

PROPOSAL FOR A DRAFT BILL

THE HEALTH (MISCELLANEOUS PROVISIONS) BILL (NI)

CONSULTATION DOCUMENT

2014

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Introduction

1. The Department of Health, Social Services and Public Safety is conducting a consultation on proposed amendments to the Health (Miscellaneous Provisions) Act (NI) 2008 (referred to in this consultation as "the 2008 Act"). These amendments will be contained in Part 2 of a Bill which, when enacted, will be called the Health (Miscellaneous Provisions) Act (Northern Ireland). Separately, Part 1 of this Bill will contain provisions to prohibit the sale of nicotine products to those under eighteen.

Prohibition of sale of nicotine products to persons under 18

2. Part 1 of the draft Bill contains provisions which will enable the Department to make regulations prohibiting the sale of nicotine-containing products, including e-cigarettes, to persons under the age of 18. A provision to allow the Department to create an offence in relation to the proxy purchasing of nicotine-containing products is also included. The legislation will not apply to licensed nicotine replacement therapy (NRT) products currently on the market.

3. Schedule 1 to the draft Bill amends the Tobacco Retailers (Northern Ireland) Act 2014, to allow for offences in relation to the underage sale of nicotine-containing products to be included as an offence which could lead to an application for a restricted sale order or restricted premises order.

The Health (Miscellaneous Provisions) Act (NI) 2008

4. The amendments to the 2008 Act are mainly technical in nature and are required to amend anomalies identified in that legislation. These changes can only be made through primary legislation and a copy of the draft amending Bill is attached at Annex A for your consideration. Annex C contains a draft Explanatory and Financial Memorandum (EFM) explaining the main provisions. The Department is also using the Bill to amend outdated legislative references and to make other minor technical corrections. The Minister of the Department of Health, Social Services and Public Safety, Edwin Poots MLA has

agreed to this consultation. The Northern Ireland Executive and the Health Committee have both been notified.

Background to the 2008 Act and the need for amendment

5. Part 6 of the Health and Personal Social Services (NI) Order 1972 ("the 1972 Order") contains the legislative powers for the administration of general dental services, general ophthalmic services and pharmaceutical services in Northern Ireland. The 2008 Act (amongst other matters) made various amendments to these powers. These included the creation of contractual legislation for dental services in Northern Ireland and the extension of the general ophthalmic and pharmaceutical services listing system to include all practitioners. Subsequently, the Department has identified certain anomalies in terminology used in these particular sections of the 2008 Act. As currently framed, the 2008 Act does not provide the Department with the powers to fully introduce new dental contracts nor to extend general ophthalmic services and pharmaceutical services listing to include all providers and practitioners. This consultation sets out how the Department proposes to amend the legislation. Further detail on these and other minor amendments is set out in detail in the draft Explanatory and Financial Memorandum at Annex C.

Next steps

6. The Department is satisfied it need only consult on a draft of the Bill accompanied by suitable explanatory material. The policy intention to introduce contractual legislation for dental services remains unchanged as is the policy on listing providers of general ophthalmic and pharmaceutical services. Any extension of listing to include all practitioners including employed opticians and pharmacists requires further policy development and consultation outside of this Bill. Other amendments in Part 2 of the Bill are either presentational or have been included to avoid any ambiguity.

Following consideration of consultation responses, the Department will finalise the Bill and seek Ministerial and Executive agreement to introduce the Bill into the Assembly by February 2015.

Responding to the consultation

7. This consultation exercise gives you the opportunity to comment on these legislative proposals. **Your comments, which should be received no later than 21 November 2014 should be returned by post or email to:**

**Margaret Glass
Room D.3.1
Castle Buildings
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BT4 3SQ**

E Mail: Margaret.glass@dhsspsni.gov.uk

If you require further copies of the Bill or Explanatory and Financial Memorandum or require them in a different format please contact the above address. They are also available on the Department's website.

http://www.dhsspsni.gov.uk/index/consultations/current_consultations.htm

Health (Miscellaneous Provisions) Act (Northern Ireland) 2014

[11/6/2014 14:31:51]

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A

BILL

TO

Prohibit the sale of nicotine products to persons under 18, to amend the Health and Personal Social Services (Northern Ireland) Order 1972 and the Health (Miscellaneous Provisions) Act (Northern Ireland) 2008 in relation to the provision of health care; and for connected purposes.

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

PART 1

PROHIBITION OF SALE OF NICOTINE PRODUCTS TO PERSONS UNDER 18

Prohibition of sale of nicotine products to persons under 18 [j11]

1.—(1) The Department may by regulations make provision prohibiting the sale of nicotine products to persons aged under 18.

(2) A person who breaches a prohibition in regulations under subsection (1) commits an offence.

(3) Subsection (2) does not apply if—

(a) at the time of the sale, the person to whom the nicotine product is sold is employed by a manufacturer of nicotine products to which regulations under subsection (1) apply or by a dealer in such products (whether wholesale or retail), and

(b) the purchase of the product is for the purposes of the manufacturer's or dealer's business.

(4) Where a person is charged with an offence under this section it is a defence that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.

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

(6) The Department may by regulations—

(a) amend Article 4A of the Health and Personal Social Services (Northern Ireland) Order 1978 (purchase of tobacco on behalf of persons under 18) so as to apply it (with or without modifications) in relation to nicotine products, or

(b) provide for that Article to apply (with or without modifications) in relation to nicotine products.

(7) For the purposes of this section "nicotine product" means—

- (a) a device which is intended to enable nicotine to be consumed by an individual or otherwise to be delivered into the human body,
- (b) an item which is intended to form part of a device within paragraph (a), or
- (c) a substance or item which consists of or contains nicotine and which is intended for human consumption or otherwise to be delivered into the human body.

(8) It does not matter for the purposes of subsection (7)(a) whether the device is also intended to enable any other substance to be consumed by an individual or otherwise to be delivered into the human body.

(9) The following are not nicotine products for the purposes of this section—

- (a) tobacco;
- (b) cigarette papers;
- (c) any device which is intended to be used for the consumption of lit tobacco.

(10) In this section “tobacco” has the same meaning as in Part 2 of the Health and Personal Social Services (Northern Ireland) Order 1978.

Amendments consequential on section 1 [j12]

2.—(1) Schedule 1 makes amendments consequential on section 1.

(2) The Department may by regulations make provision amending, repealing, revoking or otherwise modifying any statutory provision (whenever passed or made) in connection with provision made by or under section 1.

PART 2

MISCELLANEOUS PROVISIONS

Persons performing primary dental services [j1]

3.—(1) Section 2(2) of the Act of 2008, which substitutes new Articles 61 to 61F of the Order of 1972, is amended as follows.

(2) Before the new Article 61F (persons providing general dental services), insert new cross-heading “Persons performing primary dental services”.

(3) In the new Article 61F—

- (a) for the heading substitute “Persons performing primary dental services”;
- (b) for paragraph (1) substitute—

“(1) Regulations may provide that a health care professional of a prescribed description may not perform any primary dental service for which the Regional Board is responsible unless that professional is included in a list maintained under the regulations by the Regional Board.”;

(c) For paragraph (2)(b) substitute—

“(b) the Regional Board is responsible for a primary dental service if it provides the service, or secures provision of the service, under or by virtue of Article 60A.”.

Ophthalmic services [j2]

4.—(1) In Article 62(2) of the Order of 1972 (arrangements for general ophthalmic services), after “shall include provision” insert—

- “(a) for the preparation and publication of lists of medical practitioners, and ophthalmic opticians respectively, who undertake to provide general ophthalmic services;
- (b) for conferring a right, subject to any provision made under Article 64C and to the provisions of this Order relating to the disqualification of persons providing services, on any medical practitioner having the prescribed qualifications or ophthalmic optician who wishes to be included in the appropriate list, to be so included;
- (c) for conferring on any medical practitioner, who is dissatisfied with a determination that he or she does not possess the qualifications prescribed under this Article, a right of appeal to a committee appointed by the Department, and for making provision for any matter for which it appears to the Department to be necessary or expedient to make provision in consequence of the conferring of that right;”.

(2) Omit Article 62A of the Order of 1972.

Pharmaceutical services [j3]

5.—(1) In Article 63 of the Order of 1972 (arrangements for pharmaceutical services) for paragraphs (3) and (4) substitute —

“(3) The regulations shall include provision—

- (a) for the preparation, publication and maintenance of lists of persons, other than medical practitioners or dental practitioners, who undertake to provide pharmaceutical services;
- (b) that an application to the Regional Board for inclusion in such a list shall be made in the prescribed manner and shall state—
 - (i) the pharmaceutical services which the applicant will undertake to provide and, if they consist of or include the supply of appliances, which appliances the applicant will undertake to supply; and
 - (ii) the premises from which the applicant will undertake to provide those pharmaceutical services;
- (c) that, except in prescribed cases—
 - (i) an application for inclusion in such a list by a person not already included; and
 - (ii) an application by a person already included in such a list for inclusion also in respect of pharmaceutical services or premises other than those already listed in relation to that person,

shall be granted only if the Regional Board is satisfied, in accordance with the regulations, that it is necessary or desirable to grant it in order to secure in the neighbourhood in which the premises are located the adequate provision by persons included in the list of the pharmaceutical services or some of the pharmaceutical services, specified in the application;

- (d) for the removal of an entry in respect of premises from a list if it has been determined in the prescribed manner that the person to whom the entry relates—
 - (i) has never provided from those premises, or
 - (ii) has ceased to provide from them,

the pharmaceutical services, or any of the pharmaceutical services, which the person is listed as undertaking to provide from them.

(4) The regulations may include provision—

- (a) that an application to the Regional Board may be granted in respect of some only of the pharmaceutical services specified in it;
- (b) that an application to the Regional Board relating to pharmaceutical services of a prescribed description shall be granted only if it appears to the Regional Board that the applicant has satisfied such conditions with regard to the provisions of those pharmaceutical services as may be prescribed;
- (c) that an application to the Regional Board by a person who qualified to have that person's name registered under the Pharmacy (Northern Ireland) Order 1976 by virtue of Article 8(2)(c) of that Order (qualification by European diploma) shall not be granted unless the applicant satisfies the Regional Board that the applicant has the knowledge of English which, in the interests of the applicant and the persons making use of the pharmaceutical services to which the application relates, is necessary for the provision of pharmaceutical services;
- (d) that the inclusion of a person in a list in pursuance of such an application may be for a fixed period;
- (e) that, where the premises from which an application states that the applicant will undertake to provide pharmaceutical services are in an area of a prescribed description, the applicant shall not be included in the list unless the applicant's inclusion is approved by a prescribed body and by reference to prescribed criteria; and
- (f) that the prescribed body may give its approval subject to conditions.

(5) The regulations shall include provision conferring on such persons as may be prescribed rights of appeal from decisions made by virtue of paragraph (3) or (4).

(6) The regulations shall be framed as to preclude—

- (a) a person included in a list under paragraph (3)(a); and
- (b) an employee of such a person,

from taking part in the decision whether an application such as is mentioned in paragraph (3)(c) should be granted or an appeal against such a decision brought by virtue of paragraph (5) should be allowed.

(7) Before making any regulations under this Article, the Department shall consult such organisations as appear to it to be representative of the pharmaceutical profession.

(8) In the Article "listed" means included in a list for the time being approved for the purposes of this Article by the Department."

(2) Omit Article 63AA of the Order of 1972.

Disqualification by the Tribunal [j4]

6.—(1) Schedule 11 to the Order of 1972 (disqualification of persons providing Part 6 services) is amended as follows—

(a) for paragraph 1(2) substitute—

"(2) Subject to the provisions of this paragraph, if the Tribunal receives from the Regional Board representations that a person who has applied to be included in any list, or who is included in any list, meets any of the conditions for disqualification which may apply in that person's case, the Tribunal must inquire into the case.";

(b) for paragraph 1(6) substitute—

"(6) The first condition for disqualification is that—

- (a) in relation to a list referred to in sub-paragraph (8)(a) or (c), the inclusion or continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list perform; or
- (b) in relation to a list referred to in sub-paragraph (8)(d) or (e), the continued inclusion of the person concerned in the list would be prejudicial to the efficiency of the services which those included in the list undertake to provide.”;
- (c) in paragraph 1(7A), at the beginning insert “Subject to sub-paragraph (7B),”;
- (d) after paragraph 1(7A) insert—

“(7B) The third condition for disqualification only applies to cases where a person is included in, or has applied to be included in, a list referred to in paragraph (8)(a) or (c).”;

- (e) in paragraph 1(8)(c), omit “and bodies corporate”;
- (f) for paragraph 1(8)(d) substitute—

“(d) a list of medical practitioners and ophthalmic opticians undertaking to provide general ophthalmic services;”;

- (g) for paragraph 1(8)(e) substitute—

“(e) a list of persons undertaking to provide pharmaceutical services;”;

- (h) in paragraph 1(8A), for “sub-paragraph (8)(a)” substitute “sub-paragraph (8)”;
- (i) in paragraph 2(1), omit “or, as the case may be, the third condition for disqualification”;
- (j) omit paragraph 2(1A);
- (k) in paragraph 2(3)(a), omit “, assisting in providing,”;
- (l) in paragraph 2(3)(b), omit “assistance in the provision”;
- (m) for paragraph 3(2) substitute—

“(2) The Tribunal must disqualify the person for inclusion in the list to which the case relates.”;

- (n) in paragraph 4(2)(c)(i), omit “, undertakes to provide or assists in providing”;
- (o) in paragraph 4(5)(aa), for “, 61F, 62A or 63AA” substitute “ or 61F”;
- (p) in paragraph 5(4), after “providing,” insert “approved to assist in providing”;
- (q) in paragraph 7(1)(a), for “, approved to assist in providing or approved to perform” substitute “or approved to assist in providing”;
- (r) in paragraph 9(8), for “61F, 62A or 63A,” substitute “or 61F.”

(2) Until the coming into operation of section 2 of the Act of 2008, Schedule 11 to the Order of 1972 (as amended by subsection (1)) has effect with the following modifications—

- (a) in paragraph 1(6)(a), omit “or (c)”;
- (b) in paragraph 1(6)(b), for “(d) or (e)” substitute “(c), (d) or (e)”;
- (c) in paragraph 1(7B), omit “or (c)”;
- (d) for paragraph 1(8)(c) substitute—

“(c) a list of dental practitioners undertaking to provide general dental services;”

Provision of medical or dental services: Article 15B arrangements [j6]

7.—(1) In Article 15B(4) of the Order of 1972, after “in relation to” insert “primary medical services or”.

(2) For Article 15C(1)(b)(iii) of the Order of 1972 substitute—

“(iii) an individual who is providing services—

- (A) under a general medical services contract or a general dental services contract;
 - (B) in accordance with Article 15B arrangements, section 92 arrangements, section 107 arrangements, section 50 arrangements, section 64 arrangements or section 17C arrangements; or
 - (C) under section 17J or 25 of the National Health Service (Scotland) Act 1978, section 84 or 100 of the National Health Service Act 2006 or section 42 or 57 of the National Health Service (Wales) Act 2006;
- or has so provided them within such period as may be prescribed;”.

(3) In Article 15C(2) of the Order of 1972—

(a) in the definition of “HSS employee”—

- (i) in paragraph (bc) for “(1)(bc)(iii)” substitute “(1)(b)(iii)(C)”;
- (ii) at the end of paragraph (bc) add “or (1)(c)(iii)(C)”;

(b) in the definition of “qualifying body”, in paragraph (b) for “personal dental services” substitute “primary dental services”;

(c) at the appropriate place alphabetically insert—

- ““section 17C arrangements” means arrangements for the provision of services under section 17C of the National Health Service (Scotland) Act 1978;”;
- ““section 92 arrangements” means arrangements for the provision of services under section 92 of the National Health Service Act 2006;”;
- ““section 107 arrangements” means arrangements for the provision of services under section 107 of the National Health Service Act 2006;”;
- ““section 50 arrangements” means arrangements for the provision of services under section 50 of the National Health Service (Wales) Act 2006;”;
- ““section 64 arrangements” means arrangements for the provision of services under section 64 of the National Health Service (Wales) Act 2006;”;

(d) omit the definition of “section 28C employee”.

(4) Omit Article 15D(3)(j) of the Order of 1972.

(5) In section 5(3) of the Act of 2008, in the substituted Article 15C(1)(c) of the Order of 1972, for head (iii) substitute—

“(iii) an individual who is providing services—

- (A) under a general dental services contract or a general medical services contract;
 - (B) in accordance with Article 15B arrangements, section 92 arrangements, section 107 arrangements, section 50 arrangements, section 64 arrangements or section 17C arrangements; or
 - (C) under section 17J or 25 of the National Health Service (Scotland) Act 1978, section 84 or 100 of the National Health Service Act 2006 or section 42 or 57 of the National Health Service (Wales) Act 2006;
- or has so provided them within such period as may be prescribed;”.

Charges for services provided to persons not ordinarily resident in Northern Ireland [j7]

8. In Article 42(2) of the Order of 1972 (provision of services to persons not ordinarily resident in Northern Ireland), after “the Department may,” insert “subject to such exemptions as may be prescribed and”.

PART 3
GENERAL

Interpretation [j20]

9. In this Act—

“the Act of 2008” means the Health (Miscellaneous Provisions) Act (Northern Ireland) 2008;

“the Department” means the Department of Health, Social Services and Public Safety;

“the Order of 1972” means the Health and Personal Social Services (Northern Ireland) Order 1972;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954.

Regulations and orders [j20A]

10.—(1) No regulations shall be made under section 1 or 2 unless a draft of the regulations has been laid before, and approved by, a resolution of the Assembly.

(2) Regulations and orders made by the Department under this Act may contain such incidental, supplementary, transitional, transitory and savings provisions as appear to the Department to be necessary or expedient.

Repeals [j21]

11. The statutory provisions set out in Schedule 2 are hereby repealed to the extent specified in the second column of that Schedule.

Commencement [j21A]

12.—(1) This section and sections 9, 10 and 13 come into operation on the day after the day on which this Act receives Royal Assent.

(2) The following provisions come into operation on the expiration of the period of one month from the day on which this Act receives Royal Assent—

(a) sections 3 to 6;

(b) section 7(3)(a)(i) and (5);

(c) section 8; and

(d) Part 1 of Schedule 2 and section 11 so far as it relates to that Part of that Schedule.

(3) The following provisions come into operation on such day or days as the Department may by order appoint—

(a) Part 1 and Schedule 1;

(b) the remaining provisions of section 7; and

(c) Part 2 of Schedule 2 and section 11 so far as it relates to that Part of that Schedule.

Short title [j22]

13. This Act may be cited as the Health (Miscellaneous Provisions) Act (Northern Ireland) 2014.

SCHEDULES

SCHEDULE 1

Section 2(1)

AMENDMENTS CONSEQUENTIAL ON SECTION 1 [S2]

The Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (NI 25)

1. In Article 6 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 (enforcement action by district councils)—

(a) in paragraph (1)(a), for “and Articles 3 and 4” substitute “, Articles 3 and 4 and section 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2014 (prohibition of sale of nicotine products to persons under 18),”;

(b) after paragraph (1) insert—

“(1A) Paragraph (1) applies in relation to section 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2014 only if regulations under subsection (1) of that section are for the time being in operation.”.

The Tobacco Retailers Act (Northern Ireland) 2014 (c.4)

2. The Tobacco Retailers Act (Northern Ireland) 2014 is amended as follows.

3. In the italic heading before section 5, after “tobacco” insert “or nicotine”.

4. In section 5 (restricted premises orders)—

(a) in subsection (1)(a) and (b), after “tobacco” insert “or nicotine”;

(b) in subsection (4), for “or cigarette papers” substitute “, cigarette papers or nicotine product”;

(c) in subsection (5), for “or cigarette papers” substitute “, cigarette papers or nicotine products”;

(d) in subsection (8)(b)(i) and (ii), after “tobacco” insert “or nicotine”;

(e) in subsection (13)(a), after “tobacco” insert “or nicotine”;

(f) in subsection (14)—

(i) for “tobacco offence” substitute “tobacco or nicotine offence”;

(ii) at the end of paragraph (e), omit the word “or”;

(iii) at the end of paragraph (f), add—“or

(g) an offence committed under section 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2014 (prohibition of sale of nicotine products to persons under 18).”.

5. In section 6 (restricted sale orders)—

(a) in subsection (1)(a) and (b), after “tobacco” insert “or nicotine”;

(b) in subsection (4)—

(i) in paragraph (a), for “or cigarette papers” substitute “, cigarette papers or nicotine product”;

- (ii) in paragraph (b), for “or cigarette papers” substitute “, cigarette papers or nicotine products”;
- (iii) in each of paragraphs (c) and (d), omit “cigarette” in each place;
- (iv) in each of those paragraphs, after “tobacco” insert “or nicotine products”;
- (c) in subsection (6)(a) and (b), after “tobacco” insert “or nicotine”;
- (d) in subsection (7), after “tobacco” insert “or nicotine”;
- (e) for subsection (8) substitute—

“(8) In this section any reference to a machine is a reference to an automatic machine for the sale of tobacco or nicotine products.”

6. In section 8(4) (restricted premises orders: display of notices), for “or cigarette papers” substitute “, cigarette papers or nicotine products”.

7. In section 9 (restricted premises orders: no tobacco in retail area)—

- (a) in the heading, after “tobacco” insert “or nicotine products”;
- (b) in subsection (2), for “or cigarette papers” substitute “, cigarette papers or nicotine products”;
- (c) in subsection (3), for “and cigarette papers” substitute “, cigarette papers and nicotine products”.

8. In section 10(4)(a) (offences), for “or cigarette papers” substitute “, cigarette papers or nicotine product”.

9. In section 11(1)(a) (powers of entry), after sub-paragraph (iii) add—

“(iv) an offence under section 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2014.”

10. In section 12(1) (fixed penalties for certain offences), after paragraph (c) add—

“(d) an offence under section 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2014.”

11. In section 16(1)(a) and (b) and (3) (council’s duty to share information about enforcement), after “tobacco” insert “or nicotine”.

12. In section 22(1) (interpretation), insert at the appropriate place—

““nicotine product” means a nicotine product within the meaning of section 1 of the Health (Miscellaneous Provisions) Act (Northern Ireland) 2014 the sale of which to persons aged under 18 is for the time being prohibited by regulations under subsection (1) of that section;”.

SCHEDULE 2

section 11

REPEALS [S1]

PART 1

REPEALS COMING INTO OPERATION UNDER SECTION 12(2)

| Short Title | Extent of Repeal |
|---|-------------------------------|
| The Health and Personal Social Services (Northern | Article 62A. Article 63AA. |

| | |
|--|--|
| Ireland) Order 1972 (NI 14) | <p>In Schedule 11—</p> <p>(a) in paragraph 1(8)(c), the words “and bodies corporate”;</p> <p>(b) in paragraph 2(1), the words “or, as the case may be, the third condition for disqualification”;</p> <p>(c) paragraph 2(1A);</p> <p>(d) in paragraph 2(3)(a), the words “, assisting in providing”;</p> <p>(e) in paragraph 2(3)(b), the words “assistance in the provision”;</p> <p>(f) in paragraph 4(2)(c)(i), the words “,undertakes to provide or assists in providing”.</p> |
| The Primary Medical Services (Northern Ireland) Order 2004 (NI 2) | Article 6(8)(c). |
| The Health (Miscellaneous Provisions) Act (Northern Ireland) 2008 (c. 2) | <p>Section 8.</p> <p>Section 10.</p> <p>In Schedule 1—</p> <p>(a) paragraph 1(2) and (4);</p> <p>(b) paragraph 2(2) and (3).</p> |

PART 2

REPEALS COMING INTO OPERATION UNDER SECTION 12(3)

| Short Title | Extent of Repeal |
|--|---|
| The Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14). | <p>In Article 15C(2), the definition of “section 28C employee”.</p> <p>Article 15D (3)(j).</p> |
| The Tobacco Retailers Act (Northern Ireland) 2014 (c. 4) | <p>In section 5(14)(e), the word “or”.</p> <p>In section 6(4)(c) and (d), the word “cigarette”.</p> |

Equality and Human Rights

1. As part of the original policy development process, the Department carried out a preliminary screening of the policy proposals and, as part of this screening process, concluded that an Equality Impact Assessment was not necessary.¹ The Department is content that there would be no adverse impact on any of the groups listed under section 75.

2. The Department is also satisfied that the proposals are compatible with the European Convention on Human Rights and no convention rights have been engaged.

¹ Section 10 <http://www.dhsspsni.gov.uk/showconsultations?txtid=3709>

¹ Section 9 http://www.dhsspsni.gov.uk/dental_strategy_2006.pdf

DRAFT EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

1. This Explanatory and Financial Memorandum has been prepared by the Department of Health, Social Services and Public Safety in order to assist the reader in understanding the Bill. It does not form part of the Bill.

Background and policy objectives

2. Part 6 of the Health and Personal Social Services (NI) Order 1972 ("the 1972 Order") contains the legislative powers for the administration of general dental services, general ophthalmic services and pharmaceutical services in Northern Ireland. Amongst other matters, the Health (Miscellaneous Provisions) Act (NI) 2008 (referred to in this memorandum as "the 2008 Act") made various amendments to these powers in the 1972 Order, including the creation of contractual legislation for dental services in Northern Ireland and the extension of the general ophthalmic and pharmaceutical services listing system to include all practitioners. Subsequently, the Department has identified certain anomalies in terminology used in these particular sections of the 2008 Act which now need amended. As currently framed, the 2008 Act does not provide the Department with the powers to fully introduce new dental contracts nor to extend general ophthalmic services and pharmaceutical services listing to include all providers and employed practitioners.

3. The draft Bill now contains amendments to address these issues. The Department is also using the Bill to amend outdated legislative references and to make other minor technical corrections. Further detail on these changes are set out in the following paragraphs. All these provisions are contained in Part 2 of the Bill.

4. Separately, Part 1 of the Bill contains provisions to prohibit the sale of nicotine products to those under eighteen. Since the introduction of the Smoking (Northern Ireland) Order 2006, the sale of non-licensed nicotine-containing products, such as

e-cigarettes, has grown in popularity and there are now thought to be over 2 million users in the UK. There are presently no restrictions on selling these products to children, therefore, the main aim of the provisions in the draft Bill is to prevent young people from accessing nicotine-containing products, primarily electronic cigarettes. The provisions will also allow for an offence of an adult purchasing such products on behalf of a person under the age of 18. These provisions are set out in clauses 1 and 2 and a commentary is contained in sections 20 and 21 of the draft Memorandum.

Dental services - the introduction of new dental contracts including the creation of performers' lists

5. At present, general dental services may only be provided by dental practitioners. One of the main policy aims of the 2008 Act was to change the way dental services are organised in Northern Ireland. These provisions will be known as primary dental services and, once commenced, the Health and Social Care Board (HSCB), will either provide primary dental services itself or arrange for their provision. Primary dental services will be provided through general dental services contracts or primary dental services agreements. Primary dental services may be provided by a wider range of providers not just dental practitioners.

Performers' lists

6. Linked to contractual legislation is the introduction of performers' lists which will place wider requirements on individual dentists. Dentists will have to provide detailed information and undertakings prior to listing and will be subject to certain HSCB powers of suspension as well as possible disqualification by a Tribunal. No dentist will be able to perform primary dental services unless their name is held on the professional list of performers maintained by the HSCB.

Amendments now needed to the primary dental services legislation

7. New dental contracts are being piloted in Northern Ireland. In the interim, the Department needs to amend specific wording and legislative references in the 2008 Act. These amendments are technical in nature and the original policy is unaffected.

The amendments are set out in clauses 3, 6 and 7 in the attached draft Bill. A commentary on these clauses is contained in sections 22, 25 and 26 of this draft Memorandum.

General ophthalmic and pharmaceutical services - extension of listing system to include all practitioners

8. Currently, the HSCB maintains lists of those with whom it has an arrangement to provide either general ophthalmic or pharmaceutical services. These are not lists of individual professional opticians or pharmacists. Rather, they are lists of providers, who may be professionally qualified, but may also be corporate bodies or (for pharmaceutical services) individual non professional providers. Once on a list, these providers are subject to specific terms of service and the HSCB has certain disciplinary powers over them. A Tribunal has the power to suspend and ultimately disqualify a provider from the list.

9. The policy intention of the 2008 Act was to extend the general ophthalmic and pharmaceutical services listing procedures to include pharmacists and opticians employed by providers. At the same time the HSCB and the Tribunal were to have widened powers over all those listed.

10. However, the 2008 Act has unintentionally restricted the existing contractors list (and potentially the HSCB's and Tribunal's powers over those listed) and failed to extend listing to all practitioners.

Amendments now needed to general ophthalmic and pharmaceutical services provisions

11. The Department now considers the initial policy consultation did not sufficiently recognise and address how the general ophthalmic services and pharmaceutical services providers' listing system could be maintained while at the same time expanding the listing process and HSCB's powers to include all professionals employed by those providers. This has resulted in imprecise

legislative powers affecting both the existing providers' listing system and the proposed creation of a professional listing system.

12. The Department proposes to revisit this policy and, in the meantime, return the general ophthalmic and pharmaceutical services provisions to their pre 2008 Act position. Any future extension to listing to include all professionals carrying out general ophthalmic services and pharmaceutical services will, dependent on Ministerial and Executive agreement, be subject to detailed policy development, consultation and legislative change. This will require further primary legislation.

13. The amendments required to return the general ophthalmic and pharmaceutical services legislation to its pre 2008 Act position are set out in clauses 4 and 5 respectively in the attached draft Bill. A commentary on these clauses is contained in sections 23 and 24 in this draft Memorandum.

Other amendments to the 2008 Act

Charges for services provided to persons not ordinarily resident in Northern Ireland

14. The 1972 Order authorises the Department to make available any services provided under the Order to persons not ordinarily resident in Northern Ireland. The Department may determine charges for such services and also prescribe exemptions from these charges. The 2008 Act, in rewording this provision, removed the phrase "subject to such exemptions as may be prescribed" from the 1972 Order. To avoid any ambiguity and for clarity, the Department wishes to make the minor amendment of restoring these words. These amendments are set out in clause 8 in the attached draft Bill. A commentary on this clause is contained in section 27 in this draft Memorandum.

Consultation

15. The Department is satisfied it need only consult on a draft of the Bill. With regards to Part 1 of the draft Bill, the Department will undertake a further consultation on the detailed regulations on nicotine-containing products before they are made. In

relation to Part 2, the policy intention to introduce contractual legislation for dental services remains unchanged as is the policy on listing providers of general ophthalmic and pharmaceutical services. Any extension of listing to include employed opticians and pharmacists requires further policy development and consultation outside of this Bill. Other amendments to Part 2 of the Bill are either presentational or have been included to avoid any ambiguity.

Options considered

Age of sale restrictions on nicotine-containing products

16. A primary legislation vehicle was required in order to grant the Department the necessary powers to make regulations prohibiting the sale of nicotine-containing products such as e-cigarettes to children and young people. In order to keep pace with England and Wales, where similar powers were granted through the Children and Families Act 2014, the inclusion of provisions in the draft Health (Miscellaneous Provisions) Bill was deemed the most suitable way forward. Regulations to be made under the draft Bill will be consulted on in due course.

Dental Services

17. In order to have the necessary powers to fully introduce new dental contracts the only viable option open to the Department is to amend the 2008 Act.

General ophthalmic services and pharmaceutical services listing

18. In order to have the necessary powers to extend listing to all general ophthalmic services and pharmaceutical services practitioners it is necessary, as a first stage, to restore the pre 2008 Act powers to allow for the continued listing of those who have an arrangement with the HSCB to provide these services. Before legislating again on this matter, the Department will carry out a full public consultation. Any subsequent legislation will be taken forward in a further Assembly Bill.

Charges for services provided to persons not ordinarily resident in Northern Ireland

19. The 1972 Order authorises the Department to make available any services provided under the Order to persons not ordinarily resident in Northern Ireland. The Department may determine charges for such services and also prescribe exemptions from these charges. The 2008 Act, in rewording this provision, removed the phrase "subject to such exemptions as may be prescribed" from the 1972 Order. To avoid any ambiguity and for clarity, the Department has chosen the option of making the minor amendment of restoring these words.

Commentary on Clauses in Part 1 of the Bill

Clause 1 Prohibition of sale of nicotine products to persons under 18

20. This provides a regulation-making power for the Department to prohibit the sale of nicotine products to a person under 18. The penalty for committing this offence is a fine not exceeding level 5 on the standard scale. There is an exemption for persons employed in the industry and a due diligence defence. Clause 1 also includes a regulation-making power for the creation of an offence in relation to the proxy purchasing of nicotine products. "Nicotine product" is defined in this clause. Examples include an electronic cigarette and part of an electronic cigarette. Tobacco products, which are already subject to a prohibition on sale to persons aged under 18, are not nicotine products for the purposes of this clause. Through subordinate legislation, the Department may provide for exceptions or make provision in relation to nicotine products of a specified kind, such as licensed NRT products, or all nicotine products.

Clause 2 Amendments consequential on section 1

21. This clause makes consequential amendments to integrate the new age of sale offence for nicotine products into the existing age of sale legislation for tobacco products. Consequential amendments to Article 6 of the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991 apply the enforcement regime for tobacco age of sale offences to an offence under clause 1. Consequential amendments to sections 5, 6, 8, 9, 10, 11, 12, 16 and 22 of the Tobacco Retailers Act (Northern Ireland) 2014 integrate the offence under clause 1 into the existing regime for repeated tobacco age of sale offences.

Commentary on Clauses in Part 2 of the Bill

Clause 3 Persons performing primary dental services

22. The purpose of this clause is to provide the Department with the necessary legal powers to introduce new dental contract provisions including the introduction of performers' lists for dentists. By correcting certain wording (so that the words "providing" and "provide" now read "performing" and "perform") it addresses anomalies identified in the 2008 Act. Other references (so that Article 61 now reads Article 60A) are also made.

Clause 4 Ophthalmic services

23. This clause revokes the provisions in the 2008 Act and restores the pre 2008 Act listing provisions.

Clause 5 Pharmaceutical services

24. This clause revokes the provisions in the 2008 Act and restores the pre 2008 Act listing provisions.

Clause 6 Disqualification by the Tribunal

25. This clause amends Schedule 11 of the 1972 Order (disqualification of persons providing Part 6 services) which sets out the powers of a Tribunal to consider a case against a listed individual or body. As the Bill will restore the pre 2008 Act position of listing only general ophthalmic services and pharmaceutical services providers, the Tribunal's powers are to revert to pre 2008 Act position. The Tribunal's extended powers for performers will not apply to general ophthalmic services or pharmaceutical services. Consequently, the Tribunal will have to consider cases from two different types of lists:

- lists of those who have an arrangement with the HSCB to provide general dental services (until primary dental services are introduced), general ophthalmic services and pharmaceutical services; and
- lists of primary medical services (and future primary dental services) performers.

The powers of the Tribunal vary, depending on the type of list, and the amendments in clause 6 address these differing situations. They also correct the Tribunal's powers for performers of primary dental services and makes transitional provision until the primary dental services provisions are commenced.

Clause 7 Provision of medical or dental services: Article 15B arrangements

26. This clause amends Article 15B of the 1972 Order. Article 15B sets out an alternative system for providing primary dental services other than through general

dental services contracts. The amendments correct earlier omissions and typographical and presentational errors.

Clause 8 Charges for services provided to persons not ordinarily resident in Northern Ireland

27. This clause makes specific reference to the power to prescribe exemptions.

Commentary on Clauses in Part 3 of the Bill and Schedules

28. Clauses 9 – 13 and the Schedules support the main provisions of both Part 1 and Part 2 of the Bill. They define the meaning of certain phrases (clause 9, Interpretation); provide detail on subordinate legislation processes (clause 10, Regulations and Orders); provide for repeals (clause 11, Repeals); commencement dates for the introduction of specific powers (clause 12, Commencement) and set out the title of the Bill (clause 13, Short title). The Schedules deal with amendments and repeals.

Financial effects of the Bill

29. There are no new significant financial implications for the Department as a result of implementing the policy to inform the Bill.

Equality and Human Rights issues

30. As part of the original policy development process, the Department carried out a preliminary screening of the policy proposals and, as part of this screening process, concluded that an Equality Impact Assessment was not necessary. The Department is content that there would be no adverse impact on any of the groups listed under section 75. The Department is also satisfied that the proposals are compatible with the European Convention on Human Rights and no convention rights have been engaged.

Regulatory Impact Assessment

31. It is the Department's view that a RIA is not required at this stage. There may be minimal costs to dental practitioners in time spent in completing applications for performers' lists, however in relation to Part 2 of the draft Bill, it is not envisaged there would be an adverse impact to business, charities, the social economy or voluntary sector. With regards to Part 1 of the Bill which deals with age of sale provisions for nicotine-containing products, the Department would intend to carry out an RIA to accompany the regulations which will be made under the Bill.

Freedom of Information Act 2000 – Confidentiality of Consultations

1. The Department will publish a summary of responses following completion of the consultation process. Your response and all other responses to the consultation may be disclosed on request. The Department can only refuse to disclose information in exceptional circumstances. Before you submit your response, please read the paragraphs below on the confidentiality of consultations and they will give you guidance on the legal position about any information given by you in response to this consultation.

2. The Freedom of Information Act gives the public a right of access to any information held by a public authority, namely, the Department in this case. This right of access to information includes information provided in response to a consultation. The Department cannot automatically consider as confidential information supplied to it in response to a consultation. However, it does have the responsibility to decide whether any information provided by you in response to this consultation, including information about your identity should be made public or be treated as confidential.

3. This means that information provided by you in response to the consultation is unlikely to be treated as confidential, except in very particular circumstances. The Lord Chancellor's Code of Practice on the Freedom of Information Act provides that:

- the Department should only accept information from third parties in confidence if it is necessary to obtain that information in connection with the exercise of any of the Department's functions and it would not otherwise be provided;
- the Department should not agree to hold information received from third parties "in confidence" which is not confidential in nature;
- acceptance by the Department of confidentiality provisions must be for good reasons, capable of being justified to the Information Commissioner.

For information about confidentiality of responses please contact the

Information Commissioner's Office or see web site at:

[http://www.ico.gov.uk/about us/regional offices/northern ireland.aspx](http://www.ico.gov.uk/about_us/regional_offices/northern_ireland.aspx)

