

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT
GENERAL COMMITTEES

Public Bill Committee

TOBACCO AND VAPES BILL

Ninth Sitting

Tuesday 21 January 2025

(Morning)

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CLAUSES 47 TO 64 agreed to.
SCHEDULE 8 agreed to.
CLAUSE 65 agreed to.
SCHEDULE 9 agreed to.
CLAUSES 66 TO 84 agreed to.
SCHEDULE 10 agreed to.
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SCHEDULES 11 TO 13 agreed to.
CLAUSES 86 AND 87 agreed to.
SCHEDULES 14 AND 15 agreed to.
CLAUSE 88 agreed to.
CLAUSE 89 under consideration when the Committee adjourned until 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 25 January 2025

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The Committee consisted of the following Members:

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

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

Public Bill Committee

Tuesday 21 January 2025

(Morning)

[SIR ROGER GALE *in the Chair*]

Tobacco and Vapes Bill

Clause 47

CROWN APPLICATION

9.25 am

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

The Chair: With this it will be convenient to discuss clauses 66 and 134 stand part.

Dr Caroline Johnson (Sleaford and North Hykeham) (Con): Good morning, Sir Roger. It is a pleasure once again to serve under your chairmanship on this important Bill.

Clause 47 is a somewhat standard clause protecting the Crown, providing that the Crown cannot be criminalised by the Bill, but the Bill does bind the Crown, which essentially leads to the position in which the courts can say that if the Crown commits an act or omission against or in breach of part 1 of the Bill, such an action may be unlawful. There was one question that I asked the Minister in relation to the Crown and to which I do not think we got a clear yes or no answer, although that is perhaps not unusual for this Government. The Minister will know that the House, despite its exemption from the smoking ban drafted by the Labour Government in the early 2000s, has a record as being one of the first places to have a no-smoking area. When Parliament—more precisely, the House of Commons—sat in St Stephen's Hall, it was so smoky in there that Members could not see one another properly, so it was decreed that there would be a snuffbox for Members' use at the entrance to the House of Commons.

That snuffbox exists today and is, I believe, used by a small number of Members now. It is occasionally used by a Member who wants to put it on record in their own mind that they have tried it—that does not include me. My question is this. With the Houses of Parliament being a royal palace, will the snuffbox still be allowed? I know that the Doorkeepers are interested to know whether they will be able to keep the snuffbox at the door, because the top of the box has on it a brass plaque that is engraved with the name of the current head Doorkeeper. It would be interesting to know whether the tradition can continue.

My other question on clause 47 is this. I presume that it covers England, Wales and Northern Ireland because there is not separate provision for Northern Ireland. I would be grateful if the Minister indicated whether that is the case.

Clause 66, entitled "Crown application of 2010 Act", says:

"In section 36 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (asp 3)...in subsection (3), after "on the application" insert "of the Scottish Ministers or".

I had a little look at the Act to which clause 66 refers, and section 36(1) of the Primary Medical Services (Scotland) Act says: "This Part"—part 1— "binds the Crown." Section 36(2) makes the Crown not criminally liable if it does breach, which is similar to clause 47. Section 36(3), with this insertion, will provide that "the Court of Session may, on the application of the Scottish Ministers or of the council in whose area the contravention is alleged to have taken place, declare unlawful any act or omission of the Crown which constitutes such a contravention." For reference, the Court of Session is Scotland's supreme court, which I am sure you know, Sir Roger. It has been Scotland's supreme civil court since 1532 and sits in Parliament House in Edinburgh. Section 36(4) makes it clear that although the Crown itself is not exempt but cannot be criminally liable, public servants of the Crown can be, and are, covered by the relevant provision

"as it applies to other persons."

Subsections (1) and (2) of clause 134 are similar to those in clause 47, in that subsection (1) binds the Crown and (2) makes the Crown not criminally liable. Subsection (5) is also the same, stating that subsection (2) will not affect the liability of persons in service of the Crown, so they remain criminally liable. However, clause 134(3) and (4) are slightly different from the measures in clause 47, in that they have a somewhat broader scope.

Subsection (3) provides that the High Court in England and Wales or Northern Ireland, or the Court of Session in Scotland, can declare the act or omission unlawful, so this is a UK-wide clause, unlike clause 47. Subsection (4) makes it clear that the Court of Session in Scotland can be applied to by either Scottish Ministers, in keeping with clause 66, or a local weights and measures authority. What clause 134 does not do, as far as I can see, is explain who can make such an application in England, Wales and Northern Ireland, so I would be grateful if the Minister answered that question in relation to these measures.

Sarah Bool (South Northamptonshire) (Con): It is a pleasure to serve under your chairmanship, Sir Roger. I was interested by a point that my hon. Friend raised, particularly about the snuffbox inside the House of Commons itself. I think the Minister previously made the point that although the rules technically do not apply because this is a royal palace, we do apply them by convention—so there is now no smoking in the Smoking Room. However, it raises an interesting point in terms of enforcement, if they were to ban snuff in the future, about whether the Doorkeepers would be expected to be doing their ID checks as Members go through in many years' time. I was just intrigued about the point about how we are going to apply it here. It is obviously easier with the ban on smoking at the moment—you do or you do not—but it will be interesting to see how we apply it to the to the Doorkeepers going forward.

Dr Johnson: My hon. Friend makes a very interesting point about how the snuff is given out. At the moment, the snuffbox sits with the Doorkeepers near the No Lobby entrance, and it is available to Members. Obviously—or perhaps not obviously—there is no charge to Members. In fact, my understanding from the Doorkeeper who had the snuffbox last week is that the stuff that they

have currently was provided by the BBC—[*Interruption.*] I can see that is a surprise; it was a surprise to me too, but that is where I was told it came from.

It brings into question the earlier clauses that relate to sale, because clearly the Crown may purchase it—I suppose the BBC is funded by taxpayers—and it is in a royal palace, which is a Crown site rather than a retail site, and it is not being sold to Members. I wonder whether the Minister has had time to consider that.

Jack Rankin (Windsor) (Con): May I put a question? Perhaps the shadow Minister knows, but who is paying for the snuff ordinarily? Is it the Doorkeepers, out of their own pockets, or is there some kind of taxpayer kitty? I do not think the latter really should apply.

Dr Johnson: That is a really interesting question. My understanding, as I said, is that the most recent supply was provided by the BBC—I do not know how recently, by the way. I agree that the taxpayer should not be funding the supply of snuff for Members. To me, that is an undesirable thing to do, but clearly it would not be appropriate for the cost to come out of the Doorkeepers' pockets. Perhaps there is a Members' fund of some sort for Members who like to participate in such a habit and would wish to ensure that the supply is provided.

I am also not sure about quite how expensive this stuff is. Having never bought it or used it, I have literally no concept of whether this is an expensive item to buy a box of. However, my understanding, from the Doorkeepers, is that not terribly much of it is used, so it stays there for quite a long time. There are a few Members who use it regularly, and, like I said, many Members who use it just the once, almost to check that it is still there. As much as anything else, it is a tradition of the House and I would be interested to know whether that tradition will be able to continue under these clauses.

Gregory Stafford (Farnham and Bordon) (Con): It is a pleasure to serve under your chairmanship, Sir Roger. Clause 47 asserts that part 1 of the Bill and any regulations made under it bind the Crown, but makes it clear that the Crown is not criminally liable under those provisions, as my hon. Friend the Member for Sleaford and North Hykeham said. Instead, acts or omissions by the Crown can be declared unlawful by the High Court. The key Government implication for this clause is ensuring accountability. By binding the Crown, clause 47 ensures that the Government are not exempt from adhering to the same standards and regulations that they set for others, which is entirely appropriate and demonstrates a good commitment to transparency and fairness.

There is also a symbolic commitment by the Crown to public health. Including the Crown in these provisions sends a strong signal. The Government recognise the urgency of tackling public health issues and the issues associated with tobacco and vaping, and the Opposition support that wholeheartedly. When we legislate in this House, we need to ensure that the public feel that we are legislating not only for them, but for ourselves as well. Given that the Bill now applies to us, this clause strengthens public confidence in its objectives.

On the role of judicial oversight, clause 47 enables the High Court to declare acts or omissions unlawful, which ensures that there is a mechanism for oversight. That

preserves the rule of law and offers a balance of powers. However, there are some potential challenges to this clause. While the Crown is bound by the legislation, clause 47 explicitly exempts it from criminal liability, as far as I understand. Some may argue that that creates an imbalance, as individuals and private entities remain subject to prosecution whereas this House does not have criminal liability. Can the Minister clarify whether that is the case?

On practical enforcement, applying the legislation to the Crown could raise questions about how enforcement agencies would address non-compliance in Crown-operated facilities, such as this House, Government offices, military bases, and so on. Can the Minister let us know how law enforcement agencies, trading standards and the police would enforce the Bill on Crown properties? Granting the High Court jurisdiction to declare Crown acts unlawful could increase its workload. What discussions has the Minister had with the Lord Chancellor and the Ministry of Justice on overburdening the courts with such matters?

Clause 66 amends the Crown application of the Tobacco and Primary Medical Services (Scotland) Act 2010, ensuring that its provisions extend to Crown entities within Scotland. That amendment reinforces the principle of equal application of public health laws. The key implications of this clause are to do with consistency across the jurisdictions, as we have talked about on other clauses. Extending the application of the 2010 Act to the Crown entities ensures that public health measures are uniformly applied across Scotland, irrespective of whether the premises are privately owned or Crown-owned.

The clause also enhances legal cohesion. Aligning the legal obligations of the Crown with those of private entities enhances the coherence of Scotland's public health framework, reducing the ambiguities that might arise were this clause not in the Bill. The clause also promotes accountability. By amending the 2010 Act, it eliminates any loophole that might allow Crown entities to operate outside the scope of the tobacco control measures. However, there are some challenges around what I would describe as intergovernmental co-ordination—that is to say, co-ordination between the Westminster Parliament and the offices and authorities that act for it, and the devolved Administrations.

Implementing these provisions will require significant co-ordination between the Department of Health and Social Care in the UK and the relevant Ministries and Departments in the devolved Administrations. I was heartened by what the Minister said about cross-devolved-Administration working. It would be good to know whether that continues to be the case on these provisions. As we all know, working across England, Wales, Scotland and Northern Ireland, with their various different bodies, does create challenging and resource-intensive actions, due to the fact that they all operate slightly differently and have slightly different thresholds for legal prosecution. As my hon. Friend the Member for Sleaford and North Hykeham has said, when it comes to charging, there are different levels of fine and sentencing in the different administrations. While health is a devolved matter, this clause's intersection with those reserved powers could prompt debate about the limits of legislative competence between those authorities.

[Gregory Stafford]

Clause 134 is the Crown application of advertising and sponsorship restrictions and extends advertising and sponsorship restrictions under the Bill to Crown bodies.

Dr Johnson: My hon. Friend makes the point, which I had not raised earlier, that clause 134 applies to part 6, on advertising and sponsorship. Clauses 4 to 7 and 66 essentially apply to part 1. We do not appear at this time to be discussing the other parts as well, so presumably the Crown is bound in a similar way by each of those.

Gregory Stafford: I make the same assumption as my hon. Friend, given what I have read of the Bill. It would be useful if the Minister clarified that matter. It would be appropriate to ensure that this does cut across all other parts of the Bill.

Clause 134 is critical in ensuring that the Crown entities adhere to the same advertising standards as private organisations. We need to have fair competition. It would be a nonsense to say that people could not advertise vapes from a commercial point of view, but that the Crown would be able to advertise. I cannot imagine what that might look like—I doubt Windsor Castle will be emblazoned with a banner advertising vapes, or that Buckingham Palace will fly a tobacco flag, but one never knows. However, it is important that this clause does cover the Crown as well to ensure that there is a level playing field, and to prevent the Crown entities from gaining an unfair advantage through less stringent regulations.

Dr Johnson: In a previous sitting I raised that in the last couple of years there have been events within Parliament at which free vapes were given out to Members and staff. Would this clause, given that it applies to the Crown, extend to all palaces? Could such events also still continue?

Gregory Stafford: My reading of this clause is that those events will be restricted under this clause and clauses 66 and 47. It would be useful if the Minister clarified whether or not that is the case. If it is not, would he consider inserting a provision to ensure that it is, either later in our discussions in Committee or on Report? I do not think the public will have any time for us in this place if we regulate those outside but do not hold the Crown Estate and Crown authorities to the same standards.

The unified public health messaging in this clause is helpful. Extending the restrictions to Crown bodies strengthens the overall impact of the Bill, ensuring that the advertising provisions are consistent with the public health messaging that we are putting out across the country. It prevents mixed signals. Allowing the Crown bodies to advertise tobacco or vaping products would undermine the Bill's whole objective. Clause 134 ensures that the Government's stance and the stance of all Members of the House of Commons present here is not contradicted by its own entities, such as the Crown Estate.

Dr Johnson: Is it not also the case that the Crown is extremely unlikely to wish to sell tobacco products, vaping products, herbal smoking products or indeed anything else covered by the Bill, or to advertise them,

since members of the royal family attribute such importance to public health and have, sadly, suffered from ill health themselves in recent times? They have done a lot of work with various charities in relation to health, including on cancer and other conditions, so it seems unlikely that these provisions would be required.

9.45 am

Gregory Stafford: I absolutely agree with my hon. Friend, although it depends what we mean by the Crown; it can have two meanings. Clearly, it can mean His Majesty the King and members of the royal family, and I entirely agree that the work the royal family have done for many years to support charities and organisations that look after the health of the nation is extraordinary and commendable. In that context, I entirely agree that it is unlikely that any members of the royal family would want to promote tobacco or vape products. However, the other meaning of the Crown is, essentially, the Crown as it sits with entities: the buildings, this place—the Palace of Westminster—and so on. As I said, even though it is highly unlikely that the House of Commons authorities, for example, would want to have some sort of promotion of tobacco or vapes, it is incumbent on us to ensure that whatever we do to the public out there is mirrored in this place, to ensure consistency of public health messaging and to show that we are not being held to a different standard from the general public.

In clause 134 there are still a couple of potential challenges, which I hope the Minister will respond to. The first is oversight and compliance. Monitoring compliance within Crown entities could be complex. It is relatively easy to see if someone is selling vapes to children: people can be sent in to do mystery shopping, there can be reporting and the Minister—I have not yet said “bongs” in this debate—can see bongs in a shop window. However, how would these provisions be enforced in the Crown Estate, where there is not the same level of public access?

Jack Rankin: Is my hon. Friend also concerned that there might be a power imbalance in that set of circumstances? Windsor castle is in my constituency, and lots of deference is given to it. A lot of that is understandable, but I cannot imagine someone from the royal borough of Windsor and Maidenhead trying to enforce on Windsor castle; it would not be in their culture to do so.

Gregory Stafford: I agree entirely with my hon. Friend. He has two Windsor castles in his constituency: the big one where the royal family lives and a Lego model of it at Legoland. The enforcement of this clause should apply equally to Legoland and the real Windsor castle. But I agree that there is a power imbalance: it is unlikely that trading standards enforcement officers from the royal borough of Windsor and Maidenhead will go into Windsor castle.

Dr Beccy Cooper (Worthing West) (Lab): What does the hon. Member think happens currently? On various issues, there is obviously enforcement across the board, including tobacco control, and the Crown Estate has to comply. How would this extension of that enforcement differ from what happens now at Windsor or any other Crown Estate?

Gregory Stafford: I very much hope there is no difference, and that is precisely my point: we need consistent enforcement across the piece—across the country—in line with the restrictions we already have on the sale and advertising of other items. That does not take away from the point that doing that will be a very complex procedure. As we are moving towards a tobacco-free generation, it would be helpful if the Minister could let us know how that enforcement will be done across Crown entities and the Crown Estate.

The second point is around the legal ambiguities. Applying advertising restrictions to Crown entities might create legal ambiguities, particularly where such entities operate under multiple regulatory frameworks, which goes back to the point made by my hon. Friend the Member for Windsor about who might be enforcing them and where.

The final point is about resource allocation. Ensuring compliance with advertising restrictions may require additional resources both within Crown entities and among enforcement agencies. To be frank, I do not know how current licensing laws are enforced here in the Houses of Parliament, for example, but if we bring in this Bill, which I very much hope we do, there may be some resource allocation within the Crown for that.

The inclusion of clauses 47, 66 and 134 in the Bill underscores its commitment to governance and legal fairness. However, as I said, their successful implementation hinges on addressing several broader considerations. First, there is what I call enhanced intergovernmental and interparliamentary collaboration. Effective implementation of these clauses will require close collaboration between UK-wide and devolved authorities. Establishing clear channels of communication and joint enforcement mechanisms will be crucial.

The second consideration is transparent compliance frameworks. The Government should develop transparent frameworks in order to monitor and enforce compliance within Crown entities. Those frameworks should include clear guidelines, reporting requirements and accountability measures. I do not expect there to be a vast burden on the judiciary but, as I mentioned, we may need to address any potential increases in judicial workload. Additional resources should be allocated to the High Court and other relevant judicial bodies to ensure that cases related to Crown compliance are handled efficiently and quickly.

Finally, there needs to be a public awareness campaign. Raising awareness about the application of the clauses can help to foster public support for the Bill by demonstrating to the public that we in the Houses of Parliament and across the Crown Estate are being held to the same standards.

Dr Johnson: My hon. Friend is making several good points. It is important that the law is applied equally to all. He may remember that when previous legislation was brought in around tobacco advertising, an exemption was made for Formula 1. It was not clear why such an exemption was made, but I believe that a substantial donation had been received around that time by the Labour party—I am sure the Minister will correct me if I am wrong. That was harmful at the time to trust in equality, so it is important that everyone—from His Majesty the King to every one of his subjects—has the same law applied to them.

Gregory Stafford: I do not know the answer to that question, but it is an important one to raise. I am not particularly a Formula 1 fan, but I think that my hon. Friend the Member for South Northamptonshire is the chair of the all-party parliamentary group on Formula 1 and Motorsport, so maybe she will be able to intervene at some point and give me the answer.

Clauses 47, 66 and 134 represent critical components of the Bill's governance framework. By applying the Bill's provisions to the Crown, they reinforce the principles of accountability, fairness and consistency. However, their successful implementation will require careful planning, adequate resources and ongoing evaluation. As legislators, it is our responsibility to ensure that the laws we pass uphold the highest standards of governance, and I urge colleagues on both sides of the Committee to support these clauses and to advocate for the measures necessary to address their potential challenges. Together, we can ensure that the Bill not only advances public health, but sets a benchmark for legal and governmental accountability.

Jack Rankin: Government Members will be delighted to know that I do not have quite as much content as my hon. Friend the Member for Farnham and Bordon. However, I will make two points, and I seek some clarification on the second point.

As a new legislator and a non-lawyer—I know that there is an overwhelming majority of new Members in the room—my question is around the Crown. To me, the Crown seems quite a nebulous concept. We often take it to mean the state, but the shadow Minister, my hon. Friend the Member for Sleaford and North Hykeham, talked about clause 47 relating to the Crown very much in the context of this place. I do not think this is a new message to any politician, new or old, but our constituents seem to believe that different rules apply to us, in public life, than apply to them.

Dr Johnson: Further to what I said to my hon. Friend the Member for Farnham and Bordon, my understanding is that in 1997, Bernie Ecclestone, the Formula 1 chief at the time, donated £1 million to the Labour party. The donation became public knowledge in November that year, after the Labour Government had announced that Formula 1 would be exempt from the ban on tobacco advertising, which had been a key plank of the Labour party's election manifesto. That exemplifies the importance of ensuring that donations do not affect policy and that we are all treated equally under the law.

The Chair: Order. We are starting to go a little wide of the subject under discussion.

Jack Rankin: I thank my hon. Friend for that point. The point I was trying to make is that although, as Members have heard, I do not necessarily agree with all the impositions on civil liberties in the Bill, any that we choose to apply must apply equally to ourselves. To reiterate my hon. Friend's point, they also have to apply to our friends and anybody else associated with us. All of us in this House have a responsibility to rebuild the relationship and the trust between ourselves and the public.

Tristan Osborne (Chatham and Aylesford) (Lab): The Crown Proceedings Act 1947 specifically talks about Crown liability in this regard. It states that the Crown

[Tristan Osborne]

can have application only if it is applied to private individuals as well, so this entire conversation has already been covered in previous legislation.

Jack Rankin: I thank the hon. Member for providing that clarity. That is good to hear, but it is important to put on the record that we in this House should apply the same rules to ourselves as we apply to our constituents.

Again, as a non-lawyer, I ask the Minister for some clarification on the implications of the non-criminal liability of the Crown in clause 47(2) and how that sits alongside the reference to

“persons in the service of the Crown”

in subsection (4). What I am seeking is consistency between what applies in the real world and what applies to the Crown. Perhaps the Minister could say what that provision means in laymen’s terms, so that I can say to my constituents that what we are applying to them also applies to us.

I want to add to the point made by my hon. Friend the Member for Farnham and Bordon. If you will forgive me, Sir Roger, I will be a bit parochial to illustrate the point. I said earlier that the Crown is quite a nebulous concept for a legislator, and where it begins and ends is difficult to understand. It is often taken to mean the state more broadly, but I have another example, from my constituency. Windsor Great Park is Crown Estate—the arm’s length Government body that the House has been legislating on in the past weeks—but the castle itself is owned and managed by the royal household. In my casework and when dealing with stakeholders, I often find that different rules apply to the Crown Estate and the royal household. The royal household seems to have much more personal control from the monarch, whereas the Crown Estate is very much run by the trustees, effectively on behalf of the Treasury.

It would be good to understand what we mean when we talk about the Crown. It is clear from my hon. Friend the shadow Minister’s remarks that we are talking about the palaces, but it would be good to know whether the clause applies to all these different arms of the British state in some way, shape or form, or whether other provisions apply to them.

The Parliamentary Under-Secretary of State for Health and Social Care (Andrew Gwynne): It is a pleasure to serve under your chairmanship, Sir Roger. I am grateful to hon. Members for their questions on these clauses, which are entirely technical and appertain to the treatment of the Crown in relation to the measures in the Bill. They follow a general Crown application, being broadly similar to, and mirroring pretty closely, the way other Acts of Parliament deal with the Crown. I am not sure whether the fact we have spent more than half an hour debating them shows Parliament at its best or at its niggliest, but we are having the debate none the less.

Gregory Stafford: I take the Minister’s point that the clauses are technical, but if we are not here to ensure that legislation is drafted correctly and appropriately, what are we here for?

Andrew Gwynne: We are here to ensure that the Bill gets on the statute book. I was under the impression—perhaps the misapprehension—that at least the two Opposition Front Benchers, the hon. Members for Farnham and Bordon and for Sleaford and North Hykeham, were supportive of the measures in the Bill. If so, we seem to have spent an extraordinary amount of time discussing matters that do not really affect the Bill, except in relation to the Crown.

10 am

Dr Johnson: Will the Minister give way?

Andrew Gwynne: Perhaps the hon. Lady will let me finish. The measures are standard practice for any Bill, but Members have put some questions to me, so I will reassure them about some of the issues they have raised. But before doing so, I will give way to the shadow Minister, who has had plenty of time to talk about this matter.

Dr Johnson: I thank the Minister for giving way. I want to echo the point made by my hon. Friend the Member for Farnham and Bordon that the purpose of line-by-line scrutiny is to do just that: to go through the Bill line by line. The Minister’s job might be to get things on the statute book for his Prime Minister and Cabinet and for the Government in which he serves, but surely he wishes to ensure that the Bill he is leading on is in the best possible condition. That is the purpose of the line-by-line scrutiny that we are in Committee to do.

Andrew Gwynne: I absolutely do with that. The point I am making is that we have just over another week to deal with these matters. If we get to the end of next week not having considered important chunks of the Bill because we have wasted time on silly little matters that appertain not only to the whole of this legislation, but to other legislation as well, and on fairly standard clauses relating to how legislation deals with the Crown, that will be on His Majesty’s loyal Opposition.

I will make progress and answer the points that were made. Why are clauses 47 and 137 necessary parts of the Bill? The presumption is that legislation does not apply to the Crown unless expressly stated as doing so. The clauses clarify that provisions in parts 1 and 6 of the Bill, and in the regulations made under them, bind the Crown. They ensure that all bodies and persons acting as public servants of the Crown are held to the same standards as businesses and private citizens in England and Wales. They ensure consistent application of the Bill across the public and private sectors.

Does the Bill bind Parliament? Yes, it does. Parliament was consulted and was content with clause 159, in particular, being included. We have already had the debate about snuff, and it will be up to the House authorities to determine the rules of the House. There is absolutely nothing to prevent there being a box at the entrance to the Chamber with the latest chief Doorkeeper’s name engraved on it—that tradition can remain for evermore—just as we have a Smoking Room, which we can no longer smoke in but which is still called the Smoking Room. That is tradition. I really do not know why Members are overthinking these matters.

Members asked why there are differences between Crown applications in the devolved Administrations. As we have already discussed, the Bill brings together legislation from across the four nations. I believe it is a triumph, because it shows the close working relationship between the Labour Government and the devolved Administrations, irrespective of the parties in power in Cardiff Bay, Holyrood and Belfast. Because health is a devolved matter, and because the Bill builds on legislation dating back nearly 100 years in some cases, there are some differences in the provisions for each nation.

Members asked why only some parts of the Bill apply to the Crown. The fact is that clauses 47 and 134 explicitly provide that parts 1 and 6, and any regulations made under them, apply to the Crown. Other measures in the Bill also apply to the Crown without the Bill's explicitly stating so because those provisions amend existing legislation, and the Crown application reflects whether the underlying legislation applies to the Crown.

There is an established precedent that smoke-free places legislation does not apply to the Crown in England and Wales, and that it is the responsibility of the Department responsible for running the relevant part of the Crown Estate to determine what is appropriate. That is precisely what the House of Commons did when it determined that the smoking ban would apply to the royal Palace of Westminster. The same is true of all the measures in the Bill.

Members asked which parts of the Bill will apply to the Crown. Part 1 and regulations made under it apply to the Crown by virtue of clause 47.

The hon. Member for Sleaford and North Hykeham asked about Northern Ireland. Part 3 amends existing legislation in Northern Ireland, and it does not apply to the Crown. That is an existing precedent, which the Department of Health in Northern Ireland wishes to retain. Part 2 amends the existing legislation in Scotland and part 1 amends the legislation in England and Wales. That is why there is a different approach to different parts of the United Kingdom in respect of the Crown.

Members asked why we need clause 66, the technical clause relating to the Scottish Government. It is because it corrects an omission in the Tobacco and Primary Medical Services (Scotland) Act 2010, and it is being made at the request of the Scottish Government. It is a convention that in an Act of the Scottish Parliament those responsible for the enforcement of the legislation are explicitly identified as being able to make an application to the Court of Session for the purposes outlined in the clause. Scottish Ministers may take over enforcement under the 2010 Act, so it is appropriate that they are listed alongside local authorities, which is what clause 66 achieves. The clause inserts a provision into the 2010 Act, which is Scottish law. There are no impacts on the law in England, Wales or Northern Ireland. The clause is narrow and relates only to provisions in part 1 of the 2010 Act.

Members asked about overburdening the court. We are working the Ministry of Justice to ensure that the Bill does not introduce a significant burden. This is about regulatory change—and, look, most citizens are law abiding and will follow the law.

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

The Committee divided: Ayes 16, Noes 1.

Division No. 6]

AYES

Ahmed, Dr Zubir	Gwynne, Andrew
Al-Hassan, Sadik	Jarvis, Liz
Barros-Curtis, Mr Alex	Johnson, Dr Caroline
Bool, Sarah	Osborne, Tristan
Chambers, Dr Danny	Owatemi, Taiwo
Cooper, Dr Beccy	Stafford, Gregory
Dickson, Jim	Stainbank, Euan
Foy, Mary Kelly	Whitby, John

NOES

Rankin, Jack

Question accordingly agreed to.

Clause 47 ordered to stand part of the Bill.

The Chair: Notwithstanding that Division, which I chose to call, I should make it plain that I shall from now on be inclined to take decisions on the basis of the voices, which were pretty clear.

Clause 48

INTERPRETATION OF PART 1

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

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

Clauses 49, 60, 63 and 64 stand part.

Schedule 8.

Clauses 83, 112, 113, 132 and 135 stand part.

Dr Johnson: This is quite a chunky group of clauses. Clause 48 provides a series of definitions that are to be used to interpret part 1. That is important; if the law is to be enforced, we must understand what the law means by each phrase it uses. The phrase “cigarette papers” is self-explanatory. It means anything that is

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

We talked about cigarette papers previously. Likewise, “herbal smoking product”

“means a product consisting wholly or partly of vegetable matter and intended to be smoked but not containing tobacco”.

That is fairly straightforward.

The phrase “medical device” is important, and I will explain why in a moment. The clause refers to the Medical Devices Regulations 2002 (S.I. 2002/618), which state that a medical device is

“any instrument, apparatus, appliance, material or other article, whether used alone or in combination, together with any...software...necessary for its proper application, which—

(a) is intended by the manufacturer to be used for human beings for the purpose of—

- (i) diagnosis, prevention, monitoring, treatment or alleviation of disease,
- (ii) diagnosis, monitoring, treatment, alleviation of or compensation for an injury or handicap,
- (iii) investigation, replacement or modification of the anatomy or of a physiological process, or

(iv) control of conception; and

(b) does not achieve its principal intended action in or on the human body by pharmacological, immunological or metabolic means, even if it is assisted in its function by such means, and includes devices intended to administer a medicinal product”—this is part of why it is relevant—

“or which incorporate as an integral part a substance which, if used separately, would be a medicinal product and which is liable to act upon the body with action ancillary to that of the device.”

That is relevant to clause 10 onwards, on nicotine products.

In evidence on 7 January, Dr Laura Squire, from the Medicines and Healthcare products Regulatory Agency, told the Committee that one vape product received an MHRA medicines licence in 2015, but was never marketed. Theoretically, others could be marketed in the future. They would be exempt under the definition provided in clause 48, which I have just explained.

10.15 am

The next definition, which is also relevant, is “medicinal product”. That is defined as having the meaning given by the Human Medicines Regulations 2012 (S.I. 2012/1916). Regulation 2(1) defines a medicinal product as

“(a) any substance or combination of substances presented as having properties of preventing or treating disease in human beings; or

(b) any substance or combination of substances that may be used by or administered to human beings with a view to—

(i) restoring, correcting or modifying a physiological function by exerting a pharmacological, immunological or metabolic action, or

(ii) making a medical diagnosis.”

Paragraph (2) excludes most blood products.

The reason that is relevant to clauses 48 and 49 is that medical devices and medicinal products are not considered nicotine products for the purposes of clause 49, so, presumably, the age of sale, licensing and display rules do not apply to them. On the one hand, that is a positive step, because it makes nicotine replacement therapy more available to smokers who wish to quit. The Government have stated the importance they place on helping people to quit, but have they created a loophole? At present, we see vapes along the high street in sweet shops, phone shops, barbers—anywhere and everywhere, it seems. This drug is very addictive and the industry is very imaginative. There is a balance to be struck between the desire to make nicotine replacement more available to smokers and the need to avoid creating a loophole.

If we were to make nicotine replacement therapy a prescription-only medicine as a way of making it very unlikely to be sold by the average barber shop, phone shop or sweet shop, we would reduce its availability to people who want to quit, because they would need to find their doctor or another prescriber to get a prescription. That would reduce their likelihood of quitting, and we do not want to do that. I ask the Minister to consider whether medicinal flavoured nicotine gum will become popular with teens. It may be better than vaping, but, as we have heard from various pieces of medical evidence presented to this Committee and the previous Committee, nicotine is harmful in itself. What are the Minister's thoughts on ensuring that we get the balance right between making nicotine replacements available, and

not allowing flavoured or other forms of medicinal products to become the latest cool trend among children to get them addicted?

Under clause 49(2), a vaping product is not a nicotine product, and vaping products are identified separately from medical devices and medicinal products. The vaping device and the vaping substance are included in the definition of “vaping product”. In the event that a company were able to produce a medical grade vaping device, would the restrictions in part 1 apply? They would not apply to the device, because clause 48 exempts medical devices and medicinal products from its definition of “vape”, nor would they apply to the nicotine, as clause 49 exempts medicinal products from its definition of “nicotine product”. However, from my reading, the device would still be caught by the definition of “vaping substance” in clause 48, because, either at initial sale or at refill, the vape or refill would have to contain a liquid defined as a vaping substance. Therefore, as I read it, part 1 would apply to a medical vape, so age of sale and display rules would apply. Can the Minister confirm that?

This is important because while other nicotine products that are medicinally available may be recommended for young people who have started smoking and wish to quit, I believe the medical advice from the chief medical officer was clear that if children have started smoking, they should be encouraged to quit, and they can use other nicotine replacement products medicinally available to do so, but they should not use vapes. Therefore, ensuring that even a medically produced vape is not available to children would seem sensible.

The next definitions—“premises” and “retail packaging”—seem fairly straightforward. The term “sell” is defined as “sell by retail”. That is important, because if the rolling age of sale keeps going up until we have a situation whereby someone can buy cigarettes if they are 40 but not if they are 39, there will be businesspeople who are younger than that selling these products. There is no restriction on that. It is important that those dealing with the wholesale of these products and the shopkeepers themselves are not prevented from having businesses dealing in them where they are lawfully sold.

The definitions of “tobacco retailer”—meaning

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

and “UK driving licence” seem fairly straightforward, but could the Minister expand on whether “UK driving licence” refers only to full UK driving licences, or to provisional licences and those provided for medical reasons too?

Clause 63 modifies section 35 of the Tobacco and Primary Medical Services (Scotland) Act 2010 to replace the definition of “tobacco product”. The 2010 Act refers to tobacco that will be used by smoking, sniffing, sucking or chewing, and clause 63 adds

“or consumed in any other way”

to keep the provision in line with the definition in England and Wales. I suppose that will add bongs, which the Minister is not so fond of, heated tobacco and other forms of inhaled tobacco—and presumably snus, although there is provision for that elsewhere. Perhaps he could clarify that.

Clause 64 introduces schedule 8. For the most part, the purpose of schedule 8 is to modify the 2010 Act. It replaces in various places the phrase “nicotine vapour”

with “vaping”, which is fairly uncontroversial, and provides a definition of “vaping product”. Paragraph 20 of schedule 8 provides that references in other legislation to a “nicotine vapour product”, which is currently defined in section 35A of the 2010 Act, are to be read as meaning a “vaping product”. That seems fairly straightforward too.

Clause 83 substitutes article 7 of the Health and Personal Social Services (Northern Ireland) Order 1978 with proposed new articles 7 and 7A, which replicate clauses 48 and 49 of this Bill. Clause 112 provides definitions for part 5. New definitions include “importer”, which is a person who imports a nicotine product into the UK in the course of business. This definition applies to part 5 on product and information requirements, which we have not come to yet. Clause 113 provides a definition of “nicotine product” to explain part 5, and clause 135 does the same for other definitions in part 6. Clause 132 expands the definition of “tobacco product” in section 1 of the Tobacco Advertising and Promotion Act 2002 to include those consumed in any other way, so that it is not just confined to those that are smoked, sniffed, chewed or sucked, but includes the other groups that we have talked about.

Andrew Gwynne: I thank the shadow Minister for the points she has raised. Definitions are needed to ensure that the legislation can be interpreted with an appropriate understanding of the technical terms, and we have opted to take a co-ordinated approach to definitions across the four nations, which will hopefully ensure clarity for the public, retailers and enforcers.

As we know, nicotine is a highly addictive drug, particularly for adolescents whose brains are still developing. As mentioned in the Bill, a nicotine product means any device, part of a device, or substance containing nicotine that is intended to deliver nicotine to the human body. There are currently no age of sale or advertising restrictions for products such as nicotine pouches—and, unlike vapes, there are no set nicotine limits. Nicotine strengths can vary from 2 mg per pouch to, in some cases, 150 mg or more. Like vapes, they can come in a variety of flavours and colourful packaging designed to appeal to children. The use of nicotine products such as nicotine pouches is increasing, particularly among young men. As we are committed to doing everything we can to protect children from becoming addicted to nicotine, it is only right to take action to control these products.

Dr Johnson: On the point about nicotine pouches, it is of concern that they may be the next way in which this industry seeks to make our young people addicted to nicotine. We have seen in places such as Sweden a plethora of these products, which are now expanding across the UK as well. I know the Minister will be looking at some proposals to restrict the amount of nicotine in the pouches. When he does so, will he consider not just how much nicotine is in them compared with a cigarette, but how much is absorbed into the body? The amount in a cigarette that is absorbed as a proportion is much lower than that of a nicotine pouch.

Andrew Gwynne: Those are important considerations for when we are developing the regulations, and I take precisely the same view as the shadow Minister. These things have to be part of that overall analysis and equation when we come to look carefully at the regulations.

The shadow Minister asked a number of questions. First, she asked whether a provisional driving licence would be applicable, and the simple answer is that it would. She also asked whether there is a loophole here with medicinal products, and whether children could be restricted from purchasing vaping substances for a future vape that may have medicinal approvals. Of course, it is important to point out to the Committee that to date no such vape exists. As per all licensed medicines, if one existed, it would be regulated by medicine regulations, which are subject to higher standards set by the MHRA.

The health advice is that nicotine replacement treatment, for example, is most effective when provided alongside expert advice. That is really important, and that is why we are putting money into smoking cessation services and why measures in the Bill will permit the distribution of free vapes by the NHS and public health authorities; we think that is entirely appropriate.

There is no age of sale restriction for nicotine replacement therapies. In extreme circumstances, for example, were there a MHRA-approved vaping device that met the criteria of a medical device, I suppose the vaping liquid could be prescribed to a child if that were appropriate. That is all hypothetical because there is not such a device approved by the MHRA; therefore, there is not the loophole the hon. Member for Sleaford and North Hykeham thinks there might be, although she is right to raise it.

10.30 am

Dr Johnson: To clarify the point about there being no device available, that had been my understanding as well, but Dr Laura Squire from the MHRA said in evidence to the Committee that in 2015 a vape had been approved for medical use, but had never been marketed. Has the licence for that product lapsed in some way so that it is no longer available?

Andrew Gwynne: I do not know, but I will ensure the Committee is informed by officials. My point is that it is not marketed. Therefore, there is no medical device on the UK market, and all that is currently hypothetical. We have to legislate for the future, which is why I said that nicotine replacement therapy is the most appropriate form of treatment for children. Were there a device at some stage in the future that was available for the NHS to use in a medical context—as opposed to swap to stop—then it would be appropriate for a doctor to be able to prescribe that should they wish to. However, that would be within a highly regulated medical setting, as opposed to just getting liquids from a vape shop.

Dr Johnson: Clauses 48 and 49 exempt the medicinal product and medical devices. I understand why the Minister has done that, but how is he going to ensure that the industry does not find ways of making the nicotine replacement products that are currently legal and used only for medical purposes lemonade, gummy bear or unicorn milk-flavoured, and therefore attractive to children? The Committee has heard repeatedly about the way the industry behaves.

Andrew Gwynne: We absolutely have thought about that, which is why the measures in the Bill and the powers it gives to Ministers across the jurisdictions of

the United Kingdom enable regulations to be made to ensure that we always keep up with where the industry is going and—importantly—where the evidence is going. This is not just about where the industry might go; it may be that at some stage in the future there is new medical research showing that even the levels we are talking about lowering to have safety issues, and we will need to react to that.

That is why I will defend the way the Bill has been drafted, ensuring that Ministers will be able, at any stage in the future, to return to Parliament or the devolved legislatures to seek changes to secondary legislation to ensure that the measures are always relevant to the circumstances of the day.

Question put and agreed to.

Clause 48 accordingly ordered to stand part of the Bill.

Clause 49 ordered to stand part of the Bill.

The Chair: I apologise to the Committee; this is quite complex, even by my standards. Amendments 25 to 31 were debated under clause 1. The lead amendment, which was similar, was negated by the Committee on a Division, and so I am not selecting them for a separate Division. That is in my gift.

Amendment proposed: 67, in clause 50, page 25, line 34, at end insert—

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

(bb) after subsection (5) insert—

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

This amendment prevents penalties for a first offence of selling tobacco products to person under 18 in Scotland being a fine not beyond level 3 and provides for a discretionary recorded police warning.

Question put, That the amendment be made.

The Committee divided: Ayes 3, Noes 13.

Division No. 7]

AYES

Bool, Sarah
Rankin, Jack

Stafford, Gregory

NOES

Ahmed, Dr Zubir
Al-Hassan, Sadik
Barros-Curtis, Mr Alex
Chambers, Dr Danny
Cooper, Dr Beccy
Dickson, Jim
Foy, Mary Kelly

Gwynne, Andrew
Jarvis, Liz
Osborne, Tristan
Owatemi, Taiwo
Stainbank, Euan
Whitby, John

Question accordingly negated.

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

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

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

(b) after subsection (5) insert—

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

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

Question put, That the amendment be made.

The Committee divided: Ayes 3, Noes 11.

Division No. 8]

AYES

Bool, Sarah
Rankin, Jack

Stafford, Gregory

NOES

Ahmed, Dr Zubir
Al-Hassan, Sadik
Barros-Curtis, Mr Alex
Cooper, Dr Beccy
Dickson, Jim
Foy, Mary Kelly

Gwynne, Andrew
Osborne, Tristan
Owatemi, Taiwo
Stainbank, Euan
Whitby, John

Question accordingly negated.

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

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

(bb) after subsection (7) insert—

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

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

Question put, That the amendment be made.

The Committee divided: Ayes 3, Noes 13.

Division No. 9]

AYES

Bool, Sarah
Rankin, Jack

Stafford, Gregory

NOES

Ahmed, Dr Zubir
Al-Hassan, Sadik
Barros-Curtis, Mr Alex
Chambers, Dr Danny
Cooper, Dr Beccy
Dickson, Jim
Foy, Mary Kelly

Gwynne, Andrew
Jarvis, Liz
Osborne, Tristan
Owatemi, Taiwo
Stainbank, Euan
Whitby, John

Question accordingly negated.

Amendment proposed: 55, in clause 50, page 26, line 33, at end insert—

“(5A) In section 27 (Fixed penalties), in paragraph (1) at end insert ‘, save if an offence under section 4, 4A, and 4B is a first offence for which a person has admitted guilt’—(*Dr Johnson.*)

This amendment ensures that fixed penalty notices for an offence under section 50 will not be issued if it is a first offence in Scotland.

Question put, That the amendment be made.

The Committee divided: Ayes 3, Noes 13.

Division No. 10]

AYES

Boal, Sarah
Rankin, Jack

Stafford, Gregory

NOES

Ahmed, Dr Zubir
Al-Hassan, Sadik
Barros-Curtis, Mr Alex
Chambers, Dr Danny
Cooper, Dr Beccy
Dickson, Jim
Foy, Mary Kelly

Gwynne, Andrew
Jarvis, Liz
Osborne, Tristan
Owatemi, Taiwo
Stainbank, Euan
Whitby, John

Question accordingly negated.

Clause 50 ordered to stand part of the Bill.

Clause 51 ordered to stand part of the Bill.

Clause 52

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 consider clause 53 stand part.

Dr Johnson: Clause 52 repeals the offence of purchasing tobacco under 18 in Scotland, as per the Tobacco and Primary Medical Services (Scotland) Act 2010; clause 52(2) would omit section 5, concerning purchasing tobacco products by people under the age of 18, from the 2010 Act. This is a reasonable thing to do, because clause 50 replaces the current age of sale with the rolling age of sale and extends to those over 18.

However, subsection (3) of clause 52 is interesting, because it refers to the presumption of products in the contents of a container. Section 33 of the 2010 Act essentially says if a person has seen someone sell a packet of cigarettes to somebody, and the person can clearly see the packet of cigarettes, they do not have to prove that it contains cigarettes; they just have to see it. I suppose that prevents people from the defence of saying that they were selling empty boxes, that it was just role play, that the boxes only contain sweets, or that they do not really contain tobacco—they are just boxes. In some respects, those are fairly implausible defences, but perhaps those defending them could prove reasonable doubt on that basis. Section 33 presumes that cigar boxes contain cigars, for example, or that cigarette boxes contain cigarettes; in the context of their being bought that seems fairly obvious, but it is interesting that the Scots felt it necessary to have this section previously.

I respect that this is a devolved matter and the Scots' wishes to amend section 33 of the 2010 Act, but could the Minister perhaps explain, from the conversations that I am sure he has had with Ministers in Scotland, why the Scots introduced it in the first place? Was it perceived that it might be an issue, or was it actually an

issue that people were pretending or suggesting that what was in boxes of cigarettes was not cigarettes, and therefore, "It's not illegal to sell a box; it's only illegal to sell the cigarettes in it, and you can't prove they were there, your honour."?"

Why has the Minister not chosen to replicate such a provision in England? Although I respect what he says about devolution, and the Scots have the competency to do as they wish in Scotland, in England it is up to him and he has the levers of power. Can he say in the rest of the UK where this defence has been used before? Has section 33 of the Tobacco and Primary Medical Services (Scotland) Act 2010 ever been used as a defence in litigation? If it has, was it successful? If it was, why does he not want to replicate the provision in England? It is a somewhat peculiar situation.

10.45 am

Clause 53 will repeal section 7 of the Tobacco and Primary Medical Services (Scotland) Act, which enables the confiscation of tobacco products from children. I understand why the Minister is happy for the Scots to act as they wish, but confiscating such products is useful. We have talked about the proportionality of offences. If a constable were to see a child in the street with a vape or a cigarette, they could take those articles off them to prevent the child from using them. Clause 53 will remove that power and will to some extent weaken the law as it applies to smoking and vaping products. Will the Minister explain what rationale Ministers in Scotland have given him for wishing to weaken the law in that respect? Will he also explain why, conversely, he does not wish to strengthen it in England?

Andrew Gwynne: In answer to the shadow Minister, clause 52 will repeal the offence for someone under the age of 18 in Scotland of buying or attempting to buy a tobacco product or cigarette papers. It means that it will no longer be an offence for someone under the age of 18 to buy or attempt to buy those products in Scotland. That is because Scotland is the only part of the United Kingdom in which it is an offence for those under 18 to purchase tobacco products. The repeal will align the legal approach across the whole United Kingdom. It is being done after consultation and with the full consent of the Scottish Government. With the change to the age of sale, it was no longer deemed necessary to retain this provision, as the age-of-sale restrictions apply to the sale and not the purchase of tobacco products.

Clause 53 will repeal the power for constables in Scotland to confiscate tobacco products or cigarette papers from someone in a public place whom they suspect to be under 18. Both provisions were originally made in the Tobacco and Primary Medical Services (Scotland) Act 2010. Repealing them will ensure that legislation in Scotland is in line with legislation in England, Wales and Northern Ireland. With the change to the age of sale, it was no longer considered necessary to retain the provision, as age-of-sale restrictions apply to the sale and not the purchase of tobacco products. As we have already debated, that will ensure that we do not criminalise children.

Question put and agreed to.

Clause 52 accordingly ordered to stand part of the Bill.

Clause 53 ordered to stand part of the Bill.

Clause 54

Extension of tobacco legislation to herbal smoking products

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

Dr Johnson: Clause 54 will extend tobacco legislation to cover herbal smoking products, which are products made from plant material and intended for smoking that do not contain tobacco. It will amend section 4 of the Tobacco and Primary Medical Services (Scotland) Act, which governs the sale of tobacco products to individuals under 18, by inserting “herbal smoking product” after “tobacco product” in subsection (1). This will mean that the sale of herbal smoking products is subject to the same restrictions as tobacco products and is prohibited to persons under 18.

The clause will also amend section 4C of the 2010 Act, which deals with the sale of tobacco-related products by persons under 18, by adding “herbal smoking product” so that individuals under 18 are also prohibited from selling herbal smoking products. This is distinct from the ability to buy them, for which there will be a rolling age; it applies to the selling of these products.

The clause will also modify section 6 of the Act, which addresses the purchase of tobacco products on behalf of individuals under 18, otherwise known as proxy purchasing. It will amend subsection (1) by inserting “herbal smoking product” after “tobacco product”, making it illegal for anyone to purchase herbal smoking products on behalf of individuals under 18.

Finally, the clause will insert into section 35 a definition for herbal smoking products. This was covered in clause 48 and clause 1; clause 54 will add it to Scottish legislation. It specifies that a herbal smoking product is one that is made entirely or partially of vegetable matter and that is intended to be smoked, but that does not contain tobacco. Given our previous debate, these seem reasonable changes to make.

Andrew Gwynne: I will not detain the Committee on this question. As the shadow Minister says, these are reasonable changes to make and are in line with the clauses that we have just discussed.

Question put and agreed to.

Clause 54 accordingly ordered to stand part of the Bill.

Clauses 55 to 57 ordered to stand part of the Bill.

Clause 58

POSSESSION OF SNUS ETC WITH INTENT TO SUPPLY

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

“, save if it is a first offence.”—(*Dr Johnson.*)

See explanatory statement to Amendment 72.

Question put, That the amendment be made.

The Committee divided: Ayes 3, Noes 11.

Division No. 11]**AYES**

Bool, Sarah
Rankin, Jack

Stafford, Gregory

NOES

Ahmed, Dr Zubir
Al-Hassan, Sadik
Barros-Curtis, Mr Alex
Cooper, Dr Beccy
Dickson, Jim
Foy, Mary Kelly

Gwynne, Andrew
Osborne, Tristan
Owatemi, Taiwo
Stainbank, Euan
Whitby, John

Question accordingly negated.

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

“, save if it is a first offence.”—(*Dr Johnson.*)

See explanatory statement to Amendment 72.

Question put, That the amendment be made.

The Committee divided: Ayes 3, Noes 11.

Division No. 12]**AYES**

Bool, Sarah
Rankin, Jack

Stafford, Gregory

NOES

Ahmed, Dr Zubir
Al-Hassan, Sadik
Barros-Curtis, Mr Alex
Cooper, Dr Beccy
Dickson, Jim
Foy, Mary Kelly

Gwynne, Andrew
Osborne, Tristan
Owatemi, Taiwo
Stainbank, Euan
Whitby, John

Question accordingly negated.

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

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

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

Question put, That the amendment be made.

The Committee divided: Ayes 3, Noes 11.

Division No. 13]**AYES**

Bool, Sarah
Rankin, Jack

Stafford, Gregory

NOES

Ahmed, Dr Zubir
Al-Hassan, Sadik
Barros-Curtis, Mr Alex
Cooper, Dr Beccy
Dickson, Jim
Foy, Mary Kelly

Gwynne, Andrew
Osborne, Tristan
Owatemi, Taiwo
Stainbank, Euan
Whitby, John

Question accordingly negated.

Clause 58 ordered to stand part of the Bill.

Clauses 59 to 64 ordered to stand part of the Bill.

Schedule 8 agreed to.

Clause 65

EXTENSION OF RETAILER REGISTER ETC

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

The Chair: With this it will be convenient to discuss schedule 9.

Dr Johnson: Clause 65 introduces schedule 9, which will amend the Tobacco and Primary Medical Services (Scotland) Act 2010 to broaden the scope of the retailer register and make related provisions to include herbal smoking products, vaping products and nicotine products, alongside tobacco. The amendments that it makes aim to regulate businesses that sell those products in a similar way to tobacco products.

Essentially, in schedule 9, the key changes are as follows. There will be an expansion of the register: section 10 of the 2010 Act will be amended to require the Scottish Ministers to maintain a register of businesses that are selling tobacco, herbal smoking products, vaping products and nicotine products. It will ensure that all those categories are subject to the same regulatory framework as respects the register.

There is clarification within the schedule of a “registrable business”, which is now defined to include any businesses dealing with tobacco, herbal smoking, vaping or nicotine products. The term is used throughout the Act, ensuring that all relevant businesses are captured under the regulations.

The amendments that schedule 9 will make to section 11 of the 2010 Act require applicants to specify which type of registrable business they intend to operate at each premises—essentially, which products they wish to sell. Can the Minister confirm that that means that some businesses could register to sell some products but not others under the Act? Perhaps they could sell tobacco products but not nicotine products, or vice versa. The registration process will be updated to reflect those additions.

Section 12 of the 2010 Act, which deals with certifications and notifications, will be amended to require certificates of registration to specify the type of product that a business sells. Additionally, under section 13, businesses must notify the Scottish Ministers of any changes, such as if they no longer desire to sell a specific type of registrable product. The Act’s provisions concerning banning orders, offences and public inspection of the register will be updated to reflect the inclusion of herbal smoking products, vaping products and nicotine products alongside tobacco products.

In addition, schedule 9 will add new definitions, including of “herbal smoking product business” and “nicotine product business”, ensuring clarity in the application of the law.

Andrew Gwynne: I welcome the shadow Minister’s comments. Of course, health is a devolved matter. Scotland has a long-established and functioning register of tobacco and nicotine vape product retailers. The Bill will expand Scotland’s registration scheme to include retailers selling herbal smoking products and nicotine products. The Scottish Government’s view is that introducing a licensing scheme at this time would put undue pressure on local authorities and the retail sector in Scotland. In line with the Scottish Government’s tobacco and vaping framework,

the technical infrastructure of the register is being improved, which has been welcomed by stakeholders. Each of the nations of the United Kingdom is taking forward an approach that best suits its population.

11 am

The shadow Minister asked whether Scottish retailers could register some but not all products. The simple answer is yes. With that, and given that the changes being made reflect the desire of the Scottish Government, I will conclude my remarks.

Question put and agreed to.

Clause 65 accordingly ordered to stand part of the Bill. Schedule 9 agreed to.

Clauses 66 and 67 ordered to stand part of the Bill.

Clause 68

AGE OF SALE FOR TOBACCO PRODUCTS ETC

Amendment proposed: 73, in clause 68, page 36, line 12, at end insert

“, save if it is a first offence.”—(Dr Johnson.)

See explanatory statement to Amendment 76.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 13.

Division No. 14]**AYES**

Bool, Sarah

Stafford, Gregory

NOES

Ahmed, Dr Zubir

Gwynne, Andrew

Al-Hassan, Sadik

Jarvis, Liz

Barros-Curtis, Mr Alex

Osborne, Tristan

Chambers, Dr Danny

Owatemi, Taiwo

Cooper, Dr Beccy

Stainbank, Euan

Dickson, Jim

Whitby, John

Foy, Mary Kelly

Question accordingly negated.

Amendment proposed: 74, in clause 68, page 36, line 12, at end insert—

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

See explanatory statement to Amendment 76.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 13.

Division No. 15]**AYES**

Bool, Sarah

Stafford, Gregory

NOES

Ahmed, Dr Zubir

Gwynne, Andrew

Al-Hassan, Sadik

Jarvis, Liz

Barros-Curtis, Mr Alex

Osborne, Tristan

Chambers, Dr Danny

Owatemi, Taiwo

Cooper, Dr Beccy

Stainbank, Euan

Dickson, Jim

Whitby, John

Foy, Mary Kelly

Question accordingly negated.

Clause 68 ordered to stand part of the Bill.

Clause 69

PURCHASE OF TOBACCO ON BEHALF OF OTHERS

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

“, save if it is a first offence.”—(*Dr Johnson.*)

See explanatory statement to Amendment 76.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 13.

Division No. 16]**AYES**

Bool, Sarah
Stafford, Gregory

NOES

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

Question accordingly negated.

Amendment proposed: 76, in clause 69, page 36, line 31, at end insert—

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

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

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 13.

Division No. 17]**AYES**

Bool, Sarah
Stafford, Gregory

NOES

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

Question accordingly negated.

Clause 69 ordered to stand part of the Bill.

Clauses 70 to 74 ordered to stand part of the Bill.

Clause 75

POSSESSION OF SNUS ETC WITH INTENT TO SUPPLY

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

“, save if it is a first offence.”—(*Dr Johnson.*)

See explanatory statement to Amendment 79.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 13.

Division No. 18]**AYES**

Bool, Sarah
Stafford, Gregory

NOES

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

Question accordingly negated.

Clause 75 ordered to stand part of the Bill.

Clause 76

SALE OF VAPING OR NICOTINE PRODUCTS TO UNDER 18s

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

“, save if it is a first offence.”—(*Dr Johnson.*)

See explanatory statement to Amendment 83.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 13.

Division No. 19]**AYES**

Bool, Sarah
Stafford, Gregory

NOES

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

Question accordingly negated.

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

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

See explanatory statement to Amendment 83.

Question put, That the amendment be made.

The Committee divided: Ayes 2, Noes 13.

Division No. 20]**AYES**

Bool, Sarah
Stafford, Gregory

NOES

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

Question accordingly negated.

Clause 76 ordered to stand part of the Bill.

Gregory Stafford: On a point of order, Sir Roger. There is an hon. Member outside who wishes to come in. I know that the doors have been locked for these Divisions, but is it possible to open the doors so that he can come in and vote on the rest of the motions?

The Chair: It is up to the Whips to let the Chair know if there are Members who they want to be here. Otherwise, I will assume that everyone who should be here is here.

Clause 77

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

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

“, save if it is a first offence.”—(*Dr Johnson.*)

See explanatory statement to Amendment 83.

Question put, That the amendment be made.

The Committee divided: Ayes 3, Noes 13.

Division No. 21]

AYES

Bool, Sarah
Rankin, Jack

Stafford, Gregory

NOES

Ahmed, Dr Zubir
Al-Hassan, Sadik
Barros-Curtis, Mr Alex
Chambers, Dr Danny
Cooper, Dr Beccy
Dickson, Jim
Foy, Mary Kelly

Gwynne, Andrew
Jarvis, Liz
Osborne, Tristan
Owatemi, Taiwo
Stainbank, Euan
Whitby, John

Question accordingly negated.

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

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

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

Question put, That the amendment be made.

The Committee divided: Ayes 3, Noes 13.

Division No. 22]

AYES

Bool, Sarah
Rankin, Jack

Stafford, Gregory

NOES

Ahmed, Dr Zubir
Al-Hassan, Sadik
Barros-Curtis, Mr Alex
Chambers, Dr Danny
Cooper, Dr Beccy
Dickson, Jim
Foy, Mary Kelly

Gwynne, Andrew
Jarvis, Liz
Osborne, Tristan
Owatemi, Taiwo
Stainbank, Euan
Whitby, John

Question accordingly negated.

Clause 77 ordered to stand part of the Bill.

Clauses 78 to 83 ordered to stand part of the Bill.

Clause 84

EXTENSION OF RETAILER REGISTER

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

The Chair: With this it will be convenient to discuss schedule 10.

11.15 am

Dr Johnson: Clause 84 is a short clause that extends the retail register provisions in Northern Ireland. It states:

“Schedule 10 amends the Tobacco Retailers Act (Northern Ireland) 2014 (c. 4 (N.I.)) to extend certain provisions about the registration of tobacco retailers so that they apply in relation to retailers of vaping products and nicotine products.”

Schedule 10 ensures that retailers selling tobacco products, herbal smoking products and cigarette papers are covered by the scheme.

Andrew Gwynne: As the shadow Minister says, the clause extends the existing registration scheme by expanding it to businesses that sell relevant products. The register will be expanded while the new licensing regulations are introduced, ensuring a stronger and consistent enforcement regime at all times.

Question put and agreed to.

Clause 84 accordingly ordered to stand part of the Bill.

Schedule 10 agreed to.

Clause 85 ordered to stand part of the Bill.

Schedules 11 to 13 agreed to.

Clauses 86 and 87 ordered to stand part of the Bill.

Schedule 14 and 15 agreed to.

Clause 88 ordered to stand part of the Bill.

Clause 89

POWER OF OFFICER OF REVENUE AND CUSTOMS TO SEIZE AND DETAIN SNUS ETC

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

Dr Johnson: Clause 89 is such an important clause in that it forms a whole part of the Bill, part 4, by itself; whereas other parts contain multiple clauses, part 4 only contains clause 89. The clause deals with the power of a Revenue and Customs official to seize and detain snus, which the Bill defines as an oral tobacco product that

“is not intended to be inhaled or chewed”.

Hon. Members will remember that snus is a tobacco product that the Bill treats differently from all other tobacco products; there is a much heavier penalty for sale and a complete ban on manufacture. In line with the fact that it is dealt with differently from other

tobacco products and that it will be illegal to manufacture and import, there needs to be provision for customs officials to deal with the snus if they find it.

Subsection (1) allows a Revenue and Customs officer to

“seize any relevant oral tobacco products that have been imported and detain them for no more than 48 hours.”

I presume that 48 hours is standard; the Minister may be able to expand on that. Any products seized and detained under this clause

“must be dealt with during their period of detention in such manner as the Commissioners for His Majesty’s Revenue and Customs may direct...For the purposes of calculating the 48-hour period mentioned...any period falling on a non-working day is to be disregarded.”

The Minister will be able to confirm, but I presume that is essentially saying that, if a product were seized on a Friday at 4.50 pm, they would get all of Saturday and Sunday and until late on the Tuesday to deal with the snus and would be able to seize it for that period.

The clause says that non-working days are Saturdays, Sundays and bank holidays; that is fairly straightforward. A relevant offence is an offence under clause 9 of the Bill in England and Wales, section 9C of the Tobacco and Primary Medical Services (Scotland) Act 2010, which is inserted by the Bill, and article 4G of the Health and Personal Social Services (Northern Ireland) Order 1978, which is also inserted by the Bill.

Gregory Stafford: The shadow Minister quite rightly asked the Minister why there is a 48-hour period; it would be helpful to understand if that is just a standard period. What I am not clear on is what happens during, or indeed after, that period. Is the 48-hour period for some kind of destruction of the illicit substance? Is it for investigation? If His Majesty’s Revenue and Customs for whatever reason breaches the 48-hour period, what recompense can the importer receive? Should they receive any kind of recompense, given that they are likely to be importing a banned substance?

Dr Johnson: My hon. Friend is right to probe the Minister on those questions. It is important to understand why things are chosen. The Minister has sometimes referred to things being chosen because that is the way they were before, but the writing of new primary legislation

offers a not-frequent opportunity to change things that may not be working very well. When items are seized at the moment, is the Minister’s advice from his civil servants that 48 hours is an adequate period of time in which to deal with all the paperwork that presumably needs to be done? Is it too long, and could it be shorter if it needed to be?

The commissioners for His Majesty’s Revenue and Customs are responsible for dealing with the relevant oral tobacco product during the period of detention, but that will not prevent the importation of snus for personal use. Can the Minister explain why that is the case?

Andrew Gwynne: It is not illegal to consume snus in the UK—I got told off for pronouncing that in Mancunian as “snuss” earlier, but each to their own—or to possess it for personal use. Clause 89 is that is intended to form part of a robust legislative framework in relation to oral tobacco products, and specifically helps to enforce other provisions of the Bill that prohibit possession with intent to supply in the course of business. It is common practice for customs officials to seize suspected illicit goods at the border. That will now also be applicable to snus products imported into the UK. The 48-hour period is standard practice, but after 48 hours the enforcement agency is able to decide on what action it wishes to take. I hope that answers the points raised by the shadow Minister and the hon. Member for Farnham and Bordon.

Dr Johnson: I want to understand how a customs official would make such a decision. The Minister has been clear that it is not illegal to possess snus—I hope I pronounced that properly—for personal use. However, it is an offence to manufacture it under clause 7, to sell it or offer it for sale under clause 8 or to possess it with intent to supply under clause 9. How would the Minister quantify an amount for personal use? Under ordinary circumstances, one could say—

11.25 am

The Chair adjourned the Committee without Question put (Standing Order No. 88).

Adjourned till this day at Two o’clock.

