circumnavigate the Bill’s intent by creating a machine that does not sell the product but simply gives to a person the product they have already bought?

Clause 70 applies to Northern Ireland. It will insert into the Health and Personal Social Services (Northern Ireland) Order 1978 the new article 4B, which is essentially the same as clause 3, so the same questions and comments apply. The only difference between the two clauses that I can see is that in Northern Ireland we have a level 5 offence, and in England and Wales we have a level 4 offence.

I wondered briefly why there was no clause for Scotland, but section 9 of the Tobacco and Primary Medical Services (Scotland) Act 2010 makes it illegal to have an automatic machine for the sale of tobacco products, regardless of whether the machine also sells other products, with a level 4 fine, so Members can be reassured that that is covered. I do not think the Minister answered this point in relation to the previous clause: clearly he chooses the fine levels for England and Wales in the Bill; why has he chosen to have the same penalty as Scotland but a lower penalty than that in Northern Ireland?

Sarah Bool: Clause 3(1) says:

“A person commits an offence if the person has the management or control of premises on which a tobacco vending machine is available for use.”

My first point goes to the point my hon. Friend the Member for Sleaford and North Hykeham made about the concept of that person, because that leads to some questions and confusion about where the liability sits. When it comes to the person who has management or

control of the premises, we might expect there to be a landlord and a tenant, in which case perhaps the tenant has control legally under the terms of their lease. But if the landlord has a managing agent—the hint is in the name—could they be caught within the scope of the Bill if they have not done enough to prevent the machine from being on the property?

What about cases in which a landlord who is a licensor has a licensee? The concept is slightly different: it is not as official as a lease, but someone has the right to use the premises but not exclusive use or possession of the premises. We could potentially argue about who actually has the management and control of the property in that instance. It would be interesting to know whether in future landlords could be in trouble if they do not include in the lease a provision that bans the location and siting of a vending machine in the property. I do not think that would be where landlords currently stand, but that is perhaps worth considering. It seems pedantic but, knowing the way the legal system can go when people want to find defences, we do have to stress test the wording we use, so we need to examine the concept of a person having management and control.

Dr Johnson: My hon. Friend is making a very important point that I had not fully considered: who is responsible where you have a larger corporation with a group of shops beneath? You have the board level, the regional managers, the local shop manager, the shift supervisor and then the shop worker, so who has the control? Is that something the Government have a fixed position on, or would each company individually need to prove who that was? If trading standards was prosecuting such an offence and chose the wrong individual, would the Government allow the corporation to get off scot-free?

Sarah Bool: My hon. Friend makes an incredibly valid point. It is something we are duty-bound to explore and test, to make sure we can avoid any problems with the roll-out and implementation of this.

10.45 am

Jack Rankin: The nub of clause 3 is age verification. The reason the Minister and the Government do not want tobacco vending machines in operation is not that they do not want convenience for the customer, but rather that they want to make sure that people are of a suitable age under the law. Without somebody to check, that is a problem.

In my youth, I used to play snooker in what was the Minister's constituency. There was a little area of the club, with a little gate, where the gambling machines were, and there was a tobacco vending machine in there. The only thing preventing us from going in there was honesty. Whereas it stopped me as a teenager, I do not suppose that it would have stopped adults in the same way—if you wanted to restrict adults from being a smoker in the future, that would not serve as a deterrent.

My question is about nicotine products, which I was hoping the Minister could come to, perhaps when he winds up. Nicotine products are defined separately from tobacco products in this legislation, so it would still be acceptable for things such as nicotine patches to be sold through vending machines. That does not sound unsensible, because it does not seem to me that people trying to evade this law would be attracted to nicotine products

in the same way they might be to other tobacco cessation devices. Perhaps the Minister can comment on how he proposes to treat them when he winds up.

Andrew Gwynne: Let me first say to the shadow Minister that we are aware of the new type of machines she mentioned, and we are concerned by their presence. The Department is looking to ensure that there are no loopholes in this legislation and that these machines, which may seek to bypass the age of sale restrictions, are not able to. Secondly, she has already answered the point about Scotland: the reason these measures do not appertain to Scotland is that Scotland already has legislation covering them.

To other Members, I say that we are overcomplicating this. As I said in opening, the clauses merely restate the existing ban on tobacco vending machines in England, Wales and Northern Ireland. We are consolidating the legislation to make it easier to understand the law but also to enforce it from one place—and that is it. This is the consolidation of existing powers that are working now.

The hon. Member for Windsor is absolutely right when he says that we want to ensure that age of sale is absolutely enabled to be enforced. As he said, when he was playing snooker in my old constituency, he would have been able to purchase tobacco products from a vending machine, and it was basically on the basis of trust that people were able to do that. That is no longer acceptable. We are bringing in the age restrictions, and we therefore need to make sure that they are adhered to.

I do not wish to stray on to nicotine products, because those are subject to a debate further on in the Bill. However, the hon. Gentleman is right to draw a distinction in the way he has. That is why the whole Bill treats nicotine products separately to, and very differently from, tobacco products, for reasons we will get to in due course.

Question put and agreed to.

Clause 3 accordingly ordered to stand part of the Bill.

Clause 4

SALE OF UNPACKAGED CIGARETTES

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

The Chair: With this it will be convenient to discuss clauses 51 and 71 stand part.

Andrew Gwynne: These clauses restate that it is an offence for tobacco retailers to sell cigarettes that are not in the original packaging they were supplied in. Selling unpackaged cigarettes is currently an offence in England, Wales, Scotland and Northern Ireland, and these clauses re-enact that offence. The prohibition was originally introduced to reduce smoking among children, because there was evidence that children were being sold single cigarettes. The clauses ensure that the sale of loose cigarettes continues to be prohibited and that cigarettes are sold in the appropriate packaging. I therefore commend the clauses to the Committee.

Dr Johnson: As the Minister says, clause 4 makes it against the law to sell cigarettes that are not in their original packaging, so that individual or small amounts of cigarettes cannot be sold separately. That is in part because cigarette packets now have standardised formats, warnings and information designed to alert the smoker to the health problems caused by the smoking habit, and selling cigarettes outside the packets means the smoker avoids that information.

I asked the Minister earlier about proposals for warning notices about smoking on the cigarette paper itself, but I did not hear his thoughts. The notices might ensure that, were individual sales to happen despite the law, the warning would still be received by the child or smoker, but there is also the risk of adding additional chemicals to the paper. Where does he think the benefit or balance of risk lies in that respect?

Everywhere else the Bill makes it an offence for a “person” to do something, so why does the clause mention a “tobacco retailer” rather than a “person”? If the Minister does not wish cigarettes to be sold individually, why would it be more of an offence for a proper tobacco retailer to sell them individually than it would be for an individual who is not a tobacco retailer? Why the change in wording? I do not understand. If someone is not a tobacco retailer, it would clearly be illegal, because they would have no licence. Why not have this additional offence for the most reckless people, so that they can be dealt with more severely?

As the Minister says, the minimum pack size of 20 was brought forward in 2017, because it was felt that packs of 10 were closer to the level of pocket money and were encouraging the uptake of cigarettes by children. When we come to vaping, we will discuss the pocket money nature of some of these products.

Jack Rankin: Certainly in my experience, the only reason people sell unpackaged cigarettes is to make them cheaper for schoolchildren, so I find it strange that subsection (2) states that the fine is level 3 on the standard scale. If I understand what my hon. Friend said in the last sitting about the standard scale, level 3 is lower than the level 4 fine for sale. A sale could have been in error, but unpackaging cigarettes to sell to schoolchildren seems deliberately malicious, so I am surprised that it is not treated more severely. Perhaps my hon. Friend can comment on that.

Dr Johnson: My hon. Friend is right that the offence of selling a product to a person born on or after 1 January 2009 is something someone could do unintentionally. They could genuinely believe the ID in front of them, or that the person looked so significantly older that it was not even necessary to ask them for ID, whereas selling cigarettes outside the packaging requires the deliberate act of removing them from the packet and selling them individually, in a way that is not normally done. I think my hon. Friend is right, and it is perhaps surprising to have a deliberate act at a lower fine level than a potentially unintentional one.

Sarah Bool: Why are we limiting this to cigarettes? Forgive me, I am not an expert—I have never bought herbal smoking products—but if we are applying the same rules and we just want an outright ban, perhaps we should apply it generally, in case there are rule changes, to the sale of not only unpackaged cigarettes

but unpackaged herbal smoking products. That would add further to the emphasis on changing the term from “a tobacco retailer” to “a person”, as my hon. Friend suggested.

Dr Johnson: I thank my hon. Friend for her contribution, and she is right to talk about the quantity. If the principle behind this clause is to ensure that the quantity of sale is such that it restricts younger people from purchasing these products with their pocket money, what consideration has the Minister given to the quantities of herbal cigarettes, or herbal smoking products, and cigarette papers, so that they would be purchased in quantities not easily accessible to young people?

On the comments made by my hon. Friend the Member for Windsor about the fine levels, the fines are level 3, which in this case is consistent across the four nations of the United Kingdom. Clause 51 amends the Tobacco and Primary Medical Services (Scotland) Act 2010 to add proposed new section 4E, which essentially has the same effect—it is different wording, but it has the same essential effect of banning the sale of loose cigarettes. Clause 71 adds proposed new section 4C, which is essentially the same as clause 4, to the Health and Personal Social Services (Northern Ireland) Order 1978 to have the same effect. Again, it has the same fine, so there is some consistency across the four nations of the country, but I would be grateful for the Minister’s comments on the points I have raised.

Andrew Gwynne: I thank the hon. Lady for raising these matters. Again, it is a case of perhaps overcomplicating what the clause does. As with clause 3, clause 4 merely restates that it is an offence for tobacco retailers to sell cigarettes that are not in the original packaging they were supplied in. We are not talking about proxy purchasing, or somebody breaking up a packet of cigarettes and selling them as an individual; we are talking here about retailers. This practice used to be quite common, but thankfully, because of the measures that are already in place, it is already an offence and we are reaffirming that offence in the Bill.

Dr Johnson: The Minister says that it has been illegal for some time and that is an offence to sell loose cigarettes, and of course it has been. However, we heard in evidence from the Royal College of Physicians last week that the sale of loose cigarettes to youngsters was still a problem—it is an entry way into cigarettes. Does the Minister have any comment on whether reaffirming the offence with this legislation will actually help to enforce it to any greater degree?

Andrew Gwynne: Yes, I believe it will. Of course, this measure is not being taken in isolation, and it is not just a stand-alone measure. This is part of a whole package of tobacco control measures that form this part of the Bill. Taken together, these things will ensure that we drive down even further smoking prevalence in young people. However, we do not want to undo the legislation as it stands; we need it to be part and parcel of the whole raft of measures we are bringing forward.

11 am

Sarah Bool: I am concerned about whether we are accidentally and inadvertently creating a loophole here. If we are not going to ban someone from breaking down a cigarette packet and selling it, that is the way

they will go about doing it. We should be going for consistency and tightness on this. I appreciate that that is the law as it stands, which is why we have applied it, but have we had the foresight to ensure that we do not create a loophole? It seems quite possible that we have.

Andrew Gwynne: If the hon. Lady is not talking about retailers breaking up packets, which is illegal, she is talking, effectively, about proxy purchasing—an adult buying tobacco products for children, splitting up the packet and selling those products on. It is already an offence for those children to get cigarettes—whether a full packet or part of a packet—even if they are not from retailers. It is proxy purchasing, and we have already covered that.

The shadow Minister raised the issue of messaging on individual cigarettes. I am not sure whether she was under the misapprehension that it is not covered in the Bill. The Bill restates the existing power to make regulations on the appearance of tobacco products, including cigarette sticks. Not only that, but it goes further by extending the power to other products, including cigarette papers. Although we do not plan to introduce dissuasive cigarettes at this time, as we believe we already have strong health warnings in the existing measures, we will continue to monitor the situation. We do leave an open door to it, and the powers are there. We will, however, mandate pack inserts into cigarette packs. We believe that that is proportionate at this time, while not closing the door to going further.

Lastly, the shadow Minister noted that, in some cases, fines are consistent across the United Kingdom, but that, in others, there are differences. I am afraid that that is the result of the devolution settlement. We have built into the Bill the ability for all four nations to walk together on making our country smoke-free, but the levels at which fines are levied are entirely a matter for the devolved Administrations. That is why there is sometimes an inconsistency in fine levels.

Question put and agreed to.

Clause 4 accordingly ordered to stand part of the Bill.

Clause 5

AGE OF SALE NOTICE AT POINT OF SALE: ENGLAND

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

The Chair: With this it will be convenient to discuss clauses 6, 55 and 72 stand part.

Andrew Gwynne: Clauses 5, 6 and 72 replace the requirement for age of sale notices in England, Wales and Northern Ireland to reflect the new age of sale for tobacco products. Clause 55 provides Scottish Ministers with the power to set requirements about warning statements, which are notices that reflect the new age of sale requirements there. Age of sale notices are required under current legislation and must state in a prominent position:

“It is illegal to sell tobacco products to anyone under the age of 18.”

The Bill will replace that requirement with a requirement for notices to reflect the new age of sale, stating:

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

The notices must comply with any requirements set out in regulations on the size or appearance of those notices. This updated wording on age of sale notices will support tobacco retailers in implementing the new age of sale restrictions by helping to clarify and underline them for customers and staff. I therefore commend these clauses to the Committee.

Dr Johnson: Clauses 5, 6, 55 and 72 make provision for age of sale notices. Clause 5(1) makes it clear on which premises the notices must be displayed. In some respects, that is obvious, but the fact that the Bill makes clear that the notices must be on the same premises where the tobacco is being sold is perhaps a sign that the Minister has the measure of the tobacco industry: if that was not clearly stipulated, there would be temptation to display the notices in head office or somewhere else where no one could see them. The fact that it is thought necessary to state what is blindingly obvious—that the notice must be displayed in the right place—is somewhat sad.

Subsection (3) deals with positioning. The statement that the notice must be prominent and readily visible at each point of sale is relevant to shops that have more than one till at the counter. One sometimes goes to the counter of a large supermarket, or similar, and sees a whole row of tills. It is therefore important that the signs are visible from all the tills, not just the one closest to the tobacco.

What the notice must say is provided for in subsection (2):

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

That is clear, simple and informative, which is good. However, it does not mention cigarette papers or herbal smoking products. Why has the Minister chosen not to include the other items included in the rolling age of sale and the Government’s smoke-free generation on the notice for clarity? That is important because we heard in evidence, and have all read in the news, of examples where people who work in our retail sector have been treated in an abusive—sometimes violent—fashion or people have been very rude to them.

If the purpose of the notice is to be clear on what the law is, providing clarity that it also includes herbal smoking products and cigarette papers would enable the public to be aware of the law and the retailer to point to the sign and say, “I can’t do this—look.” The message as currently drafted does not do that, and that could cause shopkeepers or shop assistants more difficulty. I notice that under subsection (4), any aspect of the notices, including the appearance and wording, can be amended, so that could be done at a later date if the Minister feels that the shopkeepers’ evidence is that herbal smoking products and cigarette papers are proving a challenge. Why has he chosen not to do that at the outset?

Subsection (7) talks about a defence of having taken reasonable steps. I have two questions on that. First, is “It fell down and I hadn’t noticed, your honour” an adequate defence? How does the Minister envisage the reasonable steps defence? What are the reasonable steps? If the Government choose under subsection (4) to change the appearance or wording—perhaps if they discover it is inadequate in some way—what steps will need to be taken to ensure that all retailers are aware of those changes, and within what timeframe will retailers be expected to react to those changes?

[Dr Caroline Johnson]

The impact assessment says that the cost of putting up a new sign is not prohibitively expensive for an individual business—it is about £4 per retailer—but it means that there is an overall cost to small and micro-retailers of around £124,000 in England, and £143,000 in the UK. That is a cost to business overall, even if a small one to individual businesses. The impact assessment also notes the cost of staff training and awareness. There are an estimated 42,582 convenience stores in England, each with a store manager who would have to disseminate that information to the estimated 299,957 members of staff. Of those stores, 71% would be considered small or microbusinesses.

The cost of amending those things means that the Opposition invite the Minister to get the notice right the first time so costs are not incurred twice. There is an estimated cost of around £2 million in total on training. Although the cost to any one small or microbusiness is likely to be small—around £70 on average—that cost combined with £4 for a sign, at a time when small businesses are being squeezed by other budgetary measures the Government have brought in, is another potential straw to break the camel's back.

The fine is at a level 3, and the person who carries on a business involving the sale of tobacco products by retail is the person who is liable. But what does it mean to be

“a person who carries on a business involving the sale of tobacco products by retail”.

Is it the director of the business? Is it the store manager who is on duty that day? Is it the overall store manager, or is it the licence holder?

Jack Rankin: My hon. Friend has previously sought to amend the Bill in various places to add the qualifier “save for the first offence”. It seems to me that, particularly in the first instance, this could be a genuine oversight and that it would be appropriate for a council officer or someone from trading standards to simply bring it to the attention of store management and ask them to rectify it over a period of time. Does she think this clause should be tweaked in such a way, on the same principle on which that she has sought to amend other clauses?

Dr Johnson: I am going to disagree with my hon. Friend on that point. There will be licensing for tobacco products, and part of the due diligence of setting up to sell such products includes familiarising oneself with the legislation as it stands and thus with the regulations around signage, buying and putting up the appropriate signs, and providing the appropriate training. The challenge occurs if the Government seek to amend the notice, at which point they would need to ensure that they had given adequate notice and information to the company to ensure that it had the time, resources and information to put up the correct signs.

Tristan Osborne: On signs, if we accept the premise that the law is changed—as we have done in clause 1—to include a rolling scale with the date being 1 January 2009, signs will have to be updated in any event to reflect that. The current signs about being 18 would have to be removed. On the definition on the signs—tobacco products versus relevant products—is it not clearer to the public, who are going to be the purchasers of the products, if it

is tobacco products? It does not preclude extra signage, which exists in many stores, of what can and cannot be purchased. While I accept the premise of the idea of relevant products versus tobacco products, for the public it would be clearer if it were tobacco products.

Dr Johnson: The hon. Gentleman is right, of course, that those selling tobacco products legally now will need to change their signs to have the date of 1 January 2009 on them, as opposed to the age of 18, because that will be the law: that clause has now passed, and I expect that it will continue its passage through the House and the other place, because it has broad support among the public and within Parliament.

11.15 am

Yes, signs will need to be changed, so I suspect that the hon. Member for Chatham and Aylesford is arguing in defence of my hon. Friend the Member for Windsor. But I do think that if a shop has a licensed product for sale, it is their responsibility to ensure that they comply with the terms of the law around the selling of those products, particularly in relation to something like relevant signage. It is difficult to get the particular day wrong by accident, in the way that we can potentially misinterpret someone's age—we are not very good at working that out, if one looks at research of the population. It is difficult to get something wrong when it is in black and white what needs to be done. I urge the Minister to ensure that the guidance on what this new signage should look like is clear and explicit to ensure that that is the case.

Clause 55 applies to Scotland and amends the Tobacco and Primary Medical Services (Scotland) Act 2010. In this case, subsection (5) of section 8 of that Act, on the display of warning statements, is substituted. The clause provides a power for Scottish Ministers to regulate the size or appearance of the statement used or any other aspect of the notice. However, subsection (2)(a) to clause 8 of the 2010 Act states that the notice must contain the following statement:

“It is illegal to sell tobacco products to anyone under the age of 18”.

I note that Scottish Ministers have the power to change that statement as part of the clause, but when does it come into force? The legislation for the signage will need to come into force before 1 January 2027 in order to apply to people who were born on 1 January 2009. If it is not brought in in time, they would have a few days in which they could access cigarettes legally but unintentionally. If the Scottish legislation is to mirror this, it will need amending before that. The Scottish Government are more than capable of amending the legislation, but it will take parliamentary time, and there will be a cost to the parliamentary time and the drafting; I suppose they will have to do it by regulation.

Why not do it now? Why not amend it in this legislation? It has been amended in various other parts of Scottish legislation, so why has this not be amended for signage? Why are we leaving it to be done as a separate piece of work? It seems inefficient, and I am sure that the Chancellor has advised the Minister that she is looking for any form of productivity gain and financially sensible use of money. Is it the Minister's intention that all notices across the devolved nations be essentially the same? If it is, why not do it straight away?

Clause 6 talks about the Welsh age of sale signage. This is going to presumably be a bigger sign or a smaller print, because it needs to display the message in both English and Welsh. As for the size of the sign, even if one looks at the Bill as printed, which is in relatively small font, it is quite a long message. Obviously the word volume for the Welsh is double that because of the requirement for the bilingual notice.

Therefore, when developing guidance on the size of the notice, how will the Minister balance the need for it to be easily readable by someone at a relevant distance—that is, when they are standing at the till—with the need for it to be practical? If the retailer—perhaps a small retailer—is required to produce signs for not just the age for tobacco products but, potentially, the age for alcohol or other products, and is required to display signs for each of those individual notices and regulations, how will the Minister ensure that it is actually possible to display all the different signs in all the different right fonts? Would he consider that, if a retailer is selling a range of products that are age restricted, there could be signs that cover more than one product to make this clear to the public while not taking up all of the potential advertising and—

Dr Beccy Cooper: I just wanted to clarify something with the hon. Lady, because she is talking about the size of the signs in Wales, under clause 6, I think. Clause 6(4) says:

“The notice must comply with any requirements set out in regulations made by the Welsh Ministers”.

I presume that that is the response that she is looking for: the Welsh Ministers will absolutely be able to decide on the size of the signs.

Dr Johnson: I thank the hon. Lady for that.

Gregory Stafford: My hon. Friend is making, I think, an important point about whether Ministers, either in England or in the devolved Administrations, can put signs together in order to reduce the burden on a business of having multiple, potentially confusing signs. I understand the point about devolution, but most ordinary people will look for a single regulated sign for this. I wonder whether there is any discussion—even if

the Minister cannot legally enforce it within the Bill—about working in tandem with the relevant Ministers in Scotland, Wales and Northern Ireland, so that there can be a standardised sign, so that it is abundantly clear, whether someone is in England, Wales, Scotland or Northern Ireland, that that is the sign, and that it is both clear to consumers and it is clear to businesses what they are supposed to be displaying.

Dr Johnson: I thank my hon. Friend for his intervention. It is of course correct that we have devolution, and the hon. Member for Worthing West is of course right that Welsh Ministers—in the same way as Scottish Ministers, and, as I will come to, Northern Irish Ministers—have the capacity to deal with changes to the signs, but it will be easier to have clarity. I am merely suggesting that the Minister could discuss these details with his devolved counterparts and put such measures on the face of the Bill now, rather than not do so and then require, for example, as I said before, the Scottish Ministers to then introduce an SI for something that could be changed much more cheaply with drafting now. It would require much less time and energy from the civil service in Scotland—and spend less taxpayers’ money—to achieve that.

I am interested by the comment from my hon. Friend the Member for Farnham and Bordon about joint signs. The point I was making was about the display space: if someone has to put a lot of different signs up—particularly given that the Minister has shown reluctance on the principle of a nicotine-free generation, which I suspect is where we will end up—and we need to do that at a later date, we will end up with yet another sign with yet another date on it. There comes a point at which the amount of display space available to retailers starts to become smaller, given the required font size.

Before I finish, I have one more quick point, which is just to note that clause 72 is the Northern Irish equivalent added to the Health and Personal Social Services (Northern Ireland) Order 1978, so it is the same as clause 5, with the same effect.

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

11.24 am

Adjourned till this day at Two o'clock.

