

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TOBACCO AND VAPES BILL

Seventh Sitting

Tuesday 14 May 2024

(Morning)

CONTENTS

CLAUSE 28 agreed to.
SCHEDULES 2 TO 4 agreed to.
CLAUSES 29 TO 55 agreed to, one with an amendment.
SCHEDULE 5 agreed to.
CLAUSES 56 TO 74 agreed to.
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 May 2024

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The Committee consisted of the following Members:

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

- | | |
|--|---|
| † Aiken, Nickie (<i>Cities of London and Westminster</i>) (Con) | Johnson, Dr Caroline (<i>Sleaford and North Hykeham</i>) (Con) |
| † Baker, Duncan (<i>North Norfolk</i>) (Con) | † Leadsom, Dame Andrea (<i>Parliamentary Under-Secretary of State for Health and Social Care</i>) |
| † Bell, Aaron (<i>Newcastle-under-Lyme</i>) (Con) | Maskell, Rachael (<i>York Central</i>) (Lab/Co-op) |
| † Blackman, Bob (<i>Harrow East</i>) (Con) | † Oswald, Kirsten (<i>East Renfrewshire</i>) (SNP) |
| † Cameron, Dr Lisa (<i>East Kilbride, Strathaven and Lesmahagow</i>) (Con) | † Richardson, Angela (<i>Guildford</i>) (Con) |
| † Charalambous, Bambos (<i>Enfield, Southgate</i>) (Lab) | † Tuckwell, Steve (<i>Uxbridge and South Ruislip</i>) (Con) |
| † Foy, Mary Kelly (<i>City of Durham</i>) (Lab) | † Wakeford, Christian (<i>Bury South</i>) (Lab) |
| † Gill, Preet Kaur (<i>Birmingham, Edgbaston</i>) (Lab/Co-op) | Katya Cassidy, Kevin Maddison, Lucinda Maer, <i>Committee Clerks</i> |
| † Glindon, Mary (<i>North Tyneside</i>) (Lab) | |
| † Harrison, Trudy (<i>Copeland</i>) (Con) | † attended the Committee |

Public Bill Committee

Tuesday 14 May 2024

(Morning)

[SIR GARY STREETER *in the Chair*]

Tobacco and Vapes Bill

Clause 28

CONSEQUENTIAL AMENDMENTS TO DO WITH THIS PART

9.25 am

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

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

Schedules 2 to 4.

Clauses 29 to 32 stand part.

Clause 79 stand part.

The Parliamentary Under-Secretary of State for Health and Social Care (Dame Andrea Leadsom): It is a pleasure to serve under your chairmanship today, Sir Gary.

Clause 28 refers to the consequential amendments to do with part 1. The clause states which schedule contains which consequential amendments applicable to England and Wales. Consequential amendments revise existing legislation to ensure the law works effectively following the introduction of the Bill. This is a standard, supplementary clause that ensures the measures in part 1 of the Bill for England and Wales function as intended.

Consequential amendments that come into force two months after the Bill is passed are included in schedule 2, which amends several pieces of legislation including the Children and Young Persons Act 1933, the Children and Young Persons (Protection from Tobacco) Act 1991, the Health Act 2006, the Criminal Justice and Immigration Act 2008, the Regulatory Enforcement and Sanctions Act 2008, the Children and Families Act 2014 and the Public Health (Wales) Act 2017.

Consequential amendments that come into force six months after the Bill is passed are included in schedule 3, which amends the Regulatory Enforcement and Sanctions Act 2008 and the Children and Families Act 2014.

Consequential amendments that come into force on 1 January 2027 are included in schedule 4, which amends several pieces of legislation including the Children and Young Persons Act 1933, the Protection of Children (Tobacco) Act 1986, Children and Young Persons (Protection from Tobacco) Act 1991, the Police Reform Act 2002, the Courts Act 2003, the Regulatory Enforcement and Sanctions Act 2008, the Health Act 2009, the Tobacco and Primary Medical Services (Scotland) Act 2010, the Police Reform and Social Responsibility Act 2011 and the Children and Families Act 2014.

Schedules 2, 3 and 4 help the Bill to function effectively within the existing legislative framework and ensure that measures in the existing legislation work as intended following the Bill's introduction.

Clause 29 provides the Secretary of State with a power to make regulations that are consequential on part 1 of the Bill. Those regulations may amend, repeal or revoke any legislation passed before the Bill or later in the same Session of Parliament as the Bill or an Act or Measure of Senedd Cymru passed before this Bill. Regulations may amend primary legislation as well as secondary legislation.

During the development of the Bill, every effort has been made to identify and make provision for any required amendments to primary legislation. However, as the Bill brings together legislation made over the last century there is a small likelihood that further consequential amendments may be required to enable the Bill to function effectively. It is therefore prudent that the Government should have the power to make such changes via secondary legislation. Any regulations amending primary legislation will be subject to the affirmative procedure in line with guidance from the Delegated Powers and Regulatory Reform Committee.

I now move on to transitional and transitory provisions to do with part 1, which are relevant to England and Wales. Clause 30 provides that the programme of enforcement under clauses 20 and 21 should apply to existing tobacco and vape restrictions in the period before the new tobacco and vape measures come into force. That ensures that the programme of enforcement in the Bill continues to apply to offences despite different provisions coming into effect at different dates. In practice, that means that in the six months following Royal Assent, the programme of enforcement applies to the current restrictions on the sale of nicotine products to under-18s.

In the period following Royal Assent, before 1 January 2027, the programme of enforcement applies to the current age of sale restrictions for tobacco, breaches of the sale of un-packaged cigarettes and breaches of the requirements for age of sale notices. Trading standards is currently obliged to consider its programme of enforcement each year, and this clause replaces that obligation. The clause is important to the functioning of the Bill, as it will ensure that effective enforcement regimes are in place for the time between Royal Assent and the commencement of provisions in the Bill.

Clause 31 provides that the fixed penalty notice regime in the Bill should apply to breaches of existing tobacco and vape age of sale restrictions in the period before the new tobacco and vape age of sale restrictions come into force. That will ensure that trading standards has additional tools available to take swift and proportionate enforcement action on under-age sales without delay. Some enforcement provisions in the Bill come into force before the offences that they relate to, and clause 32 therefore provides general transitional provisions so that enforcement is aligned with the coming into force dates of different measures.

Finally, I come to the commencement of the Bill. Clause 79 provides the commencement dates for different clauses and parts of the Bill across the United Kingdom. The clause helps the measures in the Bill to function effectively. I commend clause 28, schedules 2, 3 and 4 and clauses 29, 30, 31, 32 and 79 to the Committee.

Preet Kaur Gill (Birmingham, Edgbaston) (Lab/Co-op): Clauses 28 to 32 deal with transitional arrangements after the Bill is passed and before some of its new regulations come into effect to make consequential amendments to previous Acts of Parliament that will be replaced by the new measures in this Bill. I have looked through the schedules and consequential amendments, and I am satisfied that they tie in with the measures in the Bill that we have discussed.

However, I will raise a few concerns, as the schedules relate to the commencement of various clauses of the Bill. For example, the loophole in existing legislation on the free distribution of vapes to under-18s that we discussed should be closed urgently, yet the Government have specified that that should commence only within six months of the Bill's being passed. Can the Minister explain why she is not taking swifter action? It has already been two and a half years since we proposed changes to the law on this and that the Government take that up. Who is the Minister worried about inconveniencing by introducing the regulations quickly, apart from those who would seek to addict children to vapes? I fail to see what legitimate business could risk being disrupted by going faster here, given that clause 9 specifies that it applies

“in the course of business”,

so it would not necessarily impact the use of vapes as nicotine replacement therapies.

There is also a general point to make about timing. If we soon have a general election, the short campaign will rob us of six weeks of the normal course of business and many of the provisions in the Bill, including the consequential amendments on previous Acts of Parliament, will take effect within two months of the Bill's passing. No doubt the civil service will ably do its job for the most part in preparing relevant authorities and retailers for the commencement of some of the new powers, but what can the Minister do to reassure me that a plan is already in place for the programme of work that needs to happen so that the transition is as smooth as possible?

Clauses 30 and 31 make it clear that local trading standards may conduct programmes of enforcement and issue fixed penalty notices for the breach of existing tobacco age of sale legislation until the new progressive rise in the age of sale comes into effect in 2027. I see nothing to argue with here, and likewise I have no issue with the transitional provisions detailed in clause 32.

Dame Andrea Leadsom: Let me respond to the point about the delay in coming into force. We seek to provide the right balance between giving retailers sufficient time to implement the measures and bringing the Bill into force as quickly as possible.

Question put and agreed to.

Clause 28 accordingly ordered to stand part of the Bill.

Schedules 2 to 4 agreed to.

Clauses 29 to 32 ordered to stand part of the Bill.

Clause 33

CROWN APPLICATION

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

Dame Andrea Leadsom: This clause provides that part 1 of the Bill and any regulations made under powers in part 1 bind the Crown. The effect of this is that the new age of sale restrictions for tobacco and vaping products for England and Wales apply to all bodies and persons acting as servants of the Crown. That includes Government Departments, prisons run by His Majesty's prison service and members of the armed forces. The Crown itself may not be prosecuted for an offence under this part, but that is not the case for persons in the service of the Crown, such as civil servants or prison employees. This is a standard and supplementary clause. I commend it to the Committee.

Preet Kaur Gill: I have no detailed comments to make on this clause and we are happy to give it our support.

Question put and agreed to.

Clause 33 accordingly ordered to stand part of the Bill.

Clause 34

INTERPRETATION OF PART 1

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

The Chair: With this it will be convenient to debate clauses 35 and 36 stand part.

Dame Andrea Leadsom: Clauses 34 and 35 set out the definitions of tobacco, vaping and nicotine products for interpretation within the Bill. Clause 36 substitutes the definition of “tobacco product” in the Tobacco Advertising and Promotion Act 2002.

Clause 34 sets out definitions for the purpose of interpreting part 1 of the Bill. A tobacco product is defined as

“a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked, chewed or consumed in any other way.”

All tobacco products are harmful for health, so this revised definition will ensure that all future novel tobacco products are captured by the legislation.

Another significant definition is “vaping product”, which means either a vape—a device—or a vaping substance, which means

“a substance, other than tobacco, that is intended to be vaporised by a vape”.

A vaping product is one that contains nicotine as well as one that does not.

Clause 35 provides a definition of “nicotine product”, used throughout part 1 of the Bill. The definition used is to capture other consumer nicotine delivery devices and products, such as nicotine pouches, that are not currently regulated but whose use has increased among young people. This definition is important to ensure that we capture the right types of products that might be targeted at or used by children in the future through any secondary legislation that the Government introduce to protect children from future harm and addiction.

Clause 36 substitutes the definition of “tobacco product” in the Tobacco Advertising and Promotion Act 2002. This ensures that all future novel tobacco products are

[*Dame Andrea Leadsom*]

captured by the advertising and display bans under the Tobacco and Advertising Promotion Act. I commend clauses 34, 35 and 36 to the Committee.

Preet Kaur Gill: This is, of course, an extremely important part of the Bill, as it defines many of the terms used in it. We know how adept the industry has become at worming its way around the spirit of regulations that Parliament has debated and agreed in the past. The ban on menthol cigarettes is one example. The clause sets out a series of definitions of what is covered by various terms that we have been using, such as “herbal smoking products”, “retail packaging” and “cigarette papers”. It is very important.

We know, and I think we should expect, that the industry will innovate in response to this legislation, and not necessarily in helpful ways. We must ensure that the wording of the definitions we use is specific enough not to have unintended consequences, but broad enough that we do not allow industry to get around them.

I appreciate that this is all tricky, but I have a few quick comments. I mentioned when we debated clause 11 that there is no definition of “retailer” in the Bill, and my concern related to vending machines. Can the Minister please provide clarity on which powers granted under this Bill enable Government to regulate vending machines for vapes and other nicotine products, if that was deemed necessary? If she cannot answer now, can she please write to me on that?

I also want to raise the issue of accessories. I mentioned the ban on menthol cigarettes introduced in 2020, which was no doubt a cautionary tale for us in ensuring that we give careful thought to designing regulations on flavoured vapes. A study published in the journal *Tobacco Control*, and part-funded by Cancer Research UK, surveyed 66,000 adults in England, Wales and Scotland from October 2020—five months after the menthol ban was introduced—to March 2023. It found that the number of adult smokers who reported using menthol-flavoured cigarettes at the start of the study period stayed stable at 14%, compared with 16% two and half years earlier. That may simply indicate the size of the illicit market, but the survey also found that only 15% of those who smoked menthol-flavoured cigarettes reported buying from illicit sources, such as under the counter: a proportion similar to those who smoked non-flavoured cigarettes. That instead suggests that the tobacco industry has quite adept legal loopholes to circumvent the ban.

Researchers think that that indicated that people are using legal accessories, including menthol-flavoured drops, filter balls or cards, or that they are purchasing cigarettes perceived to contain menthol flavouring without it being labelled as such. We will come back to the issue of defining flavours and those specific loopholes in other clauses, but I want to ask here about accessories such as drops, flavour cards and so on. I have looked up those products online and they are blatantly marketed for use with cigarettes—we can buy 25 packs of “rizla menthol extreme infusion flavour cards” for £9 on Amazon.

What lessons have the Government learned from that? They were meant to publish a review of the legislation in 2021, but as far as I am aware, they did

not. Have the Government looked at an expanded definition of tobacco products that would include accessories? If it is appropriate to look at something more narrow and targeted in its scope, would the Minister consider specifically looking at clause 59 on the flavour of tobacco products? Expanding the regulation-making powers to include tobacco-related products and accessories would enable regulations to be designed to capture menthol flavourings and all its derivatives and analogues, including add-on accessories to cigarettes to mask the taste of tobacco. I appreciate that the Minister has until now said that we should not let perfect be the enemy of good, but that is quite a crucial issue.

First, as I mentioned, the Government already promised to review that a few years ago, so I hope that they have a considered response to those questions either way. Secondly, the same principles apply to the flavours of vapes. With the disposable bans, consumers are effectively being encouraged to assemble their devices themselves to reduce waste. If we do not think carefully about the issue of accessories, I am concerned that we will see similar workarounds in that market too, which will undermine the efficacy of the legislation. If the Minister does not have the information to hand, could she please write to me on that?

Clause 35 provides a definition of “nicotine product” that, as we have heard, captures things that are not vapes or tobacco products, and could include things such as nicotine pouches. In the national conversation about vapes, we could easily see how more unscrupulous companies that have been marketing to children would look to pivot to other products if we do not capture them with this Bill and the regulations that it allows for.

I reiterate my earlier question to ensure that the Minister takes it away. Given the inclusion of that definition of “nicotine product” in the Bill, where does she see it necessary for the Government to introduce further regulation of those products—for example, whether they should be included in a notification process or something similar? We of course support those powers and I think the Committee agree on that, but I am keen to understand how advanced her and the Government’s thinking is on this.

Finally, clause 36 amends the Tobacco Advertising and Promotion Act 2002, which was brought in under the Labour Government. That seems eminently sensible and I support it. While we are on the subject, the Minister mentioned in the first line-by-line debate that she has recently written to the Advertising Standards Authority about its work and the trends it is seeing. I would be very interested in seeing its response and I would be grateful if the Minister could share that with me too.

Kirsten Oswald (East Renfrewshire) (SNP): I am not going to reiterate the points made by the hon. Member for Birmingham, Edgbaston, but I want to add my voice to those who are very concerned about ensuring that the Bill takes full account of all the different products. During the course of the last few days of debate, we have heard about the large number of different products out there. I think it is profoundly important that we do all we can to try to look to the future and ensure that there are as few loopholes as possible for the tobacco and vaping companies to take advantage of.

As we have heard, they are very able and enthusiastic about doing so. I am keen to hear the Minister's thoughts on whether the clause does enough, or whether she shares my concern that there are things we cannot conceive of yet that will be in the minds of those companies. As we consider the Bill, we need to ensure that we are not leaving gaps that will be rapidly filled by products that will harm people, particularly young people.

9.45 am

Dame Andrea Leadsom: As all hon. Members know, the whole point of the Bill—its definitions and secondary legislation—is to enable us to stay ahead of the horrendous trade of trying to get children addicted so that they can then be captivated, and the novel ways in which big tobacco and the vaping industry are trying to capture people while they are still too young to understand the long-term harms. That is what lies behind the Bill, so hon. Members do not need to be concerned that we are missing the opportunity to stay ahead of that game.

I wrote to all Committee members last night, and there are copies of the letter in the room, with some of the answers to the questions of the hon. Member for Birmingham, Edgbaston about vape vending machines. I will look at whether there is more that I can say about how we will stay ahead of novel ideas such as vaping solutions and products, but I think all those questions have been answered in the Bill.

Question put and agreed to.

Clause 34 accordingly ordered to stand part of the Bill.

Clauses 35 to 38 ordered to stand part of the Bill.

Clause 39

REPEAL OF OFFENCE OF PURCHASING TOBACCO PRODUCTS BY UNDER 18S

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

The Chair: With this it will be convenient to discuss clause 40 stand part.

Dame Andrea Leadsom: Clause 39 repeals the offence for someone under the age of 18 in Scotland to buy or attempt to buy a tobacco product or cigarette paper. Clause 40 repeals the power for constables in Scotland to confiscate a tobacco product or cigarette paper from someone in a public place who they suspect is under 18. These provisions were originally made in the Tobacco and Primary Medical Services (Scotland) Act 2010.

The clauses ensure that legislation in Scotland is in line with that in England and Wales and mean that it will no longer be an offence for someone under the age of 18 to buy or attempt to buy these products, and that police officers will no longer have the power to confiscate these products. With the change to age of sale, it was no longer considered necessary to retain these provisions.

This change will ensure that no one is criminalised for their addiction to nicotine. The Bill also repeals the equivalent powers on confiscation for England and Wales in the Children and Young Persons Act 1933, so we are doing the same for Scotland. I therefore commend these clauses to the Committee.

Preet Kaur Gill: I turn to part 2 of the Bill and some of the clauses that apply specifically to Scotland. As the Minister mentioned, Scotland has a proud history of leading on many tobacco control methods, including beating the rest of the UK in introducing regulations to prohibit smoking in enclosed public spaces in 2005. That was the crowning achievement of a proud public health legacy left by the last Labour Governments in Westminster and in Holyrood. I am pleased to see the constructive attitude taken by the Scottish Government to the Bill to avoid any unnecessary regulatory divergence and to offer more certainty for business and consistency for consumers.

Clause 39, as the Minister has said, relates to the repeal of section 5 of the Tobacco and Primary Medical Services (Scotland) Act 2010, which made it an offence for someone under the age of 18 to buy or attempt to buy a tobacco product or cigarette papers. As I mentioned in the first sitting, the correct approach is to focus the enforcement of the law on the retailer, not the purchaser. Established businesses should be expected to take a greater degree of responsibility than children, and the law should reflect that. It should be our priority to help children addicted to nicotine, rather than penalise them.

Moreover, I take the Minister's point that this change will make the law easier to interpret and enforce. Where possible, we do not want to diffuse responsibilities between retailers and customers, or indeed the enforcement authorities that attend to them. I am satisfied that if we have strong and consistent enforcement of the responsibility of retailers to implement age of sale law, that would achieve the same outcomes that the 2010 Act intended.

Kirsten Oswald: As we have heard, part 2 of the Bill relates specifically to Scotland and clauses 39 and 40 repeal particular offences. Clause 39 repeals an offence unique to Scotland—the purchasing of tobacco products by under-18s. That was introduced in 2010 and has been criticised for some time because of the unnecessary criminalisation of young people with a nicotine addiction. The change has been requested by the Scottish Government. Clause 40 repeals the power of the police to confiscate tobacco products from people who they suspect are under 18. Again, the power is unique to Scotland and it is seen as difficult to use. I therefore welcome these clauses as they stand.

It is correct to say that Scotland has been a world leader on a range of tobacco control measures, and there has been a steady reduction in the proportion of people smoking, but we know that far too many lives are still damaged and far too many people are still killed by tobacco. Obviously, we are aware of the huge burden on the NHS and social care services, and we know about the significant health inequalities that underlie much of that. Clauses 39 and 40 are sensible because they allow operations on the ground in Scotland to move forward in a more unified and logical manner. We welcome the new age regime and the greater power for Scottish Ministers to tackle youth smoking and vaping.

Question put and agreed to.

Clause 39 accordingly ordered to stand part of the Bill.

Clauses 40 to 45 ordered to stand part of the Bill.

Clause 46

ALIGNMENT OF DEFINITIONS

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

Dame Andrea Leadsom: This clause amends definitions in the Tobacco and Primary Medical Services (Scotland) Act 2010 for tobacco products and nicotine vapour products to align them with the definitions in the Bill. The clause amends the definition of “tobacco product” in Scottish legislation to align it with the definition in the Bill. All tobacco products are harmful to health, so this definition will ensure that any future, novel tobacco products are captured by the legislation. The clause also amends Scotland’s definition of a nicotine vapour product to state that “vapour” includes aerosol”, so that the definition more closely aligns with that of “vape” in the Bill. I therefore commend the clause to the Committee.

Preet Kaur Gill: I thank the Minister for that explanation. We support the clause, which broadens the definition of “tobacco product” in Scottish legislation and seeks to align that definition with legislation in the rest of the United Kingdom, and clarifies that the definition of nicotine vapour products specifically includes aerosols.

Above all, we support the principle that there should be clear and consistent definitions of the products that we seek to capture in regulations under the Bill across all four nations of the United Kingdom. I will take this opportunity to mention my query about the definitions that we use to capture tobacco-related products and accessories, particularly products used to augment the flavour of tobacco products, but we are happy to support the clause.

Kirsten Oswald: I reiterate the comments about the importance of setting out the definitions here so that there is clarity on the products where that is needed, including on new products that arrive in the market. I support the clause.

Question put and agreed to.

Clause 46 accordingly ordered to stand part of the Bill.

Clause 47

POWER TO MAKE CONSEQUENTIAL PROVISION

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

Dame Andrea Leadsom: The clause confers a power on Scottish Ministers to make provision that is consequential on part 2 of the Bill. Regulations may amend, repeal or revoke any legislation passed before the Bill or later in the same Session of Parliament as the Bill, as well as any Act of the Scottish Parliament passed before the Bill. Regulations may amend primary legislation as well as secondary legislation.

Although every effort has been made to identify and make provision for any required amendments to primary legislation, the Bill brings together legislation that has been made over the last century, so there is a small likelihood that further consequential amendments may be required to enable the Bill to function effectively. It is

therefore appropriate that Scottish Ministers have the power to make such changes to devolved legislation via secondary legislation. Any regulations amending primary legislation will be subject to the affirmative procedure. I therefore commend the clause to the Committee.

Preet Kaur Gill: We are happy to support this clause, which gives Scottish Ministers powers to make consequential amendments to this part of the Bill. Scotland has a proud history of leading the way on tobacco control and putting public health before corporate profit. It brought in the indoor smoking ban before the UK-wide one was introduced nearly 20 years ago. This week, we marked 25 years of the Scottish Parliament—a proud legacy of the previous Labour Government—and the principle of pushing power closer to communities so that Scottish solutions can be found to Scottish problems remains as strong as ever.

Kirsten Oswald: The clause very much reflects the constructive work underlying many clauses in the Bill. It includes several measures that the Scottish Government pushed for, and gives proper differentiated treatment to the separate Governments across the United Kingdom.

Clause 47 gives Scottish Ministers the broad power by regulations to make provision consequential on part 2 of the Bill—the bit that directly relates to Scotland. That is important, because this issue causes difficulties across the whole UK. If the Bill is passed, the Scottish Government will consider how best to use these powers, with the consent of the Scottish Parliament, to benefit public health, and will look to avoid any unnecessary regulatory divergence. That will be helpful for those who seek to prevent harms. The Scottish Government were the first Government to commit to taking action on single-use vapes, and have now launched a legislative consent memorandum in the Scottish Parliament recommending that the Parliament give its consent to the Bill.

Dame Andrea Leadsom: I put on the record my thanks to Scottish Ministers for their collaborative approach to bringing together the Bill. I am extremely grateful to them for ensuring that it is a UK-wide piece of legislation.

Question put and agreed to.

Clause 47 accordingly ordered to stand part of the Bill.

Clauses 48 to 51 ordered to stand part of the Bill.

Clause 52POWER TO RESTRICT NICOTINE PRODUCTS
OFFENCE TO SALE BY RETAIL

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

Dame Andrea Leadsom: This clause will allow the Department of Health in Northern Ireland to make regulations to define “sale” in section 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 to mean sale by retail. If the power is used, only sales from a retailer to a customer will be caught by the vape age of sale offence, and business-to-business sales—for example, sales between a wholesaler and a retailer—will not be included. I commend the clause to the Committee.

Preet Kaur Gill: I thank the Minister for setting out the Government's explanation of the clause, which we are happy to support. As she said, it aligns the definition of the sale of nicotine products with the definitions we discussed when we debated clause 34. The caveated phrase "sale by retail" means that business-to-business sales need not be impacted by restrictions on age of sale.

The Minister may have touched on this, but I would be grateful if she can explain why Northern Ireland is only being given powers to close loopholes on the free distribution of nicotine products and the sale of non-nicotine vapes, while the Bill will immediately close those loopholes for England and Wales. I note that a study from last year found that half of under-18s in Belfast who attempt to purchase vapes in shops are successful. As I have explained, such loopholes and regulations undermine an understanding of the law and weaken enforcement by trading standards bodies, which cannot use the Medicines and Healthcare products Regulatory Agency's notification publication as a definitive guide to which products are legal. Has the Minister received a commitment from Stormont on introducing such regulations? If so, what is the timeline for doing so?

Dame Andrea Leadsom: I can explore that further, but the hon. Lady will appreciate that the Stormont Assembly was re-established very late on—in fact, after First Reading if I recall rightly, or at least the decision for the Bill to be UK-wide came after First Reading. At speed, the Bill was amended to incorporate Northern Ireland, and there may well be further amendments relating to Northern Ireland. The hon. Lady makes a good point, and with your leave, Sir Gary, I will write to her.

Question put and agreed to.

Clause 52 accordingly ordered to stand part of the Bill.

Clause 53

FREE DISTRIBUTION OF VAPES AND NICOTINE PRODUCTS

Amendment made: 25, in clause 53, page 26, line 32, leave out from "liable" to end of line 37 and insert

"on summary conviction to a fine not exceeding level 5 on the standard scale."—(*Dame Andrea Leadsom.*)

This amendment changes the mode of trial and maximum penalty for an offence of free distribution of nicotine products or non-nicotine vaping products in Northern Ireland. It provides for the mode of trial to be summary only and for the maximum penalty to be a level 5 fine.

Clause 53, as amended, ordered to stand part of the Bill.

Clause 54 ordered to stand part of the Bill.

Clause 55

CONSEQUENTIAL AMENDMENTS TO DO WITH SECTIONS 51 TO 54

10 am

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

The Chair: With this it will be convenient to discuss schedule 5.

Dame Andrea Leadsom: Clause 55 refers to schedule 5, which provides consequential amendments to clauses 51 to 54 relating to Northern Ireland. Schedule 5 amends two pieces of Northern Irish legislation—the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 and the Tobacco Retailers Act (Northern Ireland) 2014. Making amendments to existing legislation is required to enable the measures in clauses 51 to 54 to function as intended, and to ensure that the existing legislative regime works effectively. I commend clause 55 and schedule 5 to the Committee.

Preet Kaur Gill: I thank the Minister for setting that out. As we have discussed the effect of these amendments, I do not want to dwell on them. For the most part, they align legislation in Northern Ireland to capture tobacco products, nicotine products and vapes in the same way as the rest of the United Kingdom, including age of sale restrictions and the penalties for retailers who break those laws. It also specifically allows non-nicotine vapes to be captured by the same regulatory regime as nicotine vapes in the Tobacco Retailers Act (Northern Ireland) 2014, which we support.

As the Minister did not accept the amendment that I tabled in a recent sitting, I would like to draw her attention to some of the sections that schedule 5 amends. Particularly, section 12 on fixed penalty notices in the 2014 Act has allowed Ministers to introduce fixed penalty notices of £250 for breach of age of sale. In Scotland, that amount is set at £200. As we have discussed, the proposed amount in the Bill is £100 for England and Wales. Has the Minister given any more thought to that issue?

Likewise, the 2014 Act introduced a duty on councils to share information about fixed penalty notices, convictions and restricted premises and sales orders that had been given by officers in their local authority area. No similar duty has been introduced in the Bill, which touches on points I have made previously about the need for joined-up government to stop repeat offenders slipping through the net. In discussions with the devolved nations about the Bill, what efforts has the Minister made to learn from existing tobacco control legislation? Was it a conscious decision to set the fixed penalty notice regime at such a significantly lower level than in Northern Ireland and Scotland? Once again, I am keen to get a clearer sense of her thinking, although we of course welcome the inclusion of clause 5 and schedule 5 in the Bill.

Dame Andrea Leadsom: All I will say is that we discussed this matter comprehensively last week and I am sure we will discuss it again.

Question put and agreed to.

Clause 55 accordingly ordered to stand part of the Bill.

Schedule 5 agreed to.

Clause 56 ordered to stand part of the Bill.

Clause 57

POWER TO MAKE CONSEQUENTIAL PROVISION

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

Dame Andrea Leadsom: Clause 57 confers a power on the Department of Health in Northern Ireland to make provisions that are consequential on part 3 of the Bill. Such regulations may amend, repeal or revoke any legislation passed before or later in the same session of Parliament as this Bill. Regulations may amend primary legislation as well as secondary legislation.

Although every effort has been made to identify and make provision for any required amendments to primary legislation, the Bill brings together legislation that has been made over the last century, so there is a small likelihood that further consequential amendments may be required to enable the legislation to function effectively. It is therefore appropriate that the Government have the power to make such changes via secondary legislation. Any regulations that amend primary legislation will be subject to the affirmative procedure, in line with guidance from the Delegated Powers and Regulatory Reform Committee. I therefore commend the clause to the Committee.

Preet Kaur Gill: We are happy to support the clause to give Ministers in Northern Ireland the power to make amendments consequential on this part of the legislation, just as we supported clause 47 for Scotland.

Question put and agreed to.

Clause 57 accordingly ordered to stand part of the Bill.

Clause 58

TOBACCO RETAIL PACKAGING

Preet Kaur Gill: I beg to move amendment 18, in clause 58, page 30, line 5, leave out “may” and insert “must, within six months of the passage of this Act.”

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

Amendment 19, in clause 58, page 30, line 29, at end insert—

“(3A) The regulations must include—

- (a) a requirement for information to be provided on packaging or otherwise supplied with a product stating that smoking does not reduce stress and anxiety;
- (b) the specific wording of the statement to be displayed on the packaging or otherwise supplied with a product; and
- (c) requirements related to the size or appearance of the statement to be displayed on the packaging or otherwise supplied with a product.”

Clause stand part.

Amendment 22, in clause 60, page 32, line 5, at end insert—

“(f) the markings on cigarette papers (including the use of branding, trademarks or logos)”.

This amendment enables the introduction of health warnings on cigarette papers.

Clause 60 stand part.

Amendment 23, in clause 69, page 37, line 19, at end insert—

“‘cigarette papers’ includes anything intended to be used for encasing tobacco products or herbal smoking products for the purpose of enabling them to be smoked;”.

These amendment is linked to Amendment 22.

New clause 4—*Mandatory health information inside tobacco packs—*

“The Secretary of State must consult on draft regulations to require tobacco manufacturers to include within tobacco and cigarette packs an insert setting out—

- (a) warnings about the dangers of tobacco to a person’s health and wellbeing, and
- (b) information about sources of advice and support on stopping smoking.”

This new clause commits the government to consult on draft regulations to require mandatory pack inserts containing health information such as quit messaging.

New clause 5—*Mandatory health warnings on cigarettes and cigarette rolling papers—*

“The Secretary of State must consult on draft regulations to require tobacco manufacturers to print health warnings on individual cigarette sticks and cigarette rolling papers.”

This new clause commits the government to consult on regulations to require the placing of specified health warnings on cigarettes and rolling papers by tobacco manufacturers and importers.

New clause 12—*Consultation on mandating quit information messages inside tobacco packs: publication—*

“The Secretary of State must, within three months of the passage of this Act, publish a response to the consultation on mandating quit information messages inside tobacco packs.”

This new clause requires the Secretary of State to publish a response to the consultation led by the Office for Health Improvement and Disparities on mandating quit information messages inside tobacco packs.

Preet Kaur Gill: Let me touch briefly on new clause 12, on the consultation on pack inserts. The Government committed to consulting on regulations a year ago, and the Department for Health and Social Care consultation closed on 10 October 2023. However, a response has still not been published, despite Government principles stating that it should have been published within 12 weeks, or that an explanation should have been provided for why that was not possible. Will the Minister please promise that the response will be published soon, so that we can get on with putting the regulations in place with the full information to hand?

Our new clause 12 would require the Secretary of State to publish the response within three months, which is more than generous, given the delays to date. That would then pave the way for the real prize—the real purpose of clause 58—which is to allow us to introduce stronger and more detailed quit messaging in tobacco products, so that more smokers kick the habit for good.

On average, smokers take 30 attempts to quit smoking before quitting for good, so it is essential to do everything possible to motivate them to attempt to quit. There is sufficient evidence from Canada, where tobacco pack inserts have been mandatory since 2000, that they can help to motivate smokers to quit. That is why we tabled amendments 18 and 19, which I would like to be considered together. They would require the Secretary of State to make regulations within six months to require tobacco companies to include information in their products to dispel the myth that smoking relieves stress and anxiety.

I am passionate about this issue. In my maiden speech, I vowed to campaign to improve the mental health of the young people of this nation and now, in Mental Health Awareness Week, we have the opportunity through this Bill to do something that could make a real difference. In the evidence sessions the other week, we heard a

passionate and moving testimony from Mark Rowland of the Mental Health Foundation that convinced me all the more that taking this action is the right thing to do.

Smoking doubles the risk of people developing depression, more than one in two people with severe mental health conditions smoke, and the life expectancy of those with mental health conditions is reduced. The issues that our young people and children face with their mental health are well known to everyone present, and smoking simply exacerbates those issues. Yet a 2022 survey found that over 40% of smokers in England cite stress relief as a reason why they smoke. Despite all the evidence to the contrary, the myth that smoking reduces stress and anxiety persists, in all its utter perversity.

This has not happened by accident. It is a myth that has been manufactured and spread by the tobacco industry. Powerful companies have commissioned research and fed it into the public domain, to create the impression that smoking has medicinal properties. It does not. We see all the time, in any gritty noir TV show or film, the stressed protagonist busily drawing on a cigarette before they face their demons. We can see how, if we do not confront such imagery head-on, it serves only to reinforce the myth.

The amendments seek to send a clear message that smoking does not relieve stress or anxiety and actually exacerbates them. The feeling that someone gets when they take a drag on a cigarette is not a real health benefit; it is a temporary relief from the withdrawal from the addiction that makes them feel worse in the first place. That is what is so insidious about this whole dynamic: it preys on the anxious, the depressed and the vulnerable.

As I have said, more than one in two people with severe mental health conditions smoke, yet whereas almost everyone understands the link between smoking and cancer, the link with mental health conditions is much less well understood. As the CEO of the Mental Health Foundation told us, it was not until 2008 that smoke-free policies were made mandatory in mental health settings. A third of mental health professionals had reservations about those policies, not understanding the link, but the evidence we have now is strong: people with mental health problems are likely to feel much calmer and more positive and to have a better quality of life after giving up smoking. Evidence suggests that stopping smoking is as effective as taking antidepressants.

As the Committee will be aware, we already face a mental health crisis in this country, with a quarter of our health burden being a result of mental ill health. We should take any opportunity to reduce that burden, so I urge the Minister to accept the amendment so that we can rid society of this insidious myth for good.

Bob Blackman (Harrow East) (Con): It is a pleasure to serve under your chairmanship once again, Sir Gary. I rise to speak in favour of the measures that I and other colleagues on the Committee have proposed.

Amendments 22 and 23 are essential consequential amendments that seek to introduce markings on cigarette papers and to define cigarette papers so that that is clear in the law. I am interested in the Minister's view of our proposals. We seek to make sure that health warnings can be put literally on to the cigarettes and other tobacco products themselves, rather than just on the packs.

New clause 5 is intended to look at mandatory health warnings on cigarettes and rolling papers, and at the regulations that would need to be rolled out and consulted on among tobacco manufacturers. It would enable us to have a consultation, rather than to change the law immediately.

Our proposal is not new. It was first proposed by the all-party parliamentary group on smoking and health, of which I am the chairman, in our 2021 report and recommendations to the Government. Importantly, our recommendation was endorsed by Javed Khan in his 2022 report. It is one recommendation that has not, thus far, been included in the Bill.

This is not even a novel policy. My noble Friend in the other place, Lord Young of Cookham, first proposed cigarette warnings when he was a Health Minister in Margaret Thatcher's Government—a great Government at the time. His statement at the 1979 world conference on tobacco and health bears repeating. He said:

“The solution to many of today's medical problems will not be found in the research laboratories of our hospitals, but in our Parliaments. For the prospective patient, the answer may not be cure by incision at the operating table, but prevention by decision at the Cabinet table...Historically, a nation would look to its doctors for better health. Now they should look to their Members of Parliament.”

Professor Sir Stephen Powis, the national medical director of NHS England, echoed Lord Young's comments when he said to this Committee that the legislation we are considering is “possibly the most important” piece of legislation since Parliament passed the National Health Service Act 1946, which led to the formation of the NHS on 5 July 1948. In his view, the legislation that we are considering is

“one of the most important—possibly the most important—pieces of legislation since the passage of that Act.”—[*Official Report, Tobacco and Vapes Public Bill Committee*, 1 May 2024; c. 89, Q129.]

This year, my noble Friend in the other House, Lord Young, will have been in Parliament for 50 years—50 years in which he has fought long and hard to end the blight that smoking leaves on society. It would be a just tribute to his efforts if the Government committed to implement this policy, which he first called for more than 30 years ago. Tobacco manufacturers already print on to cigarette papers, so it would be cheap and easy to implement.

New clause 4, on mandatory health information inside tobacco products, would commit the Government to consult again on draft regulations to require mandatory pack inserts containing health information such as quit messaging. Pack inserts were first proposed by the all-party parliamentary group on smoking and health in our 2021 report, that recommendation was also endorsed by Javed Khan in 2022, and the Government consulted on their introduction in a consultation that closed on 10 October 2023.

I am sure my right hon. Friend the Minister will be well aware that the Government's own guidelines state:

“Government responses to consultations should be published in a timely fashion”,

which is defined as

“within 12 weeks of the consultation”,

or they should

“provide an explanation why this is not possible.”

[Bob Blackman]

It is disappointing that, more than seven months after the consultation closed, the Government have still not published their response or given a reason for not doing so.

10.15 am

The Government have clearly been busy and the fruits of their labours are welcome in the Bill, but pack inserts have been in place in Canada since 2000. The evidence from Canada is that over time smokers are more likely to read inserts and that reading them is associated with a greater likelihood of attempting to quit and of successfully quitting. Pack inserts are an easy and direct way to communicate directly and specifically with smokers, and they have enormous potential to target messages about the effectiveness of vaping in helping smokers to quit. I support the amendments and look forward to responses from the Minister and Committee colleagues.

Dame Andrea Leadsom: I thank hon. Members for this debate and am grateful for the proposed amendments. I am sympathetic to the aims of the amendments, particularly those on pack inserts. They would provide an opportunity to introduce positive messages and provide more advice and support directly to smokers to help them to quit. The international evidence base shows that pack inserts can be effective in helping people to quit. For example, an evaluation in Canada showed that 26% to 31% of smokers had read the inserts at least once in the past month, which increased the likelihood of their making a quit attempt.

Pack inserts would complement our existing packaging measures, which include health warnings on packs and pointers to NHS advice on the benefits of quitting. We know that quitting smoking is associated with reduced depression, anxiety and stress, and that it improves mood and quality of life compared with continuing to smoke. Although it is a common belief that smoking can help one to relax, the evidence shows that it actually increases anxiety and tension, as it interferes with chemicals in the brain. Studies show that there are numerous mental health benefits from quitting smoking; quitting can in fact be as effective as antidepressants.

However, I point out to hon. Members that we already possess the regulation-making powers to go further on tobacco packaging. The Government's eight-week consultation on pack inserts ran from August to October '23. It explored whether we could help more smokers to quit by providing positive quit-themed information in tobacco packaging, alongside the existing information on harms. Proposed themes included the physical and mental health benefits of quitting, the financial benefits and advice on stop-smoking aids. The work to respond to the consultation is under way, and we are committed to responding in this parliamentary Session. That response will include details on the specific themes that may be included, such as anxiety and stress.

Amendments 22 and 23 and new clause 5 centre on the introduction of health warnings on cigarettes and cigarette papers, and would require the Secretary of State to undertake a consultation on that. As with new clause 4 and amendments 18 and 19, I am sympathetic towards the aims of the amendments, which would

encourage smokers to quit and provide them with information on the dangers of tobacco. However, we already have some of the most stringent regulations in the world on tobacco packaging and product design, which emphasise the health harms of tobacco. They include the requirement for plain packaging and graphic picture warnings on the outside of cigarette packs. A recent post-implementation review stated that those measures remain effective in helping smokers to quit, and in deterring children from taking up the habit. We will continue to monitor the evidence as to whether further health-harm messages are required, and take further action if necessary. For that reason, I ask the hon. Member for Birmingham, Edgbaston to withdraw her amendments.

Clauses 58 and 60 are both in part 4 of the Bill, which relates to the product requirements for tobacco, vapes and nicotine products, including in respect of packaging and flavours. The powers in part 4 are UK-wide. Clauses 58 and 60 replace existing powers set out in the Children and Families Act 2014: clause 58 replaces powers to make provision about the retail packaging of tobacco products and clause 60 replaces powers to make regulations about other tobacco product requirements, such as the markings on them and the use of branding and logos.

The Standardised Packaging of Tobacco Products Regulations 2015 introduced requirements using the relevant powers, and the Bill will not change the effect of those regulations, which will remain in force. Examples include the regulations covering the minimum pack requirement of 20 cigarettes, the requirements about the colour and shape of cigarette packaging, and the permitted colours forming part of a cigarette. The packaging requirements were originally introduced because there is evidence that standardised packaging reduces the appeal of tobacco products and decreases or delays the uptake of smoking by young people. I commend the clauses to the Committee.

Preet Kaur Gill: I will press amendment 19 to a vote, but not amendment 18. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Amendment proposed: 19, in clause 58, page 30, line 29, at end insert—

“(3A) The regulations must include—

- (a) a requirement for information to be provided on packaging or otherwise supplied with a product stating that smoking does not reduce stress and anxiety;
- (b) the specific wording of the statement to be displayed on the packaging or otherwise supplied with a product; and
- (c) requirements related to the size or appearance of the statement to be displayed on the packaging or otherwise supplied with a product.”—(*Preet Kaur Gill.*)

Question put, That the amendment be made.

The Committee divided: Ayes 6, Noes 9.

Division No. 2]

AYES

Charalambous, Bambos	Glindon, Mary
Foy, Mary Kelly	Oswald, Kirsten
Gill, Preet Kaur	Wakeford, Christian

NOES

Aiken, Nickie	Harrison, Trudy
Baker, Duncan	Leadsom, rh Dame Andrea
Bell, Aaron	Richardson, Angela
Blackman, Bob	Tuckwell, Steve
Cameron, Dr Lisa	

Question accordingly negated.

Clause 58 ordered to stand part of the Bill.

Clause 59

FLAVOUR OF TOBACCO PRODUCTS

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

Dame Andrea Leadsom: As per the previous clause, clause 59 replaces an existing power in the 2014 Act to make regulations about the flavour of tobacco products. Flavours, particularly menthol, have been shown to make it easier for young people to start smoking and therefore more likely to become addicted. That is because menthol flavouring makes the smoke less harsh and therefore easier to inhale. The flavour masks the harms of tobacco. All tobacco is harmful to health, and it is right that the Government have the powers to protect the population from those harms, and especially from tobacco products that may be more attractive to children. I commend the clause to the Committee.

Preet Kaur Gill: As we discussed in the previous debate, tobacco is an insidious industry that causes untold harm to its customers, privatising the profits while socialising the costs. I know that there are many sceptics out there who suggest that the Bill's central purpose—introducing a progressive rise in the age of sale—is not necessary because the number of people who smoke is steadily declining, especially among young people, but that makes the fundamental error of assuming that those gains are a natural force, not the hard-won result of concerted Government action over many years to reduce the appeal of tobacco.

Among the other measures, restrictions on the flavours of tobacco products that can be legally sold are certainly one, and we do not take it for granted that the powers are restated on the face of the Bill. However, as I have mentioned in previous debates, the issue of flavours has proven difficult to get right. Part of the issue is accessories such as drops, flavour cards and filter balls marketed to be added to tobacco products to give them flavours that they would otherwise not be allowed to have. I ask the Minister again whether she accepts the case that I have made for an amendment to the clause to include reference to accessories to tobacco products to capture such products.

There is also the issue of capturing flavours in legislation. As I mentioned earlier, a survey of smokers in Britain conducted in October 2020, five months after the menthol ban was introduced, and again in March 2023, found that the ban had had a negligible impact. The proportion of adult smokers reporting that they used menthol-flavoured cigarettes in 2023 compared with 2020 dropped by only 2%. Some in the sector went as far as labelling the ban worthless, as tobacco companies continue to sell hundreds of millions of cigarettes laced with menthol. Japan

Tobacco International put a range of replacement products advertised as “menthol reimagined” on the market the day the ban came into effect. That was backed up by a handbook for retailers on how to promote the range, called “Making a Mint”. Smokers were quoted as saying that the products “tasted fully menthol”. A year later, Nielsen data showed that JTI had sold more than 100 million packs of it menthol reimagined brands, amounting to total sales topping £1 billion.

In 2020, Imperial Tobacco made formal complaints about the behaviour of JTI, claiming it was breaching the legislation, before following suit by launching its own green filter range. Does the Minister think that it is time to get it right, and that we should scrap the focus on so-called characterising flavours, which are subjective and difficult to regulate, and extend a ban to all tobacco flavours?

I note that the Government were meant to review the menthol ban legislation nearly three years ago, yet we have not heard anything since then. The whole point of the ban was to target flavours that make it easier for young people to start smoking and increase the likelihood that they will become addicted. I would be most grateful if the Minister shared her thinking on the issue.

Dame Andrea Leadsom: I will share my thinking, because this is important. We are all on the same side where the Bill is concerned, and I say very genuinely to hon. Members that there is an important debate about flavours. The hon. Member for Birmingham, Edgbaston says that we should scrap menthol, but the problem is that if we scrap menthol it will be reimagined as “raspberry mint crush”—it will still be menthol, but simply reimagined. That is the perfect example of how people can get round the legislation by calling it something else—something even more appealing to children.

The idea of tackling the issue in secondary legislation is to ensure that we stay ahead of the industry at all times. I understand the desire to put things in the Bill, but I hope all hon. Members recognise that there are also weaknesses associated with something which, if we are to change it, requires primary legislation to do so.

Clause 59 accordingly ordered to stand part of the Bill.

Clause 60 ordered to stand part of the Bill.

Clause 61

RETAIL PACKAGING OF VAPING PRODUCTS AND NICOTINE PRODUCTS

Kirsten Oswald: I beg to move amendment 26, in clause 61, page 33, line 19, at end insert—

“(l) the use of fonts in any alphanumeric markings on the packaging.”

This amendment would allow the Secretary of State to make regulations about the font used on the retail packaging of vaping products and nicotine products.

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

Amendment 39, in clause 61, page 33, line 37, at end insert—

“(7) Before making regulations under this section the Secretary of State must—

[The Chair]

- (a) consider whether there are any persons who appear to be representative of the interests of those likely to have an interest in the regulations, and
- (b) if there are, to take reasonable steps to consult them.”

Clause stand part.

Amendment 40, in clause 62, page 34, line 27, at end insert—

- “(7) Before making regulations under this section the Secretary of State must—
- (a) consider whether there are any persons who appear to be representative of the interests of those likely to have an interest in the regulations, and
 - (b) if there are, to take reasonable steps to consult them.”

Amendment 21, in clause 63, page 34, line 36, leave out from “products” in the second place it occurs to the end of line 37 and insert—

- “(g) any other features of vaping products or nicotine products.”

This amendment allows for changes to other features of vaping or nicotine products as set out in the TRPR 2016 section 36 which do not distinguish between different brands such as capacity of refills, cartridges or pods, and nicotine delivery.

Amendment 41, in clause 63, page 35, line 20, at end insert—

- “(6) Before making regulations under this section the Secretary of State must—
- (a) consider whether there are any persons who appear to be representative of the interests of those likely to have an interest in the regulations, and
 - (b) if there are, to take reasonable steps to consult them.”

Clause 63 stand part.

Amendment 42, in clause 71, page 39, line 29, at end insert—

- “(6) Before making regulations under this section the Secretary of State must—
- (a) consider whether there are any persons who appear to be representative of the interests of those likely to have an interest in the regulations, and
 - (b) if there are, to take reasonable steps to consult them.”

Amendment 43, in clause 72, page 39, line 38, at end insert—

- “(4) Before making regulations under this section the Secretary of State must—
- (a) consider whether there are any persons who appear to be representative of the interests of those likely to have an interest in the regulations, and
 - (b) if there are, to take reasonable steps to consult them.”

Amendment 44, in clause 73, page 40, line 16, at end insert—

- “(5) Before making regulations under this section the Secretary of State must—
- (a) consider whether there are any persons who appear to be representative of the interests of those likely to have an interest in the regulations, and
 - (b) if there are, to take reasonable steps to consult them.”

New clause 10—*Power to change product requirements of vaping and nicotine products*—

“(1) The Secretary of State may by regulations amend regulations 36 and 38 of the Tobacco and Related Products Regulations 2016.

(2) Regulations under this section—

- (a) shall be made by statutory instrument; and
- (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.”

This new clause enables the Secretary of State to amend sections 36 and 38 of the Tobacco and Related Products Regulations 2016 related to general product requirements of vaping and nicotine products.

Kirsten Oswald: I am happy to speak to amendment 26, which was tabled by the hon. Member for Sleaford and North Hykeham, as a signatory to the amendment. The amendment seeks to deal with the use of fonts in any alphanumeric markings on the packaging. That would allow the Secretary of State to make regulations about the font used on the retail packaging of vaping and nicotine products.

The logic behind the amendment is that it would allow the Secretary of State to preclude vape companies from getting round the ugly packaging requirements by choosing an attractive or distinguishable font. The amendment provides helpful clarity. I appreciate that there is probably an ability to make provision on fonts in the Bill, but I am not sure that “probably” is good enough. The Committee has spoken about the need to try and stay ahead of the game when it comes to the companies, which are fleet of foot when trying to find ways of stopping us preventing the harms we are seeking to prevent.

Mary Glendon (North Tyneside) (Lab): I want to speak to my amendments to clauses 61, 62 and 63, which are all in a similar vein. My amendments would bind any Government to considering whether there are people who have an interest in future regulations on vaping packaging, and if so, to consult them. The point of the amendments is consultation, which would include all stakeholders with an interest—not just the industry but those who use vaping products to help them stop smoking. While the Government and the Minister have committed to that for the first round of regulation, there is no requirement for a future Government to do so.

My amendments 62 and 63 would require the Government to consult before implementing regulations. I will not press them to a Division, but I hope that the Minister, as she said she would last week, will consider and take away everything that is being suggested. I make the plea on behalf of the industry. The vaping industry takes very seriously the notion that children should not be allowed to vape, and that every precaution should be taken to ensure that children do not vape and that vapes are used as a tool to stop smoking. I say that as a member of the responsible vaping all-party group. I have followed this for many years, and am an advocate of vaping as a tool to stop smoking. I repeat that I will not press my amendments to a vote.

10.30 am

Bob Blackman: I rise to speak to amendment 21, which I tabled with other hon. Members. It seeks to regulate vaping product standards and is vital to the Bill. The amendment allows for changes to other features

of vaping or nicotine products, as set out in regulation 36 of the Tobacco and Related Products Regulations 2016, which at the moment do not distinguish between the differences among brands, such as capacity of refills, cartridges or pods, and nicotine delivery. My amendment would ensure that the Secretary of State has powers to revise generic product requirements, as set out in regulation 36 of the TRPR.

Importantly, my measure would be permissive, rather than a requirement. The wording of clause 63(1)(f) as drafted limits revision to features that “distinguish between different brands”, and could potentially exclude revision to generic standards such as capacity of refills, cartridges and pods, and nicotine delivery. The standards in the TRPR were developed for e-cigarettes only in the EU tobacco products directive back in 2013. Vaping and nicotine products have evolved considerably over the past 11 years, and they will continue to evolve, so it is vital that the Secretary of State has powers to revise the standards.

The change I propose is not to the intent of the clause; it is merely a clarification to ensure that there is no risk of limiting the powers of the Secretary of State only to characteristics that are brand-specific. Will the Minister, in her response, either accept amendment 21 or to come back with further consequential amendments, which will ensure that the Secretary of State has the powers that we know will be needed, because the industry will evolve and change its products. The industry will look at the Bill when it becomes an Act, and the risk is that we will have to come back and look at this again.

Preet Kaur Gill: New clause 10 would provide powers to the Secretary of State to amend regulations 36 and 38 of the Tobacco and Related Products Regulations 2016. As has been remarked several times in our debates, one of the biggest risks to the success of this legislation in achieving a smoke-free future and tackling youth vaping is that, if the Bill is not tightly worded, vexatious tobacco companies could find loopholes and workarounds. We have been discussing those with the failure of the flavours ban; the same goes for vapes.

To reiterate, Labour is ready to come down like a ton of bricks on any company that would attempt to profit at the expense of our children’s health. We know that the business model of tobacco and, let us face it, of vape companies is addiction. That is not to say that vapes are anywhere near as destructive and harmful as tobacco, but they are not good for us, and if we do not smoke, we should not vape.

The clauses on product requirements provide powers to the Secretary of State to create regulations for the retail packaging of vaping and nicotine products, as well as other product requirements, and they are, at face value, welcome. For a long time, we have been saying that we need to come down hard on those companies blatantly marketing nicotine addiction to children. I have seen egregious examples of that. It is not just the bright colours and pick-and-mix flavours. We heard in evidence from the NASUWT about vapes designed to look like USB sticks or highlighter pens so that they can easily fool teachers in schools. E-liquids available on the market called Candy King look like sherbet dip. I was sent one example from trading standards that really turned my stomach: a vape it seized that was shaped like a sippy cup. That is why we have long been calling for

the standardisation of vape product requirements, to remove the risk that products can be designed to appeal to children. At a minimum, the regulations should allow for bright colouring and child-appealing imagery and product names to be removed.

The one thing that companies have shown time and again, however, is that they are agile. They are able to innovate faster than Government have been able to keep up, often to harmful ends. My concern with clauses 61 and 63, which new clause 10 seeks to address, is that the powers provided are limited. In clause 61(3), the wording specifies that the regulations that the Secretary of State may create may include provisions about

“features of the packaging of vaping products or nicotine products which could be used to distinguish between different brands of the product”.

The same phrase is used about other product requirements in clause 63(1)(f). My concern is that such a caveat could exclude revision to generic standards, such as capacity of refills, cartridges or pods, and nicotine delivery.

As I mentioned, we have heard how part of the issue with the use of vapes is their tactility. They are discreet and can easily be hidden, and all evidence I have received about the concurrent disposable proposals that are being worked on by the Department for Environment, Food and Rural Affairs is that there will be little change. The leading producers will be able to meet those new requirements with a few minor adjustments to their products, such as attaching a USB port. I appreciate from his amendment that the hon. Member for Harrow East has similar concerns. I therefore think we should include provisions for other requirements to be introduced for these products that would have an impact on their use by children, while maintaining their viability as an attractive stop-smoking aid.

I include in new clause 10 powers to amend regulation 38 of the Tobacco and Related Products Regulations 2016, as well as regulation 36 on general product requirements, as they cover a range of miscellaneous presentational issues such as misleading or harmful claims that the product has certain health or lifestyle benefits, or attempts to mimic other items. I note, for example, that the current regulations specify that vapes cannot look like a food or cosmetic product, but that does not include looking like stationery, which was an issue identified in evidence by the NASUWT. Conversely, those regulations specify that a product cannot make any environmental claims where it may, in fact, be beneficial to do so to encourage greater use of reusable features once the regulations on single-use vapes come into effect.

Simply put, the purpose of the new clause is to give greater flexibility to Ministers to design regulations that can respond to problems as they arise and so that those powers are not limited to the aesthetic features of packaging or the products themselves, but can prohibit product claims and other characteristics that may appeal to children. My concern is that the legislation as drafted would not achieve that, particularly as we are dealing with regulations that were designed for vapes but which, through the Bill, could be extended to a host of as yet less understood nicotine products. We therefore need that flexibility.

Dame Andrea Leadsom: I am genuinely grateful to hon. Members for bringing this discussion before the Committee. We all agree that with vaping, product

[*Dame Andrea Leadsom*]

packaging is an integral part of what we are seeking to avoid for children. As I have said before, I am on the warpath where promoting vaping to children is concerned. I want to assure all hon. Members that the reason I resist the amendments is that we already have the powers in the Bill and I want to explain how that is so.

I am sympathetic to the concerns raised. Making sure we have the right powers to tackle the appeal of vapes to children is crucial and integral. It is totally clear that the design of many vapes is targeted at children, with brightly coloured features and eye-catching designs. There is no way we will stand by while industry knowingly, deliberately and maliciously encourages children to take up addiction and use products that have been designed for adults to quit smoking. The chief medical officer has written:

“Companies trying to addict children for profit are behaving in a shameful way. Yet it is undoubtedly happening.”

That is why we are bringing forward powers to regulate product requirements as part of the Bill.

I am sympathetic to the broadening of the scope of our regulations so they cover all product and packaging features and requirements, as in amendment 21. However, the Bill already contains regulation-making powers to make provision, in relation to vaping and nicotine products, for things such as appearance, size and packaging, as well as the substances that may be included and the amount of any substance within the e-liquid, including nicotine.

Trudy Harrison (Copeland) (Con): May I seek clarity that the font would be included in the category of appearance, because I have certainly seen some vaping products advertising lemon flavour and the font appears in a very stylised way that I would suggest is aimed at young children?

Dame Andrea Leadsom: Absolutely. The Bill does allow us great flexibility in these areas and, to clarify, this does include amending fonts and alphanumeric markings, which is the intent of amendment 26. The Bill already provides for that, just to be absolutely clear. That is why we do not need to take additional powers to amend aspects of the Tobacco and Related Products Regulations 2016, as suggested in new clause 10. The Bill already captures all the features that we may need to regulate, and allows that regulation to extend to non-nicotine vapes and other nicotine products.

Amendments 39 to 43 effectively place a duty on the Secretary of State to consult on secondary regulations. As stated in the House on Second Reading, I want to make clear my commitment to undertaking, on the vape regulations, comprehensive consultation regarding, but not limited to, packaging, product requirements, flavours and changes to the MHRA vape notification scheme. I want to make it clear to the Committee that, of course, prior to those regulations we will engage in comprehensive stakeholder discussions. For that reason, it is not necessary for a legal duty of consultation to be placed on the Secretary of State in relation to the regulation-making powers. That would result in a loss of flexibility and speed. There may be occasions when we will need to make minor changes, or quickly adapt to emerging products. Of course, in the vast majority of

cases, consultation is the right and proper thing to do, but we do not need this to be stipulated in the Bill. For those reasons, I ask hon. Members to withdraw or not press their amendments.

Clauses 61 and 63 provide the Secretary of State for Health and Social Care with a power to make regulations about the retail packaging of vaping products and nicotine products and to introduce other product requirements for vaping and other nicotine products. Vaping is never recommended for children. It risks addiction and unknown long-term health impacts while their lungs and brains are still developing. We must not replace one generation addicted to nicotine with another. We know that giving up nicotine is difficult because the body has to get used to functioning without it. Withdrawal symptoms include cravings, irritability, anxiety, trouble concentrating, headaches and other mental symptoms, so I say to those children currently thinking, “A vape is going to calm me for my GCSEs” that it is going to do the exact opposite. We need to get that message across to children.

Despite the clear health advice, there has been a significant and alarming rise in the number of children vaping. Data shows that the number of young people vaping has tripled in just the last three years and now one in five children has used a vape. That is incredibly alarming and it is unacceptable. We heard, in our vaping call for evidence, that children are attracted to vapes by the brightly coloured packaging and the use of child-friendly images such as cartoons. The hon. Member for Birmingham, Edgbaston gave very good examples. Research on vape packaging has shown that reduced brand imagery can decrease the appeal to young people who have not previously smoked or vaped, and can do so without reducing the appeal of vapes to adult smokers trying to quit. To protect children from potential health harms of vaping, we must reduce the ways in which vaping appeals to them, and do so without impacting on adult smokers.

Mary Glendon: I am not sure whether this is the appropriate moment for this question, but the Minister is making such a good case for making vaping unattractive and stopping vapes being available to children that I want to ask whether she has considered the idea of the licensing scheme that the vaping industry has put together—I believe that it has been presented to the Government before, although perhaps not to the Minister, in her position—which it believes will control who sells and supplies vapes and provide a vast sum to support greater enforcement. I just ask that, incidentally, as a question that the Minister may be able to answer.

10.45 am

Dame Andrea Leadsom: I am grateful to the hon. Lady for giving me the chance to give my personal opinion on licensing. It is a licence for the vaping industry to get rid of the competition, make loads more money and focus even more on addicting children to vapes. It is the most cynical of all the cynical proposals I have seen. I am literally in no way in support of a licensing regime. I see lots of nods around the room; I hope that my personal view is clear and am glad that it seems to be shared by a number of hon. Members.

Clause 61 provides the Government with regulation-making powers, which could be used to limit the appeal of vapes and other nicotine products to children. This

could include, for example, regulating the types of imagery that can be used on packaging, as well as the size, shape and appearance of the packaging—subject, of course, to further consultation.

Clause 63 allows us to introduce requirements that could, for example, limit the types of imagery used on the product itself, as well as its size and shape. I therefore commend the clauses to the Committee.

Question put, That the amendment be made.

The Committee divided: Ayes 1, Noes 9.

Division No. 3]

AYES

Oswald, Kirsten

NOES

Aiken, Nickie

Baker, Duncan

Bell, Aaron

Blackman, Bob

Cameron, Dr Lisa

Harrison, Trudy

Leadsom, rh Dame Andrea

Richardson, Angela

Tuckwell, Steve

Question accordingly negated.

Clause 61 ordered to stand part of the Bill.

Clause 62

CONTENTS AND FLAVOUR OF VAPING PRODUCTS AND NICOTINE PRODUCTS

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

Dame Andrea Leadsom: This clause provides the Department of Health and Social Care Secretary of State with a power to regulate the contents and flavour of vaping products and nicotine products.

Vaping is never recommended for children and, as we have just discussed, risks addiction and long-term health impacts. We know that children are attracted to the fruit and sweet flavours of vapes, both in their taste and smell, as well as how they are described. For example, the most frequently used vape flavouring for children is fruit flavour, with 60% of children who currently vape using them; and 17% of children who vape choose sweet flavours such as chocolate or candy.

We also recognise the importance of vape flavours to adult smokers who are looking to quit smoking. It is, therefore, important that we carefully consider the scope and impact of restrictions so that we reduce the appeal of vaping to children, while avoiding any unintended consequences on adult smoking rates. We have committed to consult on any regulatory measures regarding flavours. I can tell the Committee that I had an interesting roundtable with members of the public health sector, who were themselves entirely divided on whether reducing vapes significantly would encourage adult smokers to carry on smoking, rather than turning to vaping. It is a very live issue, at which we need to look carefully.

To achieve these aims, the clause will enable the Government to make regulations in future to regulate the substances and the amount of any given substance that may be used in vaping or other nicotine products,

as well as the flavours of those products. That also means that regulations are future-proofed in the event of new nicotine products coming to market; we will be able to regulate any new nicotine product, and protect our children from future addiction and health harms. I commend the clause to the Committee.

Preet Kaur Gill: I thank the Minister for her explanation of the clause. As I have already outlined, we are very concerned about the explosion in under-age vaping in recent years, with youth use trebling in the past two years alone. I think I speak for everyone in the Labour party when I say that we have been very concerned about some of the products appearing on our local shop shelves, which are obviously marketed to children.

I do not want to lump the whole of the industry in together, but some of these companies are clearly linked to big tobacco and have used big tobacco-style tactics to target youngsters. They see the way things are going with smoking and have sought to addict a new generation through vapes and other products. We therefore support the clause, which will allow us to stop products with flavours mimicking popular sweets or with bizarre names like “unicorn shake” from sucking young people and other vulnerable non-smokers in. I am afraid to say that the Government have been asleep at the wheel on this issue, and there has been a bit of a free-for-all as a result. I was flabbergasted to learn from the MHRA that something like 600,000 different vaping products have gone through the notification process and can legally be sold in the UK now.

All that said, I do appreciate the genuine and legitimate concern from people who have used vapes to help them quit smoking that, in seeking to course correct, the Government could go too far in the other direction and take away the flavours that they enjoy and feel have helped them stay off cigarettes. I appreciate that my hon. Friend the Member for North Tyneside has raised concerns to that effect, and I want to reassure her that we are committed to consulting on this issue before introducing regulations, so that we can get the balance right.

I have mentioned on previous clauses that when it comes to tobacco regulation, some of the restrictions on flavours have been among the least successful of any regulations brought in by successive Governments in recent decades. In the disappointment of the menthol ban is the cautionary tale that implementing these regulations will take thought and care. Similarly, the quagmire that the Food and Drug Administration in the US has sunk into is something we should obviously seek to avoid. I wonder if the Minister could therefore comment on what lessons she has drawn from the US, where the blanket ban on flavours has seen only a few dozen products approved for legal sale in three years, while illegal products remain widely available in stores.

The key issue we need to crack is what the best way is of dealing with flavours—is it descriptors, ingredients or the characterising flavour itself? On the latter point, I have already mentioned the menthol ban. Can the Minister please set out her view on how to proceed, given that the Bill leaves the specifics of how to implement restrictions on flavours quite open, including how the flavour of a product is to be determined. Has she conducted a systematic review of how Governments in other jurisdictions have sought to tackle this? Given our

[Preet Kaur Gill]

desire to protect the use of vapes as a smoking cessation aid, can she set out how restrictive she thinks regulations on flavours should be? Would she go as far as Canada in banning all fruit flavours, for instance? Given that the powers in the clause may be some of the trickiest to implement, I would be grateful if she could devote time in her response to answering these questions.

Bob Blackman: I rise in support of clause 62, noting the two amendments proposed by a Member not on the Committee that would have removed the power of the Secretary of State to deal with flavours. I consider it vital that the Secretary of State can make regulations about flavours of vaping products and nicotine products. As has been said, this is a much-needed power to help curb youth vaping.

The chief medical officer Sir Chris Whitty spoke very strongly when giving evidence to the Committee. He said:

“We are strongly supportive of Ministers in all four nations having the power to regulate flavours... We know that otherwise the vape industry will use this to essentially drive a coach and horses through the aims of the Bill, which is to make products less attractive to children”.—[*Official Report, Tobacco and Vapes Public Bill Committee*, 1 May 2024; c. 74, Q103.]

Indeed, literally overnight Action on Smoking and Health has published data showing that youth vaping has stabilised. That is the good news. The bad news is that 7.6% of 11 to 17-year-olds regularly vape. That is above the pre-pandemic level of 4.4%, so it has almost doubled since then. Young people are being encouraged to become addicted to vaping and will potentially go on to even more harmful products.

Exposure to marketing is also up. Some 55% of young people are exposed to vaping in shops, where vapes are on full display, and nearly a third are exposed to vaping online, so we need to take action. The measures in the Bill, particularly in this clause, will make starting to vape far less attractive to young people. That is why it is essential that it remains part of the Bill. I hope that as the Bill progresses we can resist further proposals that might seek to remove this measure from the Bill.

Kirsten Oswald: The clause is important. We have had discussions here and listened to experts in numerous sessions, which should give us a real opportunity to pause and consider why the measure is necessary. We know the incredible damage that smoking does to far too many lives and the importance of assisting people to stop smoking. Vaping can certainly be an important and helpful part of smoking cessation—that must be acknowledged.

I find it difficult, though, to imagine that many people successfully stop smoking by using a hot pink disposable pocket-money costing vape in “candy floss unicorn” flavour. That is not what those are for nor what they are aimed at. Action to deal with flavourings, as well as names and descriptions and so on, is essential. We are more than able to deal with smoking cessation and the importance of supporting that at the same time as dealing with the harms of vaping. I would be interested if the Minister could tell us about lessons from elsewhere about how that has successfully been done.

It is important to reiterate the significant numbers of youths who vape: 7.6% of 11 to 17-year-olds currently vape. That is not those who have tried vaping. For those who have tried vaping, the numbers are significantly higher and they are absolutely targeted by marketing. Even those numbers—which, as the mother of teenagers, certainly will give me further grey hair—are partly because of the exposure to marketing. We know that wherever we are and whichever shop we go into, we see attractive displays of vapes, and the flavours are a part of those displays. More than half of young people have felt exposed to that kind of marketing in shops, and nearly a third online. The Minister will not be surprised to hear me remind the Committee that people are also exposed to the advertising when they go to watch their favourite sports teams. That is wholly unacceptable and indefensible.

I support the clause, although I think more could be done, but that will come up in our later conversations.

Mary Kelly Foy (City of Durham) (Lab): I want to speak briefly in support of the clause. I am frustrated that we would need yet more consultation when there is an awful lot of evidence to support prohibiting the tactics, branding and sweet flavourings. Indeed, that was recommended by the Khan review. I am frustrated that I tabled an amendment to this effect in 2021. If it had been passed instead of being voted down by the Government, fewer children would be addicted to nicotine now.

Dame Andrea Leadsom: I share the views expressed here today that we have got to stop the marketing aimed at children in the brutal and cynical way that is happening right now. Hon. Members will appreciate that the limiting of flavours is a tricky thing to achieve. Is it the name of the flavour? Is it the ingredients in the flavour? Is it a combination of the ingredients and the flavours?

Dr Lisa Cameron (East Kilbride, Strathaven and Lesmahagow) (Con): The Minister is making a considered point. The Committee has received research data from ASH that highlights how complex the issue is. Although 50% of child vapers preferred fruit flavours, 47% of adult vapers also preferred fruit flavours. We therefore have to consult on and take these issues forward in a very considered way, because we do not want to undermine the harm reduction from helping adults who are trying to stop smoking.

11 am

Dame Andrea Leadsom: My hon. Friend is exactly right. There is another factor, of course, which is that a lot of these vape flavours are non-toxic for consumption only, as the chief medical officer has pointed out. As he said to me, “If you drink a glass of water, it’s fine, isn’t it? But if you breathe it in, it’s not quite so fine.” That is a slightly silly example, but the point is that a flavour that might be fine if it was in an ice cream could have a very different impact if it was breathed in—we just do not know. It is therefore important that we consult further. As my hon. Friend and others have said, we must ensure we do not remove the ability of adult smokers to use vapes as a quit aid, but we must stop them being marketed to children.

Question put and agreed to.

Clause 62 accordingly ordered to stand part of the Bill.

Clause 63 ordered to stand part of the Bill.

Clause 64

POWER TO INCLUDE PROVISION ABOUT ENFORCEMENT

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

Dame Andrea Leadsom: Clause 64 enables any regulations made under the Bill relating to the packaging, flavours and other requirements of tobacco, vape and nicotine products to include provision about their enforcement. That will enable future regulations to include enforcement provisions similar to the enforcement provisions for current tobacco and vape legislation, which are known to be effective. Those include provisions conferring functions to the relevant enforcement authority—local weights and measures authorities in England, Wales and Scotland, and district councils in Northern Ireland—and provisions for the relevant national authority to take over the enforcement function. The effect of the clause is that future regulations relating to the requirements of tobacco, vape and nicotine products can include provisions about their enforcement and so be successfully implemented and enforced. I commend the clause to the Committee.

Preet Kaur Gill: I thank the Minister for that explanation. Of course, where we create new regulations, we must give powers to the appropriate authorities to enforce them, so we support the clause. I do not want to labour the point, as I have made it previously, but I did not receive all the answers to the questions that I asked, so I will ask them again. How will the £30 million investment in enforcement agencies such as trading standards, His Majesty's Revenue and Customs, and Border Force be split? Is it a one-off investment? If it is, what is the timeframe over which the investment will be delivered? Or will it be an annual uplift to support their work? Can the Minister provide a breakdown of what the investment will be used to fund?

Dame Andrea Leadsom: The funding for enforcement agencies will be increased by £30 million a year, to be used by HMRC, Border Force and trading standards, and the breakdown of the funding will be determined on an ongoing basis.

Question put and agreed to.

Clause 64 accordingly ordered to stand part of the Bill.

Clause 65

POWER TO MAKE PROVISION BINDING THE CROWN

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

Dame Andrea Leadsom: This clause states that when regulations are made under part 4 of the Bill—on tobacco, vaping and nicotine product requirements—the requirements could be applied to the Crown in the same way as the measures in part 1 of the Bill explicitly apply

to the Crown. It is a standard clause that enables any regulations made under part 4 of the Bill to apply to the Crown in the same way as the measures in part 1. I commend the clause to the Committee.

Preet Kaur Gill: As with part 1, we have no objections to raise about this clause.

Question put and agreed to.

Clause 65 accordingly ordered to stand part of the Bill.

Clause 66

POWER TO AMEND OTHER LEGISLATION

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

Dame Andrea Leadsom: I commend the clause to the Committee.

Preet Kaur Gill: I touched on this in relation to my new clause 10, which was grouped under clause 61. Clearly, a gamut of regulations on the statute book stands to be affected by further regulations that will be introduced under the Bill. It is therefore apposite to provide powers to amend or remove them as they are changed or replaced. We therefore agree to the inclusion of this clause.

Question put and agreed to.

Clause 66 accordingly ordered to stand part of the Bill.

Clause 67

CONSENT TO REGULATIONS UNDER PART 4

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

Dame Andrea Leadsom: Clause 67 requires that, before the introduction of any regulations setting product requirements for tobacco, vaping and nicotine products, the Secretary of State must obtain consent from the devolved Administrations if the regulations include provisions that would be within their devolved competence. This is a standard clause that enables the Bill to function effectively. I commend the clause to the Committee.

Preet Kaur Gill: I thank the Minister for that. We of course agree with this clause to ensure that, wherever appropriate, consensus is sought on any regulations made under this part of the Bill.

Question put and agreed to.

Clause 67 accordingly ordered to stand part of the Bill.

Clause 68

CONSEQUENTIAL REPEAL

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

Dame Andrea Leadsom: I commend the clause to the Committee.

Preet Kaur Gill: I do not take for granted the enormous legislative tidying-up that this Bill requires, given that there are pieces of tobacco-control legislation extending back nearly 100 years that are affected by some of the new provisions. If I have not done so already, I would just like to pay a brief tribute to the work of the officials who have done the diligent work of helping to draft the Bill, dotting all the i's and crossing the t's to make it fit for publication.

I am happy for this clause to be included in the Bill, but there is one element of the legislation being replaced that I want to ask about. The Children and Families Act 2014 includes a clear and generous definition of the term “packaging” in relation to a tobacco product, and, as we have seen, the “retail packaging” part of the legislation has been of particular interest to other members of the Committee. I wonder whether the Minister knows why the Bill, as drafted, provides a definition of retail packaging, but not of packaging. The definition under the 2014 Act clearly includes external packaging, internal packaging, any wrapper of that product, or any other material attached to or included with that product.

Do we not lose something by revoking that definition, particularly if we consider the changes that this Committee has been keen to make to clause 58? For example, where clause 58(3) of this Bill refers to

“any other features of packaging”,

the 2014 Act refers specifically to

“any other features of the retail packaging”.

I do not disagree with the change; I only comment on it, and ask whether defining the term “packaging”, as opposed to “retail packaging”, would be useful.

The Chair: We are about to discover whether the Minister is an expert on packaging.

Dame Andrea Leadsom: I would like to take this moment, as the hon. Member for Birmingham, Edgbaston has, to say that this has been an incredible piece of work, at pace, by the Bill team. I would like to add my thanks and my gratitude to them for all of their hard work, and for all of the collaboration with all of the devolved Administrations, which has been superb. This Bill has really come forward at pace.

On the hon. Lady's point about packaging, I can absolutely assure her that packaging will be included in the broadest sense of the word. If she wants me to define “retail packaging” versus “packaging”, I can do so in writing.

Question put and agreed to.

Clause 68 accordingly ordered to stand part of the Bill.

Clause 69

INTERPRETATION OF PART 4

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

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

Dame Andrea Leadsom: Clause 69 sets out definitions to be used within the Bill, such as those to identify certain tobacco products—such as herbal smoking products—retail definitions such as retail packaging,

and vape-related phrasing such as “vape” or “vaporises”. These definitions were previously covered in clause 34 under part 1 of the Bill.

Clause 70 simply provides the definition of nicotine product used throughout part 4 of the Bill. The definition that we use here is intended to capture nicotine delivery devices and products other than vapes and tobacco products. That will enable us to regulate emerging products, such as nicotine pouches, which we know are being used increasingly by young people. We simply cannot replace one generation addicted to nicotine with another; we know how damaging it is once someone is addicted. I commend these clauses to the Committee.

Preet Kaur Gill: I will not go over the same points I raised for the previous clause on the distinction between packaging and retail packaging. As the Minister says, the clauses relate to the definitions in this part of the Bill, so we have no strong quibbles. For clarity, I want to ask why the definition of nicotine product has been drafted in the way that it has. Why does the definition differ from that in clause 35 in part 1? Why have the Government not opted to define nicotine and tobacco products in similar ways, which would encompass both the ingredients and the devices used to consume them?

I note the carve-out of medicinal products and medical devices from the definition of vapes. Could the Minister tell us what, if any, discussions she has had with vape producers about designing a product that could be licensed as a medicinal product and potentially made available on prescription? If she has had no discussions, what does she see as the barriers? Lastly, has she considered whether there is any potential for other nicotine products to serve the same purpose as stop-smoking aides that are appropriate for clinical use?

Dame Andrea Leadsom: The definitions are to provide the broadest and most flexible range of powers to clamp down on all the various illicit and under-age products designed to get children addicted to nicotine as early as possible. The hon. Lady makes an interesting point about getting a licensed vape, and we have had discussions about it. Interestingly, so far no vape company has come forward to propose a prescription-only type of vape, as she suggests. That may happen in the future, and it is something we can perhaps discuss offline.

Question put and agreed to.

Clause 69 accordingly ordered to stand part of the Bill.

Clause 70 ordered to stand part of the Bill.

Clause 71

EXTENSION OF NOTIFICATION REQUIREMENTS ETC

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

The Chair: With this it will be convenient to discuss clauses 72 to 74 stand part.

Dame Andrea Leadsom: Before being able to sell nicotine vapes on the UK consumer market, producers should ensure that their products meet the standards required under the Tobacco and Related Products

Regulations 2016 and notify the Medicines and Healthcare products Regulatory Agency as to the contents and ingredients of their products and submit their contact details. Non-nicotine vapes and other nicotine products are currently only covered by the General Product Safety Regulations 2005, which means there are no requirements to notify for these products in the same way as nicotine vapes.

Clause 71 provides regulation-making powers to introduce notification requirements for non-nicotine vapes and other consumer nicotine products, and a power to introduce fees to cover the cost of administering the new requirement. Notification plays a vital role in the oversight and compliance of vapes to help ensure that products meet regulatory requirements and are safe for consumers. Given that the Bill gives powers to introduce new restrictions on vapes via future regulations, it is necessary to be able to amend the information required by the vape notification system.

New vape regulations will likely make several changes that would impact on the design and make-up of a vape, and it is essential that the notification system can be updated with new information requirements so that it remains effective in the future. That is why clause 72 provides a power to amend the information that must be submitted when a vape or other nicotine product is notified for sale on the UK market. Without that power, the notification system would likely not align with all future restrictions placed on vapes and would therefore become ineffective.

While the notification system is not an enforcement tool, enforcement agencies use the published information to distinguish between products that have been notified for sale on the UK market and those that have not. There is currently no means by which the MHRA can withdraw a notification from the published list—for example, if a required fee is not paid. As such, clause 73 provides a regulation-making power to create exceptions to the requirement to publish notifications—that is, to allow for a notification to be removed, for example, in the event where a required fee has not been paid. The regulations that may be made under powers in part 5 may relate to consumer protection, which is a transferred—that is, devolved—matter in Northern Ireland but remains a reserved matter for Great Britain.

I turn to clause 74, which provides that if regulations relating to the notification system contain provision that would be within the legislative competence of the Northern Ireland Assembly, the Secretary of State for Health and Social Care must obtain the consent of the Executive Office in Northern Ireland. The consent provision maintains and upholds the devolution position in Northern Ireland concerning consumer protection matters with respect to regulations made under part 5. The effect of the clause is to enable the powers in part 5 to be exercised effectively, respecting the devolution settlement with Northern Ireland. I commend these clauses to the Committee.

11.15 am

Mary Glendon: My amendments to clauses 71, 72 and 73 are self-explanatory and I do not wish to detain the Committee on them any longer. The key to them all is that they would require the Government to consult on the new powers they are taking with these regulations.

Preet Kaur Gill: I will make some remarks about each of the clauses in turn. As we have discussed, this Bill finally addresses the issue of non-nicotine vapes, which have not been included in the same regulations and enforcement framework as nicotine vapes. In my view, that has left a significant loophole, undermining action to stop children getting hooked on vapes.

As I have remarked, I think most people would be shocked to learn that it is currently legal to sell vapes to children, even if they do not contain nicotine, given they could so obviously be designed as a gateway to addiction to the real thing. As I have also said, that is doubly concerning when we think about the explosion of illicit vapes ending up on British shelves. We know a considerable proportion of vapes labelled as 0% do in fact contain nicotine, giving me cause for concern that we could have allowed a spate of accidental addictions to these products.

Clause 71 is important because it allows non-nicotine vapes to be included in the notification scheme run by the regulator, the MHRA. The current two-tier system for nicotine and non-nicotine vapes is not currently robust, and that needed to change. Trading standards officers rely on the MHRA's notification publication to identify illicit vaping products on the market. The blanket exclusion of non-nicotine vapes from that publication until now makes it much harder for them to identify products that are legitimate from those that are not—a gap that unscrupulous actors in this space are no doubt aware of and I expect have sought to exploit.

Including non-nicotine vapes in the notification process should allow for a complete database of products, while currently it is difficult to identify which products are legal or illegal, which really undermines enforcement action. I thoroughly welcome these new powers and I hope that the Minister will act quickly to remedy this issue.

What plans does the Minister have to quickly ensure that existing non-nicotine products on the UK market will be brought through the notification process? Has that work started, and if so, what is the timeline for its delivery? Does the MHRA have the resources it needs to manage this? Will those non-nicotine vape producers be required now to fund this work through their notification fees?

As we heard during evidence, the impact of vaping products on the developing bodies of children has the potential to be very harmful indeed. It is vital that we take every step to make sure that our systems of regulation and enforcement are as robust as possible, to stop a new generation of products hooking our children on nicotine and harming their health.

I also want to touch on the issue of other nicotine products. As other members of the Committee have touched on, those in the industry who are hellbent on addicting a new generation to their products—this has been a very profitable business model for them—will probably seek to pivot to other products. Nicotine pouches is one such area. Given the notification process in the Tobacco and Related Products Regulations 2016 was designed for vapes, it would not be appropriate to apply that process word for word to these very different products. Can the Minister say what preparatory work has been done on that issue?

Dame Andrea Leadsom: I beg to move that the clause stand part of the Bill.

The Chair: Do you want to write to the hon. Lady with answers to those questions?

Dame Andrea Leadsom: I am very happy to write to the hon. Lady with further thoughts, but I think we have covered all the points that she raised.

Question put and agreed to.

Clause 71 accordingly ordered to stand part of the Bill.

Clauses 72 to 74 ordered to stand part of the Bill.

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

11.20 am

Adjourned till this day at Two o'clock.