

**Written evidence submitted by Carol Fraser, Senior Trading Standards
Officer, North Lanarkshire Council (TVB27)**

1. I ask the Committee to consider whether any amendment is necessary to the Tobacco and Vapes Bill (the Bill) as outlined below.
2. I am Carol Fraser and I work for North Lanarkshire Council in the Trading Standards section. I am Chair of the Scottish Tobacco and Age Restricted Products Group (a Group that is supported by SCOTSS (Society of Chief Officers of Trading Standards Services in Scotland)).
3. I make this submission in my personal capacity.
4. My comments relate to Clause 43 and 41 of the Bill and are with a view to expanding what the Bill amends or Scottish Government can amend in the Tobacco and Primary Medical Services Scotland Act 2010 as regards “herbal smoking products” and “nicotine products”.

Scottish Minister’s powers regarding “nicotine products”

5. **Clause 43 of the Bill (Power to regulate nicotine products)** makes provision for the Scottish Ministers to amend some of the provisions that relate to “nicotine vapour products” in the Tobacco and Primary Medical Services (Scotland) Act 2010 such that they could be applied also to “nicotine products”, listing specific provisions in the Act that could be amended, namely Section 4A (sale of nicotine vapour products to persons under 18), Section 4B (age verification policy), Section 4C (sale of tobacco or nicotine vapour products by persons under 18), Section 4D (defences) so far as it relates to Section 4A and Section 6A (purchase of nicotine vapour products on behalf of persons under 18).
6. The Tobacco and Primary Medical Services (Scotland) Act 2010, however, also makes provision for:
 - a. Registration of tobacco businesses and nicotine vapour product businesses.

Provisions relating to registration of tobacco and/ or nicotine vapour product businesses are detailed in Section 10 (Register of tobacco and nicotine vapour product retailers), Section 11 (application for registration and addition of premises), Section 12 (certificates of registration), Section 13 (duty to notify certain changes), Section 14 (changes to and removal from the Register), Section 20 (offences relating to the Register – Section 20 (1), (2), (2A), (3) and (6) relate to the Register), Section 21 (Public Inspection of Register), Section 22 (Council access to Register), Section 23 (Delegation of functions relating to Register) and Section 24 (Vehicles, vessels and moveable structures.)

b. Tobacco and Nicotine Vapour Product Banning Orders.

The Act makes provision to enable application to a Sheriff, for banning orders against persons in respect of carrying on a tobacco and nicotine vapour product business.

Provisions relating to Tobacco and Nicotine Vapour Product banning orders are detailed in Section 15 (Tobacco and Nicotine Vapour Product banning orders), Section 16 (Tobacco and nicotine vapour product banning orders: ancillary orders), Section 17 (Tobacco retailing banning orders etc.: appeals), Section 18 (Tobacco and nicotine vapour product banning orders etc.: notification to Scottish Minister, Section 19 (Tobacco and Nicotine Vapour Product banning orders: display of notices) and Section 20 (Offences relating to the Register – Section 20 (4), (5) and (6) relate to banning order provisions.)

c. Prohibition of vending machines for the sale of tobacco or nicotine vapour products.

Section 9 provides to the effect that it is an offence for a person who has management or control of premises to have a vending machine (automatic machine for the sale of tobacco or nicotine vapour products) available.

7. I am unsure whether Clause 43 (2) of the Bill, would enable Scottish Ministers to amend the registration provisions and banning order provisions (outlined above) in the Tobacco and Primary Medical Services (Scotland) Act 2010 (should they wish to do so) such that they can be applied to “nicotine product businesses”, through the insertion of Section 9A (2) by the Bill into the Tobacco and Primary Medical Services (Scotland) Act 2010. I am unsure whether this addition i.e. “The consequential provision that may be made by regulations under this section by virtue of section 40 (2) includes provision amending any provision of this Act” would enable Scottish Ministers to make amendments relating to the provisions for registration and banning orders. Similarly, I am unsure whether this same provision would enable Scottish Ministers to apply the same restrictions on vending machines for “nicotine products” as there are for tobacco products, nicotine vapour products (and herbal smoking products, subject to Clause 41 of the Bill being enacted).
8. If Clause 43 (2) of the Bill does not enable Scottish Ministers to make amendments (should they wish to do so) regarding the provisions discussed above then I would recommend that the bill is amended to give Scottish Ministers the power to do so, such that there is facility to make use of all the provisions currently applicable in relation to “nicotine vapour products” and “nicotine vapour product businesses” to “nicotine products” and “nicotine product businesses”.

9. The Bill could be amended such that Clause 43 (2) reads:

“After section 9 insert –

“9A Power to extend nicotine vapour product provisions to nicotine products and nicotine vapour product businesses.

- (1) (a) The Scottish Ministers may by regulations amend any of the following sections so that it applies in relation to some or all nicotine products that are not nicotine vapour products as it applies to nicotine vapour products –
- section 4A (sale of nicotine vapour products to persons under 18);
 - section 4B (age verification policy);
 - section 4C (sale of tobacco or nicotine vapour products by persons under 18);
 - section 4D (defences), so far as it relates to section 4A;
 - section 6A (purchase of nicotine vapour products on behalf of persons under 18);
 - section 9 (Prohibition of vending machine for the sale of tobacco products, nicotine vapour products (and herbal smoking products, subject to Clause 41 of the Bill being enacted)).
- (b) The Scottish Ministers may by regulations amend any of the following sections so that it applies to a “nicotine product business” as it applies to a “nicotine vapour product business” –
- Section 35 (interpretation) for the purpose of adding a definition of “nicotine product business” and to amend the definition of “tobacco, (herbal smoking product, subject to Clause 41 of the Bill being enacted) or nicotine vapour product business” to include “nicotine product business” and its definition;
 - Section 10 (Register of tobacco and nicotine vapour product retailers);
 - Section 11 (application for registration and addition of premises);
 - Section 12 (certificates of registration), Section 13 (duty to notify certain changes);
 - Section 14 (changes to and removal from the Register);
 - Section 20 (offences relating to the Register);
 - Section 21 (Public Inspection of Register);
 - Section 22 (Council access to Register);
 - Section 23 (Delegation of functions relating to Register);
 - Section 24 (Vehicles, vessels and moveable structures);
 - Section 15 (Tobacco and Nicotine Vapour Product banning orders);
 - Section 16 (Tobacco and nicotine vapour product banning orders: ancillary orders);
 - Section 17 (Tobacco retailing banning orders etc.: appeals);
 - Section 18 (Tobacco and nicotine vapour product banning orders etc.: notification to Scottish Minister);
 - Section 19 (Tobacco and Nicotine Vapour Product banning orders: display of notices).

(2) The consequential provision that may be made by regulations under this section by virtue of section 40 (2) includes provision amending any provision of this Act.”

Extension of Tobacco legislation to Herbal Smoking products

10. **Clause 41 (Extension of tobacco legislation to herbal smoking products)** of the Bill makes provision for amendment of various provisions of the Tobacco and Primary Medical Services (Scotland) Act 201 relating to tobacco products such that they apply also to herbal smoking products.
11. As previously outlined in paragraphs 5 (a) and (b) in relation to the provisions of the Tobacco and Primary Medical Services (Scotland) Act 2020 that apply for tobacco product and nicotine vapour product businesses as regards “registration” and “banning orders” it is suggested that power is given to Scottish Ministers such that they could, if they so wished, apply these provisions to herbal smoking product businesses too.
12. Clause 41 of the Bill could be amended to add a new **subsection (8)**:

“The Scottish Ministers may by regulations amend any of the following sections so that it applies to a “herbal smoking product business” as it applies to a “tobacco product business” –
Section 10 (Register of tobacco and nicotine vapour product retailers);
Section 11 (application for registration and addition of premises);
Section 12 (certificates of registration), Section 13 (duty to notify certain changes);
Section 14 (changes to and removal from the Register);
Section 20 (offences relating to the Register);
Section 21 (Public Inspection of Register);
Section 22 (Council access to Register);
Section 23 (Delegation of functions relating to Register);
Section 24 (Vehicles, vessels and moveable structures);
Section 15 (Tobacco and Nicotine Vapour Product banning orders);
Section 16 (Tobacco and nicotine vapour product banning orders: ancillary orders);
Section 17 (Tobacco retailing banning orders etc.: appeals);
Section 18 (Tobacco and nicotine vapour product banning orders etc.: notification to Scottish Minister);
Section 19 (Tobacco and Nicotine Vapour Product banning orders: display of notices).”

This would then give Scottish Ministers the ability to amend the Tobacco and Primary Medical Services (Scotland) Act 2010 should they wish to apply the registration and banning order provisions to “herbal smoking products”, if they deemed it fit to do so.

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