

Annexe B – Amendment to the Children and Families Bill

Before Clause 80

LORD NASH

57B* Insert the following new Clause—

“Regulation of retail packaging etc of tobacco products

(1) The Secretary of State may make regulations under subsection (6) or (8) if the Secretary of State considers that the regulations may contribute at any time to reducing the risk of harm to, or promoting, the health or welfare of people under the age of 18.

(2) Subsection (1) does not prevent the Secretary of State, in making regulations under subsection (6) or (8), from considering whether the regulations may contribute at any time to reducing the risk of harm to, or promoting, the health or welfare of people aged 18 or over.

(3) The Secretary of State may treat regulations under subsection (6) or (8) as capable of contributing to reducing the risk of harm to, or promoting, the health or welfare of people under the age of 18 if the Secretary of State considers that—

(a) at least some of the provisions of the regulations are capable of having that effect, or

(b) the regulations are capable of having that effect when taken together with other regulations that were previously made under subsection (6) or (8) and are in force.

(4) Regulations under subsection (6) or (8) are to be treated for the purposes of subsection (1) or (2) as capable of contributing to reducing the risk of harm to, or promoting, people’s health or welfare if (for example) they may contribute to any of the following—

(a) discouraging people from starting to use tobacco products;

(b) encouraging people to give up using tobacco products;

(c) helping people who have given up, or are trying to give up, using tobacco products not to start using them again;

(d) reducing the appeal or attractiveness of tobacco products;

(e) reducing the potential for elements of the packaging of tobacco products other than health warnings to detract from the effectiveness of those warnings;

(f) reducing opportunities for the packaging of tobacco products to mislead consumers about the effects of using them;

(g) reducing opportunities for the packaging of tobacco products to create false perceptions about the nature of such products;

(h) having an effect on attitudes, beliefs, intentions and behaviours relating to the reduction in use of tobacco products.

(5) Regulations under subsection (6) or (8) are to be treated for the purposes of subsection (1) as capable of contributing to reducing the risk of harm to, or promoting, the health or welfare of people under the age of 18 if—

(a) they may contribute to reducing activities by such people which risk harming their health or welfare after they reach the age of 18, or

(b) they may benefit such people by reducing the use of tobacco products among people aged 18 or over.

(6) The Secretary of State may by regulations make provision about the retail packaging of tobacco products.

(7) Regulations under subsection (6) may in particular impose prohibitions, requirements or limitations relating to—

(a) the markings on the retail packaging of tobacco products (including the use of branding, trademarks or logos);

(b) the appearance of such packaging;

(c) the materials used for such packaging;

(d) the texture of such packaging;

(e) the size of such packaging;

(f) the shape of such packaging;

(g) the means by which such packaging is opened;

(h) any other features of the retail packaging of tobacco products which could be used to distinguish between different brands of tobacco product;

(i) the number of individual tobacco products contained in an individual packet;

(j) the quantity of a tobacco product contained in an individual packet.

(8) The Secretary of State may by regulations make provision imposing prohibitions, requirements or limitations relating to—

(a) the markings on tobacco products (including the use of branding, trademarks or logos);

(b) the appearance of such products;

(c) the size of such products;

(d) the shape of such products;

(e) the flavour of such products;

(f) any other features of tobacco products which could be used to distinguish between different brands of tobacco product.

(9) The Secretary of State may by regulations—

(a) create offences which may be committed by persons who produce or supply tobacco products the retail packaging of which breaches prohibitions, requirements or limitations imposed by regulations under subsection (6);

(b) create offences which may be committed by persons who produce or supply tobacco products which breach prohibitions, requirements or limitations imposed by regulations under subsection (8);

(c) provide for exceptions and defences to such offences;

(d) make provision about the liability of others to be convicted of such offences if committed by a body corporate or a Scottish partnership.

(10) The Secretary of State may by regulations provide that regulations under subsection (6) or (8) are to be treated for the purposes specified in regulations under this subsection as safety regulations within the meaning of the Consumer Protection Act 1987.

(11) The Secretary of State may by regulations make provision amending, repealing, revoking or otherwise modifying any provision made by or under an enactment (whenever passed or made) in connection with provision made by regulations under any of subsections (6), (8), (9) or (10).

(12) The Secretary of State must—

(a) obtain the consent of the Scottish Ministers before making regulations under any of subsections (6), (8), (9) or (10) containing provision which would (if contained in an Act of the Scottish Parliament) be within the legislative competence of that Parliament;

(b) obtain the consent of the Welsh Ministers before making regulations under any of those subsections containing provision which would (if contained in an Act of the National Assembly for Wales) be within the legislative competence of that Assembly;

(c) obtain the consent of the Department of Health, Social Services and Public Safety before making regulations under any of those subsections containing provision which would (if contained in an Act of the Northern Ireland Assembly) be within the legislative competence of that Assembly.

(13) For the purposes of this section a person produces a tobacco product if, in the course of a business and with a view to the product being supplied for consumption in the United Kingdom or through the travel retail sector, the person—

(a) manufactures the product,

(b) puts a name, trademark or other distinguishing mark on it by which the person is held out to be its manufacturer or originator, or

(c) imports it into the United Kingdom.

(14) For the purposes of this section a person supplies a tobacco product if in the course of a business the person—

(a) supplies the product,

(b) offers or agrees to supply it, or

(c) exposes or possesses it for supply.

(15) In this section—

“enactment” includes—

(a) an Act of the Scottish Parliament,

(b) a Measure or Act of the National Assembly for Wales, or

(c) Northern Ireland legislation;

“external packaging”, “internal packaging” and “wrapper” have the meanings given by regulations under subsection (6);

“packaging”, in relation to a tobacco product, means—

(a) the external packaging of that product,

(b) any internal packaging of that product,

(c) any wrapper of that product, or

(d) any other material attached to or included with that product or anything within paragraphs (a) to (c);

“retail packaging”, in relation to a tobacco product, means the packaging in which it is, or is intended to be, presented for retail sale;

“retail sale” means sale otherwise than to a person who is acting in the course of a business which is part of the tobacco trade;

“tobacco product” means a product consisting wholly or partly of tobacco and intended to be smoked, sniffed, sucked or chewed;

“travel retail sector” means retail outlets in the United Kingdom at which tobacco products may be purchased only by people travelling on journeys to destinations outside the United Kingdom.”