

SPICe Briefing

Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill – Stage 3

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16/21

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Stage 3 proceedings on the Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill will take place on 03 March 2016.

This briefing summarises the legislative and non-legislative recommendations made by the Health and Sport Committee in its stage 1 report and the Scottish Government's response. It also summarises amendments passed at stage 2 and considers key amendments that were withdrawn or not agreed to in advance of stage 3.

SPICe briefing SB 15/50 (Robson, 2015) provides an overview of the Bill as introduced.



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EXECUTIVE SUMMARY

The Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill (as introduced) contained four broad proposals:

1 - To control the sale, advertising and promotion of Nicotine Vapour Products (NVPs) such as e-cigarettes, and apply further controls on the sale of tobacco

These controls include; a minimum purchase age of 18, the power to prohibit their sale from vending machines, making it an offence to purchase an NVP on behalf of someone under 18 ('proxy purchasing'), a requirement for NVP retailers to register on the tobacco and nicotine vapour product retailer register, a requirement that registered retailers should operate an age verification policy, and the power to restrict or prohibit domestic advertising and promotions.

2 - To make it an offence to smoke tobacco outside of buildings on NHS hospital sites

The Bill would make it an offence to smoke within a designated no-smoking area around buildings in NHS hospital grounds. The area will be immediately outside of buildings on hospital sites and bounded by a perimeter of a specified distance (to be determined in regulations). The Bill would allow Ministers to make exceptions. Outside of the perimeter, NHS Boards would have the discretion as to whether or not to apply a no-smoking policy.

3 - To introduce a duty of candour for health/care organisations

The Bill proposes to give health, social care and social work organisations a 'duty of candour'. What this would mean is that, in the event that a person experiences (or could have experienced) an unintended or unexpected harm from their care, the organisation would have a duty to tell that individual. The Bill would also allow an apology to be given without it amounting to an admission of negligence or a breach of a statutory duty.

4 - To introduce offences of wilful neglect and ill treatment for health/care professionals and organisations

The Bill proposes to create new offences of ill-treatment or wilful neglect; one of which would apply to adult health and social care workers, and another which would apply to adult health and social care providers

The Health and Sport Committee supported the general principles of the Bill at stage 1 and there were few amendments to the Bill at stage 2.

The most significant amendment at stage 2 was the inclusion of a statutory duty on Ministers to provide (or secure the provision of) communication equipment and support in using that equipment, for any person who has lost their voice or has difficulty speaking.

One of the most significant amendments to be withdrawn at stage 2, was one which would have established a single register for retailers of all age restricted products.

INTRODUCTION

The Bill was introduced in the Scottish Parliament on 4 June 2015 by the Cabinet Secretary for Health and Wellbeing. [SPICe briefing 15-50](#) provides more detailed information on the Bill's provisions at introduction but, in summary, the Bill contains four broad proposals:

1 - To control the sale, advertising and promotion of Nicotine Vapour Products such as e-cigarettes, and apply further controls on the sale of tobacco

In light of the uncertainty around the health effects of NVPs, the Bill adopts something of a precautionary approach and is proposing a number of restrictions on the sale, advertising and promotion of NVPs. These include:

- a minimum purchase age of 18,
- the power to prohibit their sale from vending machines,
- making it an offence to purchase an NVP on behalf of someone under 18 ('proxy purchasing')
- a requirement for NVP retailers to register on the tobacco and nicotine vapour product retailer register,
- a requirement that registered retailers should operate an age verification policy, and
- the power to restrict or prohibit domestic advertising and promotions.

2 - To make it an offence to smoke tobacco outside of buildings on NHS hospital sites

At the moment, the NHS in Scotland operates a smoke free policy across all of its grounds. However, the NHS does not have any powers to enforce the policy and compliance is reported to be an issue. The Bill would make it an offence to smoke within a designated no-smoking area around buildings in NHS hospital grounds. The area will be immediately outside of buildings on hospital sites and bounded by a perimeter of a specified distance (to be determined in regulations). The Bill would allow Ministers to make exceptions. Outside of the perimeter, NHS Boards would have the discretion as to whether or not to apply a no-smoking policy.

3 - To introduce a duty of candour for health/care organisations

Following a number of reviews in England, there have been calls for greater candour amongst health and care organisations when things go wrong. As a consequence, the Bill proposes to give health, social care and social work organisations a 'duty of candour'. What this would mean is that, in the event that a person experiences (or could have experienced) an unintended or unexpected harm from their care, the organisation would have a duty to tell that individual. The Bill would also allow an apology to be given without it amounting to an admission of negligence or a breach of a statutory duty.

4 - To introduce offences of wilful neglect and ill treatment for health/care professionals and organisations

Following a review of patient safety in England, it was recommended that there should be an offence of wilful neglect or ill treatment which is on a par with that covering mental health patients in the UK. Consequently, the Bill proposes to create new offences of ill-treatment or wilful neglect; one of which would apply to adult health and social care workers, and another which would apply to adult health and social care providers

The Health and Sport Committee was the lead Committee on the Bill. The Committee supported the general principles of the Bill and reached the following conclusions about each part of the Bill:

Figure 1: Health and Sport Committee's conclusions on the Bill's proposals

- a. We consider that the Bill provides a necessary and proportionate approach to restricting the sale and advertising of Nicotine Vapour Products whilst the evidence base on their potential harm and impact on smoking cessation continues to develop.**
- b. We agree with the Bill's proposal to provide for an enforceable area in hospital grounds within which smoking is prohibited, albeit we support a different approach to that proposed by the Scottish Government in relation to how the limit of that area is determined in subsequent regulations.**
- c. We support the duty of candour proposed in the Bill as enabling health and social care organisations to learn from incidents of unintentional harm and improve their care so that such harm does not arise in future.**
- d. Finally we agree with the creation of new offences of ill-treatment or wilful neglect that would apply to adult health and social care workers and to adult health and social care providers. These extend similar provisions that already exist for some patients in some health settings to all health and social care settings thereby recognising a wider range of circumstances when people may be vulnerable to ill-treatment or neglect.**

(Scottish Parliament Health and Sport Committee, 2015)

The Committee made a number of recommendations based on the issues that arose during stage 1. These are summarised in [table 1](#) below, along with the Scottish Government's response and the outcome at stage 2.

Key amendments agreed to at stage 2 are also set out in [table 2](#).

STAGE 1 – HEALTH AND SPORT COMMITTEE RECOMMENDATIONS AND SCOTTISH GOVERNMENT RESPONSE

The table below summarises the main recommendations of the Health and Sport Committee ([Scottish Parliament Health and Sport Committee, 2015](#)) and the Scottish Government's response ([Scottish Government, 2015](#)). The table does not include all recommendations, but instead focuses on those that sought changes to the Bill or required further action from the Scottish Government. Scottish Government commitments to bring forward amendments at stage 2 are highlighted in bold.

Table 1: Summary of the Health and Sport Committee recommendations at Stage 1 and Scottish Government response

Report Para	Committee Comment or Recommendation	Scottish Government Response	Outcome
Restricting the Sale of Nicotine Vapour Products			
31	Recommended that the Scottish Government considers whether the NHS should provide national guidance on the currently known risks and benefits of using NVPs to stop smoking. The Committee thought that this would assist those wanting to quit smoking to make an informed choice about using NVPs (alongside accessing any support provided by smoking cessation classes).	<p>The Scottish Government welcomed the recommendation and highlighted that it had been working with NHS Health Scotland and NHS Smoking Cessation Leads to ensure a more consistent approach to the advice and support provided by NHS stop smoking services to individuals who want to stop smoking using an NVP.</p> <p>An action plan has been agreed which includes reviewing smoke free policies to ensure a consistent message on NVPs, the development of national guidance, resources and training for cessation staff and standardising collection of data on NVP use.</p> <p>NHS Health Scotland is also revising its position statement to reflect current and emerging evidence. The position statement is primarily aimed at NHS Boards and provides advice on NVP use as part of a tobacco cessation attempt. The Scottish Directors of Public Health are also revising their position statement to reflect current evidence.</p>	No further action at stage 2.

Report Para	Committee Comment or Recommendation	Scottish Government Response	Outcome
Definition of Nicotine Vapour Products			
40	<p>The Bill does not cover NVPs licensed as medicinal products. At present there is just one NVP licensed as a medicine and the Committee heard evidence about the costs of seeking a medicinal licence.</p> <p>In light of this, the Committee invited the Scottish Government to consider working with the UK Government to assess whether the current Medicines and Healthcare Products Regulatory Agency process presented any unreasonable barriers to licensing complex products such as NVPs as medicinal products.</p>	<p>The Scottish Government highlighted that it is a matter for the UK Government and the Medicines and Regulatory Healthcare products Agency (MHRA). However, it provided a response from the MHRA which stated that the authorisation procedure makes use of existing flexibilities to apply a risk-proportionate approach to licensing whilst ensuring that the balance of risks and benefits associated with these products is demonstrated. The MHRA also stated that it continues to provide advice prospectively to applicants to aid understanding of the requirements for a medicines marketing authorisation and that it has recently carried out some work with e-cigarette manufacturers to re-engage industry in the process of medicinal licensing for e-cigarette products.</p>	No further action at stage 2.
Age Restrictions on the Sale of Nicotine Vapour Products			
53	<p>The Committee noted concerns about the power in the Bill for Ministers to amend the age set for the age verification policy for selling NVPs and sought further information from the Scottish Government on how it would use this power and in what circumstances.</p>	<p>The Scottish Government explained that age 25 had been chosen to bring the proposal into line with similar measures already in place for alcohol and with voluntary measures already applied by retailers. They stated that there is no immediate intention to exercise the power but that circumstances may change in future. The power provides flexibility to allow the Scottish Ministers to change the age without recourse to primary legislation and there are equivalent powers in alcohol licensing legislation. If it is considered appropriate to change the minimum age in future, this power would allow legislation on alcohol, tobacco and NVP age verification policies to be changed simultaneously, to ensure consistency and avoid retailers operating different policies.</p>	No further action at stage 2.

Report Para	Committee Comment or Recommendation	Scottish Government Response	Outcome
Scottish Tobacco and Nicotine Product Retailer Register			
67	The Committee was content with the Bill's proposal to rename the register as being for Tobacco or NVPs but recommended that, in the longer term, the Scottish Government considers whether the time is right to create one age restricted register. This was seen as a way of neutralising the negative association between tobacco and NVPs but also as a way of potentially future-proofing the register.	<p>The Scottish Government explained that, as the approach to the regulation of other age restricted products and their associated enforcement does not mirror those in place for tobacco products and NVPs, the creation of a single register would require duplication of effort by retailers and other sectors as well as those responsible for holding the existing public register.</p> <p>However, the Scottish Government highlighted that, in addition to the name of the register changing, it will commit to considering the outward facing aspect of the register and explore opportunities to provide a clear separation between the two products on the website where the register is held.</p>	At stage 2, Malcolm Chisholm MSP lodged amendments 13 to 16 which sought to implement the Committee's recommendation for a single register for retailers of all age-restricted products. The Member withdrew the amendments in order to reflect on points made by the Minister (see ' Main amendments withdrawn or not agreed to at stage 2 ')
Retail Banning Orders - Nicotine Vapour Products			
70	The Committee sought the Scottish Government's views on whether the Bill should be amended to include a ban on premises in the same fashion as the powers that exist for Licensing Boards in respect of underage alcohol sales.	The Scottish Government explained that powers do exist in alcohol legislation to obtain a premises licence as well as a personal licence, and for that licence to be revoked. However; it went on to say that the alcohol licensing scheme differs from the requirement for retailers to register when they intend to sell tobacco or NVPs. A banning order is a sanction issued by the court; it is issued based on a person having committed three or more criminal offences under tobacco (and NVP) legislation and contravening an order is itself a criminal offence. Applying a banning order to the premises rather than the person, would mean that no other person (legal or individual) could register to carry on a tobacco business from that premise regardless of whether they had committed an offence or not. The Scottish Government did not consider this proportionate to the	No further action at stage 2.

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		aims of the legislation and thinks it is right that the sanction, which is based on the criminal law, and the consequences which flow from that, are borne by the person who has committed the criminal offences.	
Advertising of Nicotine Vapour Products			
92 to 93	The Committee requests a response from the Scottish Government to the concerns of some witnesses that restricting advertising of NVPs in Scotland to point of sale only will offer a competitive advantage to those already established NVP retailers.	<p>The Scottish Government believes that this is a legitimate concern. Restrictions on advertising might act as a barrier to entry for new entrants as they will be restricted in their ability to communicate product information via the types of advertising affected (advertisement by way of billboards, leafleting, brand sharing, free distribution, nominal pricing, and domestic advertising events). This may be particularly disadvantageous to small start-ups with limited budgets for advertising and marketing.</p> <p>The Scottish Government felt that it is difficult to predict the impact but, at its most extreme, it might result in the failure of some, especially, small companies. However, it highlighted the cross national nature of the industry and, while the advertising rules and the Tobacco Products Directive restrictions will apply across the UK, the proposals in the Bill are restricted to Scotland. The Scottish Government was not aware of proposals to restrict domestic advertising in other countries of the UK and therefore it suggested that this may mitigate the impact on individual companies who trade across all countries of the UK.</p>	No further action at stage 2.
Smoking Outside Hospitals			
118 to 119	The Committee had concerns about the feasibility of the proposed approach of setting the same set distance from hospital buildings for all hospital grounds. This was based on	The Scottish Government states that it understands the desire to provide a flexible approach to meet the needs of individual hospital grounds. It considered a flexible approach when developing the policy but believes it is important that a consistent approach is achieved across	No further action at stage 2.

Report Para	Committee Comment or Recommendation	Scottish Government Response	Outcome
	<p>the experiences of NHS Ayrshire and Arran and Livingston High Court. It questioned whether identifying the same set distance is achievable given the diversity of purposes of hospitals (such as outpatient, inpatient, secure etc) and the differing sizes and layout of hospital grounds.</p> <p>The Committee therefore recommended that the Scottish Government reviews its proposal to set out, in regulations, the same set distance from hospital buildings for all hospital grounds within which no-smoking will be legally enforceable. It also recommended that the Scottish Government consider whether each NHS board should be able to propose its own legally enforceable perimeter in the regulations. The Committee thought this would enable each health board to reflect the differing topography and grounds of hospitals within each board area. It would also enable the outcome of any discussions between each health board and relevant local authorities about enforcement to be reflected in each NHS health board's agreed perimeter (see also the next section).</p>	<p>all NHS hospital sites in Scotland. Reasons for doing so include providing an equitable approach which will avoid situations that would see individuals, particularly patients who may be recovering from serious illness, being required to move a short distance from buildings on one site, and at another site they are required to move much further from the building to avoid committing an offence.</p> <p>The Scottish Government also explained that the change in law must be communicated clearly to ensure that the public understands when they will be committing an offence. It argued that this would become complex where different distances are set at each hospital site and could lead to individuals inadvertently committing an offence as a result of confusion. It would also require Local Authorities to take a different approach to enforcement across different hospital sites.</p> <p>The Scottish Government highlighted that NHS Boards made clear, almost unanimously, in their written evidence to the Committee and to the Scottish Government consultation, that they would like legislation to cover the entirety of hospital grounds. The Scottish Government proposed that further consultation offering perimeters of different distances could result in a similar response (i.e. NHS boards would want to set a distance to cover the whole hospital ground) but that it does not believe that this approach is proportionate when attaching a criminal offence. Instead it wishes to set a perimeter around buildings in order to focus on the areas where there is the highest level of traffic of people on foot leaving and entering the hospital and where there is a risk of smoke entering hospital buildings as a result of people smoking</p>	

Report Para	Committee Comment or Recommendation	Scottish Government Response	Outcome
		<p>close to the building, in particular at entrances. It also felt that it is easier to enforce a prohibition backed by the criminal law near buildings given that some hospital grounds are vast in size.</p> <p>The Scottish Government stated that it understands the concern that people may simply move outwith the perimeter, however; it contended that this would remain a possibility where different perimeters are set. The Scottish Government pledged to continue to support NHS smoke-free policies which apply to all grounds. It feels that this approach allows NHS Boards to make decisions about how they choose to implement and enforce local smoke-free policies. This includes raising public awareness, providing alternatives to tobacco and asking those who visit NHS sites to respect the policy. People who do not comply, including those with impeded mobility and serious illness, do not face a criminal penalty. In considering the introduction of criminal penalties in respect of those who do not comply, it felt that the impact of such action needs to be balanced with the commitment to treat all users of hospitals, particularly those who are most vulnerable, with dignity and respect.</p> <p>The Scottish Government stated it will consult with Health Boards in the development of regulations in respect of the distance of the perimeter to be applied across all NHS hospital sites and how that perimeter should be applied.</p>	
Exemptions to the Smoking Ban Outside Hospitals			
145 to 146	The Committee recognised the intention that any exemptions should apply uniformly across all relevant hospitals, however it questioned how	The Scottish Government responded that the provisions in the Bill which provide powers for exemptions could be used to 'allow' exemptions tailored to accommodate the needs of different NHS hospital site layouts e.g.	No further action at stage 2.

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	<p>such exemptions might be practically applied given the different types of hospital buildings that could be sited within hospital grounds (could an exemption for the grounds of an adult hospice be clearly identified where the same grounds are shared with or are in close proximity to other hospital types?).</p> <p>Under its previous recommendation (para 119) the Committee highlighted that NHS boards would be able to take cognisance of how any exemptions might be applied based on their own site layouts before each NHS board recommends its own legally enforceable perimeter for inclusion within the regulations.</p>	<p>regulations could describe and exempt buildings or land relevant to some sites but not others. It felt that this could achieve flexibility in how exemptions are applied across NHS hospital sites in practice. The Scottish Government stated it will consider this in consultation with Health Boards in the development of the regulations.</p>	
Duty of Candour			
177 to 178	<p>The Committee report noted that, whilst the Bill sets out the range of provisions that the duty of candour procedure should cover (such as the role of the responsible person, the actions they should take and when as well as how information should be made available) much of the detail of the duty of candour procedure will be set out in regulations later on. As such the Committee saw the regulations as playing a significant part in ensuring that the duty of candour procedure is</p>	<p>The Scottish Government responded that the regulations will set out matters of detail which may need to be amended from time to time. It committed to engage with stakeholders in the implementation of the Bill and that engagement may result in refinements to the duty of candour procedure, as set out in the regulations. It stated that such changes would be to the operational detail of the duty of candour and would not detract from the central policy of the duty of candour as set out in the Bill. Therefore, the Scottish Government remained of the view that the regulations would be more suited to scrutiny by the negative procedure.</p>	No further action at stage 2.

Report Para	Committee Comment or Recommendation	Scottish Government Response	Outcome
	<p>able to be implemented effectively across a wide range of health and care settings.</p> <p>Given this the Committee agreed with the Delegated Powers and Law Reform Committee that the Bill should be amended at Stage 2 to provide for these regulations to be subject to affirmative procedure.</p>		
181	The Committee sought the Scottish Government's views on whether the duty of candour procedure will enable patients and their families to challenge the details of an incident where they consider these to be incorrect. It also requested clarification of the extent that patients and their families would be involved in identifying the causes of incidents as well as in identifying any future service improvements.	The Scottish Government responded that the duty of candour procedure will give more details as to the ways in which the contact with organisational representatives provides the opportunities for communication and further involvement in the review of the incident. It explained that it will be for organisations to determine the ways in which incidents (and subsequent service improvements) will be identified, and this may include identification by patients, carers and relatives.	No further action at stage 2.
183	The Committee sought the Scottish Government's response to the concerns of the Care Inspectorate that some providers of care services may choose to establish their business in a way that means they would be exempt from the duty of candour.	The Scottish Government responded that it will give further consideration to this matter.	No further action at stage 2.
Duty of Candour - Apologies			
204	The Committee sought a response from the Scottish Government to COSLA's concerns, in written evidence, that employer's liability	The Scottish Government responded that it will engage further with COSLA to understand more about the implications of an apology on insurance.	No further action at stage 2.

Report Para	Committee Comment or Recommendation	Scottish Government Response	Outcome
	insurance and personal indemnity insurance could be affected by apologising.		
Duty of Candour Procedure - Triggers			
218	The Committee stated that while it was content that the harms listed as triggering the duty of candour are comprehensive, it noted witness' concerns about the potential for relatively minor incidents to trigger the duty of candour. It therefore invited the Scottish Government to consider amending the Bill to reflect the magnitude of the harm or potential harm (such as 'significant' harm) which would trigger the duty of candour.	The Scottish Government noted the Committee's view but stated it did not agree that the list of outcomes listed in section 21(4)(c) of the Bill could arise from "minor incidents".	No further action at stage 2.
219 to 220	<p>The Committee acknowledged the evidence of some witnesses that the harms listed in the Bill differ from those used by other inspection regimes such as the Care Inspectorate. As such, it felt that there is the potential for confusion or misinterpretation amongst staff.</p> <p>The Committee therefore recommended that the Scottish Government also consider including within its duty of candour procedure, clear guidance on how the triggers for the duty of candour differ from other regulatory regimes but also case studies setting out the thresholds for</p>	<p>The Scottish Government stated that the potential for confusion or misinterpretation will be addressed through the information that will be developed for organisations by the Care Inspectorate and Healthcare Improvement Scotland.</p> <p>It noted the Committee's recommendation and committed to include these elements in its guidance.</p>	No further action at stage 2.

Report Para	Committee Comment or Recommendation	Scottish Government Response	Outcome
	activation of the duty of candour procedure (as suggested by Healthcare Improvement Scotland).		
Duty of Candour - Independent Registered Healthcare Professionals			
234	The Committee noted that, under the Bill, the duty of candour procedure must set out the training to be provided to the responsible person. In view of the importance of the Independent Registered Health Professional (IRHP) in triggering the duty of candour procedure, it recommended that the Bill be amended to include a specific requirement to provide training and support on the IRHP role.	The Scottish Government noted the Committee's recommendation and stated it will ensure that it is clear that the organisational duty involves the provision of training and support to all who are involved with the duty of candour procedure. The Scottish Government did not believe it necessary to amend the Bill to include a specific requirement for training in respect of the IRHP role.	No further action at stage 2.
Duty of Candour - Monitoring, reporting and enforcement			
244	The Committee highlighted the proposal from Healthcare Improvement Scotland (HIS) that the Bill should be amended to clarify that it is the monitoring body for those independent healthcare services it regulates —and where the legislative powers for regulation have been commenced. The Committee sought the Scottish Government's views on this proposed amendment.	The Scottish Government noted the Committee's remarks but does not believe that the provisions need any further clarification. It stated that the intention is to commence Part 2 of the Bill so that it will apply to those independent health care services in relation to which HIS has a regulation function.	No further action at stage 2.
Ill-treatment and Wilful Neglect – Care Provider Offence			
291	The Committee expressed some sympathy with those who questioned whether the burden of proof is too high for organisations to be found guilty of	The Scottish Government responded that it will give further consideration to the matter.	No further action at stage 2.

Report Para	Committee Comment or Recommendation	Scottish Government Response	Outcome
	wilful neglect given it requires a 'gross' breach of their duties of care. It therefore recommended that the Scottish Government reviews the matter.		

MAIN AMENDMENTS AGREED TO AT STAGE 2

Stage 2 of the Bill took place on [19 January 2016](#) and [26 January 2016](#). The Health and Sport Committee considered a number of amendments arising as a result of the stage 1 report, as well as a number of amendments on other issues lodged by the Minister for Sport, Health Improvement and Mental Health.

Table 2: Summary of Amendments Agreed to at Stage 2

Issue and Reference	Amendments and Effect
Tobacco and nicotine vapour product banning orders	
Section 10 (Official Report)	<p>Amendment 2 was moved by the Minister and agreed to.</p> <p>The amendment will revise the Tobacco and Primary Medical Services (Scotland) Act 2010 to make a conviction under section 92(1)(b) or (c) of the Trade Marks Act 1994 a relevant enforcement action.</p> <p>Under the amendment, a conviction that relates to the sale, possession and control of tobacco and NVPs where there is unauthorised use of a trademark will count as a relevant enforcement action that could result in the local authority applying to the sheriff for a banning order.</p>
Incident which activates the duty of candour procedure	
Section 21	<p>Amendments 3 and 4 were moved by the Minister and agreed to.</p> <p>The amendments make changes to what can trigger the duty of candour procedure.</p>

[\(Official Report\)](#)

Under the Bill (as introduced), the duty of candour procedure would be triggered if a person requires treatment from a doctor in order to prevent their death or injury. Amendment 3 widens that to treatment from a 'registered health professional' thereby including nurses, midwives, paramedics, dentists etc.

Amendment 4 adds 'permanent lessening' of one or more functions of the body, to the types of harm that will trigger the duty of candour procedure.

Provision of Communication Equipment

New section after section 31

Amendment 1 was moved by the Minister and agreed to.

[\(Official Report\)](#)

The purpose of the amendment is to meet the [Programme for Government 2015-16](#) announcement made in September 2015 which contained the following commitment:

“The Scottish Government recognises that access to voice equipment is vital to children and adults who finds speaking difficult or are at risk of losing their voice. We will therefore bring forward an amendment to the Health Bill that is currently in Parliament to provide a statutory right to voice equipment when required.”

The amendment inserts a new section 46A into the National Health Service (Scotland) Act 1978 (the 1978 Act) which places a duty on Scottish Ministers to provide or secure the provision of communication equipment and to provide or secure the provision of support to allow the recipient to take advantage of the equipment and use it properly. The provision is to be made to such extent as Ministers consider necessary to meet all reasonable requirements of the recipient of the equipment.

Whilst the duty is being placed on Scottish Ministers in the Bill, there is provision which can be made under the 1978 Act to have the Ministers' functions delivered by Health Boards. This is the Scottish Government's intention.

MAIN AMENDMENTS WITHDRAWN OR NOT AGREED TO AT STAGE 2

The following outlines a number of amendments considered at stage 2 but withdrawn following discussion with the Minister. These included:

Register of Tobacco and Nicotine Vapour Product Retailers

Malcolm Chisholm MSP lodged amendments 13 to 16 which sought to implement the Committee's recommendation for a single register for age restricted products. The Minister for Public Health restated her commitment to ensure that the outward facing part of the register is separate for tobacco and NVPs but she also raised questions about the flexibility of the approach proposed by the Member. The Minister also highlighted that there would need to be a wide consultation on the proposal. The Member agreed to withdraw his amendments with a view to revisiting the issue at stage 3 (see [official report](#)).

Incident which does not activate duty of candour procedure

Rhoda Grant MSP lodged amendments 11 and 12 which sought to set out a separate procedure for patients involved in incidents which did not, or could not, have resulted in harm or injury to the person. The amendments proposed that in such circumstances, the patient should be informed of the incident and given information about further steps taken or any other information considered relevant. The Minister for Public Health argued that the focus should be on the cases where real harm has occurred, or where there was a real risk that harm could have occurred, and therefore felt that the amendments were not proportionate. The Member agreed to withdraw the amendments but with a view to considering the matter further (see [official report](#)).

Duty of candour procedure: consulting relevant person

Malcolm Chisholm MSP lodged amendment 17 which sought to give patients the choice as to whether they wish to be told of incidents that would trigger the duty of candour procedure. The Minister stated that the Scottish Government's guidance development group will consider such issues as part of its remit in taking forward implementation of the Bill. The Minister also stated that the regulations which will set out the duty of candour procedure will reflect the aim of amendment 17. The Member agreed to withdraw the amendment (see [official report](#)).

Offences by care workers and care providers

Mary Scanlon MSP lodged amendments 18, 21, 22, 23 and 25 which sought to add the term 'abuse' to the offences that could be committed by care workers and providers. This was in light of experiences of poor care at a care home in Inverness that had been brought to her attention. The Member sought to widen the offence as she felt that the behaviours that had taken place in the care home would not be redressed through the proposed 'wilful neglect' offence. The Minister explained that the Bill also contained an offence of 'ill-treatment' which is familiar to the police and courts in Scotland and may cover the types of incident she had described. The Member agreed to withdraw the amendment but with the possibility of lodging the amendments again at stage 3 (see [official report](#)).

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[SB 15-50: Health \(Tobacco, Nicotine etc. and Care\)\(Scotland\) Bill](#)

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