

These notes refer to the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 (c.26) which received Royal Assent on 12 May 2016

Health (Miscellaneous Provisions) Act (Northern Ireland) 2016

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Health (Miscellaneous Provisions) Act (Northern Ireland) 2016 which received Royal Assent on 12 May 2016. They have been prepared by the Department of Health in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section or schedule does not seem to require an explanation or comment, none is given.

BACKGROUND AND POLICY OBJECTIVES

3. [Part 1](#) of the Act 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 2m users in the UK. There are presently no restrictions on selling these products to children in Northern Ireland, therefore, the main aim of the provisions in the Act 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. In addition, Part 1 of the Act contains a provision to increase the level of fine applicable for sales of tobacco from a vending machine. It also contains a provision to prohibit the use of nicotine products or tobacco in enclosed vehicles when a person under 18 is in the vehicle.
4. [Part 2](#) of the Act deals with the requirement for a study to be carried out in relation to a levy on sugar sweetened drinks.
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. 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. The Act now contains amendments to give full effect to this 2008 Act policy intention.

6. The Department is also using the Act to amend the general ophthalmic and pharmaceutical services listing systems provisions. Further detail on these changes is set out in the following paragraphs. All these provisions are contained in Part 3 of the Act.

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

7. 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

8. 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 to the primary dental services legislation

9. 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 sections 9, 12 and 13 in the Act.

Amendments to general ophthalmic and pharmaceutical services provisions

10. 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.

11. 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. 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. The relevant amendments are set out in sections 10 and 11 respectively in the Act.

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

12. 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 section 14 in the Act.

Human Transplantation

13. At the moment, human transplantation is governed by the Human Tissue Act 2004 which applies to England, Wales and Northern Ireland. Part 4 of the Act contains provisions to promote and increase awareness on human transplantation through a campaign at least once a year, and also to produce an annual report on transplantation activity. These sections will fit into the general framework already established by the Human Tissue Act 2004.

OVERVIEW

14. The Act has 21 sections and 2 schedules and is split into 5 parts:-

Sale or use of nicotine products and tobacco – consists of 7 sections and provides for regulations to be made prohibiting the sale of nicotine products both to under 18s and from vending machines. It provides, through schedule 1, for amendments to be made to the Tobacco Retailers Act (Northern Ireland) 2014 and, separately, for an amendment to the Children and Young Persons (Protection from Tobacco) (Northern Ireland) Order 1991. It also contains a provision to prohibit the use of nicotine products or tobacco in enclosed vehicles when a person under 18 is in the vehicle. It also makes provision for interpretation of Part 1 of the Act.

Levy on sugar sweetened drinks – consists of 1 section and provides for a study to be carried out in relation to a levy on sugar sweetened drinks.

Miscellaneous provisions – consists of 6 sections to amend the 2008 Act provisions in respect of primary dental services, general ophthalmic services, pharmaceutical services and charges for services provided to persons not ordinarily resident in Northern Ireland.

Human transplantation – consists of 2 clauses and contains provisions to promote, provide information about and increase awareness on human transplantation

General – consists of 5 sections and makes provision in respect of interpretation of the Act, subordinate legislation and repeals, and sets out the title and commencement dates.

COMMENTARY ON SECTIONS

A commentary on the provisions follows below. Comments are not given where the wording is self-explanatory.

Commentary on Sections in Part 1 of the Act

Section 1: Prohibition of sale of nicotine products to persons under 18

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. Section 1 also includes a regulation-making power for the creation of an offence in relation to the proxy purchasing of nicotine products.

Section 2: Prohibition of sale of nicotine products from vending machines

Provides a regulation-making power for the Department to prohibit the sale of nicotine products from an automatic vending machine. Regulations made under this power must state who would be responsible for breaching the ban, the penalty for which is a fine not exceeding level 5 on the standard scale.

Section 3: Amendments consequential on sections 1 and 2

This section 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 offences under sections 1 and 2. Consequential amendments to sections 5, 6, 8, 9, 10, 11, 12, 16 and 22 of the Tobacco Retailers (Northern Ireland) Act 2014 integrate the offences under sections 1 and 2 into the existing regime for repeated tobacco age of sale offences.

Section 4: Amendment of the Order of 1991

Increases the penalty for selling tobacco from an automatic vending machines from a level 4 offence to a level 5 offence. This is in line with similar offences for underage sales of tobacco products.

Section 5: Prohibition of use of tobacco or nicotine products in enclosed vehicles

This section seeks to amend Article 6 of the Smoking (Northern Ireland) Order 2006 in relation to smokefree vehicles, to allow offences to apply to private vehicles where under eighteens are present in the vehicle. It also provides that regulations may be made in relation to prohibiting the use of nicotine products in cars when persons under the age of 18 are present.

Section 6: Review

This section requires the Department to publish a report on the implementation of Part 1 of the Act not later than 3 years after the commencement of Section 6 of the Act.

Section 7: Interpretation of Part 1

“Nicotine product” is defined in this section. 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.

Commentary on Sections in Part 2 of the Act

Section 8: Levy on sugar sweetened drinks

This section places a duty on the Department to carry out a study on a levy on sugar sweetened drinks within two years of the enactment of the Act. The section also sets out what should be included in the study.

Commentary on Sections in Part 3 of the Act

Section 9: Persons performing primary dental services

The purpose of this section is to provide the Department with the necessary legal powers to introduce the new dental contract provisions including the introduction of performers’ lists for dentists. By changing certain wording (so that the words “providing” and “provide” now read “performing” and “perform”) it gives full effect to the 2008 Act policy intention. Changes to other references (so that Article 61 now reads Article 60A) are also made.

Section 10: Ophthalmic services

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

Section 11: Pharmaceutical services

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

Section 12: Disqualification by the Tribunal

This section amends Schedule 11 to 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 Act 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 section 12 address these differing situations.

Section 13: Provision of medical or dental services: Article 15B arrangements

Article 15B sets out an alternative system for providing primary dental services other than through general dental services contracts. This section amends Article 15B of the 1972 Order to ensure it gives full effect to the 2008 Act policy intention.

Section 14: Charges for services provided to persons not ordinarily resident in Northern Ireland

This section makes specific reference to the power to prescribe exemptions.

Commentary on Sections in Part 4 of the Act

Section 15: Duty to promote transplantation

This section places a duty on the Department to promote transplantation and to provide information and increase awareness about transplantation.

Section 16: Annual report on transplantation

This section requires the Department to produce a report once a year on transplantation activities. The report must be given to the Assembly. Once every five years, the Department must report on whether the Act has been effective in promoting transplantation activities, and on any potential ways in which the law could be amended to increase transplantations.

Commentary on Sections in Part 5 of the Act and Schedules

Sections 17 – 21 and the Schedules support the main provisions of both Part 1 and Part 2 of the Act. They define the meaning of certain phrases (section 17, Interpretation); provide detail on subordinate legislation processes (section 18, Regulations and Orders); provide for repeals (section 19, Repeals); commencement dates for the introduction of specific powers (section 20, Commencement) and set out the title of the Act (section 21, Short title). The Schedules deal with amendments and repeals.

HANSARD REPORTS

15. The following table sets out the dates of the Hansard reports for each stage of the Act's passage through the Assembly and the date Royal Assent was achieved.

STAGE	DATE
First stage.	30 November 2015
Second stage.	8 December 2015
Committee stage - briefing from Departmental officials, Cancer Prevention Focus and BMA Public Health Forum.	7 January 2016
Committee stage - Committee discussion of clauses.	13 January 2016
Committee stage - Informal clause-by-clause scrutiny.	20 January 2016
Committee stage - Formal clause-by-clause scrutiny.	27 January 2016
Committee's report on the Act - Report number NIA 294/11-16.	3 February 2016
Consideration stage.	22 February 2016
Further Consideration stage.	7 March 2016
Final stage.	15 March 2016
Royal Assent.	12 May 2016