



25 March 2025

Dear Committee Members,

Ahead of Report stage for the Tobacco and Vapes Bill on 26 March, I am writing to members of the Tobacco and Vapes Bill Committee to provide further details on a number of issues that were raised with my predecessor during the proceedings.

I apologise that this letter is being sent in such close proximity to Report; Honourable Members raised a number of detailed questions to which detailed answers are required. I hope Members find the answers in this letter useful.

I would like to thank all Honourable Members for their important contributions and the vital debate that was had which has informed the government amendments that have been tabled at Report. I look forward to our further engagement on this landmark Bill.

Snus

Members asked how many manufacturers in the UK are producing snus for export. We do not hold specific data on this; however, we expect that there are very few as it has been illegal to sell snus within the UK since 1992. We also think it is unlikely that any would be incentivised to export snus as it has been banned for sale across the EU since 1992 and the EU is the UK's largest trading partner.

Tobacco related devices

Members flagged that the power to extend measures in Part 1 to tobacco related devices could potentially result in a change in the age of sale for products, such as bongos. This would bring them in line with the smoke-free generation age of sale change.

They noted that this could result in some individuals that are able to be sold these products being prohibited in the future. Whilst I understand this concern, these individuals would not be able to be sold the tobacco to use alongside these products. As they cannot be sold tobacco, there is no need for them to be able to be sold a bong. However, we currently do not have any plans to alter the age of sale for these products.

Vending machines

Members raised a concern that innovation has led to new types of vending machines, where purchases can be made via apps and then dispensed via a vending machine, and that this would be particularly exploitable. To make it clear that such machines are prohibited, the government has tabled an amendment for Report to clarify that the vending machine provisions in the Bill extend to machines which dispense products to a customer in connection with a sale. This means that machines which dispense products where the sale is made elsewhere are clearly captured by the ban.

Vape advertising and pharmacists

Members raised concerns in the debate about how the advertising provisions would apply to pharmacists and healthcare services providing advice to patients. Under the Bill, healthcare providers providing advice about vaping as a cessation tool will not be caught by the prohibitions against publishing, designing, printing or distributing advertisements. This only applies to businesses promoting a specific vaping product. For example, pharmacists could display public health campaign messaging about vaping as a smoking cessation tool.

Sponsorship contracts / Forestalling measure

Members posed questions about the commencement of the ban in the Bill on sponsorship of vaping and nicotine and other products and the contracts it will impact. The sponsorship ban will not apply to any agreement entered into earlier than two months after royal assent. The ban itself will take effect from a date to be specified in regulations, which is consistent with rest of the advertising provisions in the Bill. From that date, it will be an offence if either party makes a contribution under the agreement and does anything whose purpose or effect is to promote one of these products.

Members also asked the previous Bill Minister how he will ensure that new contracts set to run for long a duration will not be entered into prior to the Bill's provisions coming into force. In most circumstances, and barring good justification, the Government will not interfere with an existing contract which has already been lawfully entered into.

Medically licensed vapes

Members asked whether the license for the first approved medicinal vape, which was granted authorisation in 2015, has lapsed. My officials have confirmed that the authorisation for this product was cancelled in 2018.

The Medicines and Healthcare Products Regulatory Agency is ready to support a future medicinally licensed product if the industry comes forward with a successful candidate.

Valid ID

Members raised concerns that the list of identity documents to satisfy the defence for someone charged with selling products to someone under the age of sale was limited, and queried whether other ID, such as veteran cards, should be added. While the Minister at the time highlighted that additional ID documents may be added by virtue of clauses 46 and 82, we have tabled amendments at Report to revise our approach for setting out this defence.

We are aware of the ongoing work of the Department for Science, Innovation and Technology (DSIT) to enable the widespread use of trusted digital verification services. These digital identities are another type of ID that can be used by a person to prove their age when purchasing age-restricted products. We are therefore amending the Bill to remove potential ambiguity for retailers regarding the use of digital ID, and other types of ID, for verifying the age of prospective customers when selling tobacco, vaping and nicotine products. The tabled amendments remove the list of physical ID from the face of the Bill and instead provide a power to set out in regulations the steps to be taken to verify age using both physical and digital ID, in order to satisfy the defence. This better future-proofs the defence against developments in identification processes and provides better alignment with government ambition to support the widespread use of digital ID.

Restricted Premises Orders and Restricted Sale Orders

Members probed on a number of technical questions related to restricted premises orders and restricted sale orders. Some questions were answered during the committee sessions, but I would like to provide clarity on outstanding questions here.

Members asked why restricted premises orders and restricted sale orders are only for age of sale and vending machine offences. These orders specifically prevent the sale of tobacco, vape and nicotine products, where offences relating to the sale of these products have been persistently committed in relation to a specific retail premises. They are therefore a proportionate enforcement tool that is specific to the nature of the offence committed. Other tobacco and vape offences, such as free distribution offences, may be committed outside of the retail context and so a restricted premises order or restricted sale order would not be an appropriate enforcement tool. A range of alternative enforcement options are available for other offences, including fines, and the new fixed penalty notices introduced by the Bill.

Members were concerned around a potential loophole with regard to a business issued with a restricted premises order continuing to sell online for in-store collection. Restricted premises orders apply to a business premises and do not cover online sales, however, restricted sales orders apply to the person and provide an alternative enforcement option for a given case. It will be for Trading Standards to decide what action is most appropriate on a case-by-case basis. Alternatively, the future licensing scheme will provide further opportunities to crack down on rogue retailers. We will carefully consider the licence conditions, and further consequences for anyone found to have breached those conditions, such as licence revocation.

Members questioned whether an employee who sold a relevant product prohibited under a restricted premises order would have a reasonable defence if they were not made aware of the sales restriction. Appropriate action will be taken on a case-by-case basis. In this scenario, it is likely action would be taken against the business owner rather than an employee since the offence is for any sale from the premises and is not focused on who carried out the sale.

Questions were also raised about who would be considered an interested person and the removal of a restricted premises order. Clause 24 defines an interested person as an occupier or anyone with an interest in the premises and requires that interested persons are notified of the restricted premises order. It will be for Trading Standards, who apply to the

magistrates' court for an order to be made, to decide who has an interest in the premises and who they give notice to. For example, an interested person might be the manager, business owner or landlord of a premises. Any interested person is able to make representation to the court to try to prevent or vary a restricted premises order being issued.

For Report Stage we have tabled government amendments which remove duplicative provisions that prohibit a business or individual issued with a restricted premises order or restricted sale order from keeping or operating a vending machine for the sale of tobacco, vaping and nicotine products. The Bill already prohibits the sale of these products from vending machines and therefore these provisions are unnecessary. I hope this clarifies a point raised during Committee.

Performers exemption

Members queried whether the power that allows regulations to be made to create an exception to permit performers in England to use tobacco or vaping products, when it is justified to preserve the artistic integrity of a performance, should be altered so that the exemption only applies to herbal smoking products and/or non-nicotine vapes. The government is not minded to remove this exemption as the creative industry is a significant part of the UK economy and the Bill needs to balance a range of priorities. The Bill already seeks to protect those that are most vulnerable to second hand smoke and we are of the view that the relative public health benefit from removing this exemption is low.

Crown application

Members asked about the application of provisions in the Bill to the Crown. The Crown application for parts of the Bill is as follows:

- In Part 1 of the Bill, clause 47 provides that this Part (and any regulations made thereunder) apply to the Crown.
- Part 2 of the Bill amends existing legislation in Scotland. The legislation amended already applies to the Crown, therefore the provisions of Part 2 apply to the Crown.
- Part 3 of the Bill amends existing legislation in Northern Ireland which does not apply to the Crown. This is an existing precedent which the Department of Health in Northern Ireland wished to maintain.
- Part 4 refers to offences under parts 1 to 3 of the Bill which apply to the Crown and therefore explicit mention is not required.
- In Part 5 of the Bill, clause 106 empowers the Secretary of State to provision for regulations made under Part 5 to bind the Crown.
- In Part 6, clause 134 provides that this Part (and any regulations made thereunder) apply to the Crown.
- In Part 7, there is a difference in approach between (1) England and Wales and (2) Scotland and Northern Ireland. This is because Part 7 amends existing legislation relating to the creation of smoke-free places. The existing legislation for England and Wales does not apply to the Crown. The existing legislation being amended for Scotland and Northern Ireland does apply to the Crown.

Application of Part 7 to Parliament / Crown Estate

Members asked about the application of existing smoke-free places legislation to Parliament and the Crown Estate (as opposed to the Crown itself).

Clause 159 makes provision for the Bill to apply to Parliament. This will not apply to Part 7 (Smoke-free places, vape-free places and other free-from places), because Part 7 only contains amendments to other legislation, so the question of whether or not the provisions of Part 7 apply to Parliament is determined by the individual piece of legislation being amended.

In the case of England, the Health Act 2006 does not contain provision which applies it to Parliament. There is established precedent therefore, that smoke-free places legislation does not apply and it is the responsibility of the Department responsible for running the relevant part of the Crown Estate to determine what is appropriate.

Members also asked about how enforcement of the Crown Estate is conducted. Enforcement on Crown Estates is considered on a case-by-case basis and dependent on the nature of the estate. Estates vary, from publicly accessible parks to prison estates, and it is the responsibility of the relevant department or management body to determine what is appropriate for a given estate, to ensure the law is adhered to.

Application of smoke-free places and vape-free places in prisons

Members queried whether vape-free places will also include closed prisons and requested that the measures extend to these areas. As set out above, existing smoke-free places legislation and the measures in Part 7 of the Bill do not apply to the Crown in England and Wales and therefore it is the responsibility of the Ministry of Justice to determine the policy in relation to prisons.

Currently in England and Wales prisoners cannot smoke anywhere in a closed prison estate and smoking is permitted in designated outside areas in open prisons. Vaping is only permitted in designated areas or a cell providing it is not shared with a non-vaper.

The Government will consult on proposals to create additional smoke-free places as well as vape-free and heated tobacco-free places. The Ministry of Justice own the policy on extending these measures to prisons. My Department will continue to work with the Ministry of Justice as we consider any future regulations.

I have copied this letter to the Committee Chairs, and I have requested a copy of this letter be deposited in the Libraries of the Houses of Parliament.

Yours sincerely,



ASHLEY DALTON MP