Department of Health

Equalities Analysis

Tobacco Products Directive (Directive 2014/40/EU)

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Introduction

This equalities analysis examines the potential impact of the revised Tobacco Products Directive on equalities in the UK, in accordance with the Equality Act 2010. In addition, in respect of England, this document considers issues relevant to the Secretary of State's duty to have regard to the need to reduce health inequalities under the National Health Service Act 2006, as amended by the Health and Social Care Act 2012.

The Department will be seeking comment on this equalities analysis during public consultation and will be updating the document as new evidence emerges in parallel to the development of implementation options available within the revised TPD.

In 2012, the European Commission published a proposed revision to the 2001 Tobacco Products Directive (Directive 37/2001/EC) (henceforth referred to as "TPD1"), the revised Tobacco Products Directive (2014/40/EU) (henceforth referred to as "the TPD2"). The TPD2 was agreed by Member States (MS) on 29 April 2014. MS must transpose the TPD2 into domestic law by 20 May 2016.

Policy Objectives

The overall objective of the TPD2 is to improve the functioning of the internal market of tobacco and related products and promote a high level of health protection. In particular, the TPD2 aims to:

1. *Update already harmonised areas*

The TPD2 aims to update already harmonised areas of tobacco control, in line with new market, scientific and international developments. Harmonised union tobacco control rules have not been updated since 2001.

2. *Harmonise implementation of the World Health Organisation's Framework Convention on Tobacco Control (FCTC) obligations*

One of the international developments that the TPD2 aims to address is the adoption by the UK and all other MS of the FCTC. The provisions of the FCTC, which are binding for the EU and all MS, places obligations on parties to meet the treaty objective to 'reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke' and to implement comprehensive tobacco control strategies.

The TPD2 aims to ensure harmonised implementation of international FCTC obligations across MS. It also aims to ensure a consistent approach to FCTC commitments. FCTC obligations include, for example, the regulation of the packaging and labelling of tobacco products.

3. *Address product and market innovations not yet covered by the TPD1*

A further objective of the TPD2 is to regulate new products to the market which are not covered by the TPD1. Since the implementation of the TPD1, a range of new tobacco products and other products delivering nicotine have been developed. Member State reaction to these products has varied and this has the potential to distort trade. The TPD2 will introduce

harmonised rules around novel and smokeless tobacco products and a range of related products including herbal products for smoking and electronic cigarettes (e-cigarettes).

4. *Further reducing illicit trade*

The TPD2 will introduce a track and trace system which reaches further down the supply chain than current arrangements and requires further overt and covert security features. These provisions aim to help enforcement authorities in tracking and identifying legitimate product, reducing the ability to market non-compliant or illegally produced product on which duty has not been paid and thus increasing the effectiveness of taxation policy on reducing smoking rates.

5. *Health protection*

In addition to improving the function of the internal market, a high level of health protection has been considered in the development of the TPD2. Just as in Europe as a whole, tobacco use remains one of the most significant challenges to public health, and is the leading cause of premature death in the UK. In addition, smoking rates are not equally distributed across all population groups and smoking is one of the most significant contributors to health inequalities.

Adult smoking rates continue to fall, however in 2013, 18.7% of the UK population continued to smoke.[1]

The fall in smoking rates in children has been even more marked and in 2013 stood at 8% in 15 year olds in England.[2] However, targeting initiation in this group remains important as the majority of adult smokers started in their youth.[3]

The TPD2 is particularly aimed at reducing the attractiveness of tobacco to children and its implementation will strengthen current rules in a number of ways such as by introducing measures relating to labelling and health warnings; a new track and trace system for tobacco products; a ban on characterising flavours in certain products, including menthol; regulation of electronic cigarettes; and enhanced reporting requirements for certain additives.

These measures are expected to discourage smoking uptake by young people and ensure that consumers are able to make informed decisions about tobacco and related products, based on objective data. We also anticipate that its provisions will impact on other population groups in which smoking rates are highest.

The potential impact of the TPD2 on equalities in the UK is assessed in the remainder of this document. The assessment will consider all articles of the TPD2 including those that relate to track and trace and security features.

Age

Smoking uptake by young people is a significant public health concern. In England, two-thirds (66%) of current and ex-smokers say that they started smoking regularly before they were 18 years old, with 39% saying that they were smoking regularly before the age of 16.[4] Very few people started smoking for the first time after the age of 25 (around 95% of all smokers have started before the age of 25). It has been estimated that around 207,000 children aged between 11-15 start smoking every year. That equates to around 600 children of this age group starting smoking in the UK every day. [5]

The TPD2 focuses on initiation of tobacco consumption, in particular its attractiveness to young people. The TPD2 will ban characterising flavours in cigarettes and roll-your-own (RYO), restrict the appearance and content of unit packets of cigarettes, and take steps to tackle illicit tobacco products. It is expected that these aspects of the TPD2 may discourage children and young people from starting to use tobacco and related products.

Characterising flavours

In a number of countries research has found that flavoured tobacco products are preferred by children and adolescents as well as experimenting smokers.[6, 7, 8] Of all the flavours, menthol is the most researched.

Research on menthol has demonstrated that:

- Menthol cigarette use is significantly more common among newer, younger smokers; [9, 10, 11]
- There is greater risk of progression to regular smoking and nicotine dependence for those who start smoking menthol cigarettes compared to those starting with non-menthol cigarettes; [12]
- Initiating smoking with menthol cigarettes was associated with higher levels of nicotine dependence. [12]
    - This link to initiation is likely to be because menthol makes it easier to inhale the smoke into the lungs by creating a sweeter, milder, or "colder" smoke and by reducing/changing the harshness of the smoke; [13, 14, 15]
- It is more likely than not that the availability of menthol cigarettes increases the likelihood of experimentation and regular smoking beyond the anticipated prevalence if such flavoured cigarettes were not available; [16]
- The average number of cigarettes smoked by menthol smokers was greater than non-menthol smokers in adolescents and menthol smokers had greater odds of reporting intent to continue smoking compared with non-menthol smoker; [17] and
- Some youths smoke menthol products because they perceive them to be less harmful than non-menthol cigarettes. [18]

In the UK, the market share of menthol is growing year on year. Menthol cigarettes accounted for 7% of the market in 2010 rising to 8.5% in 2013 [19] against a slowly declining rate of smoking in adults and a falling rate in children (15yrs) (12%- 8%) over the same time period. [20]

The TPD2 will ban characterising flavours, including menthol, in cigarettes and roll-your-own tobacco. Given the evidence relating to the attractiveness of characterising flavours in tobacco products, in particular menthol, this ban is likely to impact initiation and smoking rates, specifically in children and young people.

Appearance of unit packs

Currently, it is possible to buy cigarettes in a range of styles such as "perfume" style packs and packs with novel opening mechanisms.

This is an issue of concern as focus groups of young people (aged 15 years) found that smaller cigarette packets were perceived to be more convenient and discrete. In addition, the cigarettes within being considered weaker and less harmful due to the perceived reduced amount of tobacco contained. This research also found that participants had very positive responses to slimmer, more feminine packs. The young people were impressed by the innovative opening mechanisms of certain cigarette packages and thought that such mechanisms would be particularly impressive to other young people. [21]

Despite the general decline in factory manufactured cigarette sales, sales of superslim cigarettes which are often sold in "perfume" style packs, particularly popular among female and younger smokers, grew from 0.1% of the total market in 2008 to 0.3% of the market in 2013 according to the Euromonitor data. [19]

The TPD2 introduces new rules that prescribe the dimensions of health warnings required on unit packs of cigarettes and specifies that the minimum number of cigarettes to be sold in a unit pack will be 20, and must not resemble a cosmetic product. This will prohibit slim "perfume" style unit packs and may therefore discourage children and young people from starting or continuing to use cigarettes.

The TPD2 will also only allow unit packets of cigarettes in the form of flip-top lids or shoulder boxes with hinged lids. This will largely eliminate packets with novel opening mechanisms which may have an impact on young people's perception of cigarette packs.

Cigarette packaging with "natural" descriptors were rated as significantly more appealing and less harmful in an experiment of over 7,000 young people, suggesting that the descriptions on cigarette packaging can enhance the appeal of cigarettes and may promote false beliefs about the reduced harm of brands. [22] The TPD2 will ban such descriptors and therefore may discourage young people from smoking.

Content of unit packs

In the UK it is currently possible to buy cigarette packs of 10 or more. Cigarette packs of 10 accounted for a 20% volume share in 2013. [19]

Evidence of purchasing of 10 versus 20 packs of cigarettes among young people is mixed. In 2012 36% of pupils aged 11-15 years in England said they had bought a pack of ten cigarettes on their last attempt at buying cigarettes in a shop compared to 46% had bought a pack of 20,[23] whereas soon before packs of 10 were banned in Ireland in 2007, 75% of smokers under the age of 18 bought cigarettes in packs of 10. [24]

The TPD2 will prohibit the sales of unit packs of cigarettes containing less than twenty cigarettes. This may have a positive effect on reducing tobacco use in large groups of young people who purchase cigarettes in packs of ten and may not be able to afford packs of twenty cigarettes. (See also below on price sensitivity).

The standardised packaging equalities impact assessment also contains more information on product presentation, appearance and content of unit packs at https://www.gov.uk/government/consultations/standardised-packaging-of-tobacco-products.

Illicit tobacco products

Young people are major consumers of illicit cigarettes not only because of their price but also because of access. A UK survey found that a third of smokers between the ages of 14 and 17 had obtained illicit tobacco products from the black market, rates which are higher than amongst older smokers, and that such illicit tobacco products (including those sourced from friends and family) may account for almost half of their total tobacco consumption. [25]

The TPD2 will introduce a track and trace system and a requirement for a security feature on each unit pack with the aim of reducing illicit tobacco products. The reduction in trade of illicit tobacco products may have a greater effect on young people than on adults as young people may be less likely (and less able) to spend the money required to buy legitimate tobacco products when cheaper illicit tobacco products is harder to obtain.

Price sensitivity

Research has found that young people may be up to three to four times more price sensitive than adults in relation to tobacco use.[26] This will mean that measures in the TPD2 such as reducing cheaper illicit tobacco products through the introduction of a track and trace system and security feature, as well as prohibiting the sale of cheaper packs of 10 cigarettes, may have a greater impact on deterring young people from smoking compared to adults.

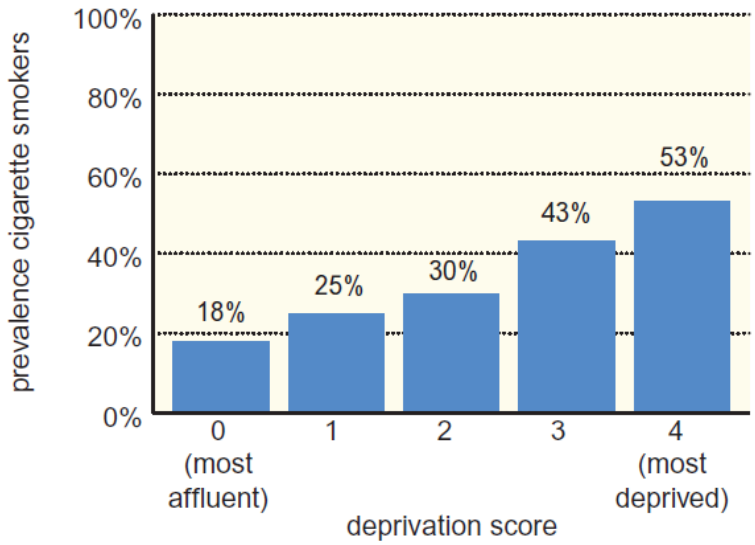
Labelling of 'other tobacco products'

The TPD2 could also have an impact on older people. The Directive gives the option for Member States to opt for a less onerous labelling regime (i.e. smaller labels without pictures) on tobacco products other than cigarettes, RYO and water pipe tobacco (i.e. cigars, pipe tobacco etc.) on the basis that these products are generally not attractive to children. A 2007 survey found that of the 1% of men that said they smoked a pipe, they were almost all aged 50 and over. [27] A decision as to whether to exempt such products from the full labelling regime has not yet been made but if certain products in this category were subject to lesser labelling rules e.g. individually wrapped cigars and cigarillos, this would reduce the health warning information available to this group of older males, which in turn may reduce any intention to quit in this population.

Socio-economic groups

Smoking is most common among those who earn the least, and least common among those who earn the most. The Office for National Statistics analysis using data from the *Integrated Household Survey* found that smoking rates are highest amongst those living in the most deprived areas.[28] Moreover, smoking prevalence is much higher among people in routine and manual occupations compared to people in managerial or professional occupations [29] and lower socio-economic status is associated with higher levels of nicotine dependence. [30] A strong social gradient when considering smoking among young people aged 16-19 is shown in Figure 1.

Figure 1: Prevalence of cigarette smoking in 16-19 year olds by deprivation score (Health Survey for England 1996-2003 pooled)



This highlights that health inequalities exist between the most deprived and least deprived in society.

Michael Marmot's independent review into health inequalities in England, *Fair Society, Healthy Lives* [31] proposed "the most effective evidence-based strategies for reducing health inequalities in England" and made the following recommendation:

> "*Tobacco control is central to any strategy to tackle health inequalities as smoking accounts for approximately half of the difference in life expectancy between the lowest and highest income groups. Smoking-related death rates are two to three times higher in low-income groups than in wealthier social groups".*

If the implementation of the TPD2 leads to reduced smoking uptake and potentially increased quit rates then it should have a positive effect on the reduction of health inequalities between socio-economic groups because the impact would be greater in those groups in which smoking prevalence is the highest. There may also be a specific impact on low socio-economic groups due to TPD2 measures relating to characterising flavours and illicit tobacco (see below).

Characterising flavours

Evidence shows that menthol cigarettes are disproportionately smoked by those with lower family incomes [10] with lower-income smokers more likely to smoke menthol cigarettes than higher-income smokers. The TPD2 will ban characterising flavours (including menthol) in cigarettes and RYO. Given the evidence that smokers use menthol products because it masks the harshness of the smoke, it may have a greater positive impact on lower-income smokers with larger numbers seeking to quit rather than transfer to less flavoured products,[32] although some smokers said that they would *'find a way to buy a menthol brand'* if menthol were banned, [33] highlighting the importance of the introduction of track and trace measures along-side the ban.

Illicit tobacco products

The latest figures from HMRC show that in 2012/13 up to 16% of cigarettes and up to 48% of RYO was non UK duty paid (NUKDP). [34] The most commonly reported price for illicit tobacco was between £3.50 and £4.00 for 20 cigarettes and around £6.70 for 50g of Hand Rolling Tobacco and in both cases prices fell if buyers bought larger quantities e.g. under £3.00 for 20 cigarettes if a sleeve of 200 cigarettes is bought. This implies that illicit tobacco typically sells at just under half the price of legitimate brands, which provides a powerful incentive to buy illicit products where smokers are on a low income. [35]

Research commissioned by ASH found that one in four of the poorest smokers buy smuggled tobacco compared to one in eight of the most affluent. [36] The availability of cheaper illicit tobacco may exacerbate health inequalities.

The TPD2 will introduce a track and trace system as well as a security feature requirement on tobacco products to reduce illicit trade. If the TPD2 fulfils its aims of reducing the trade of illicit tobacco in the UK it is likely that this will have a greater positive effect on people of low socio-economic status and may potentially reduce their use of tobacco products due to the increased cost associated with purchasing legitimate tobacco products.

Content of unit packs

In the UK it is currently possible to buy cigarette packs of 10 or more and RYO in various quantities (ranging from 8g upwards). Cigarette packs of 10 accounted for a 20% volume share in 2013. [19]

The TPD2 will prohibit the sales of unit packs of cigarettes containing less than 20 cigarettes and RYO tobacco packets containing less than 30g of tobacco. This may have a negative impact on people of low socio-economic status who remain addicted and will have to use a larger proportion of their disposable income, at any given time, to purchase tobacco products.

Sex

Characterising flavours

Recent research from Poland shows that use of flavoured cigarettes is much greater in women than men with 26.1% of women using them compared to only 10.5% of males. [37] Research also found that menthol cigarettes are disproportionately smoked by females, [6] who are 1.6 times more likely than men to smoke menthols products. [38]

If this pattern were replicated in the UK, the TPD2's ban on characterising flavours, including menthol, may have a particularly positive effect on women by reducing the number of women who smoke.

Appearance of unit packs

Packaging can be important in influencing female smoking. According to Wakefield, who conducted a review of disclosed tobacco industry documents:

> "*Packaging to appeal to women has been the subject of careful research. Cigarettes for women are often packaged in slim, long packs, often with pastel or toned down colours, to meet perceived desires to appear feminine and sophisticated.*" [39]

The tobacco industry has conducted research on the smoking patterns, needs and product preferences of women, and has intentionally altered product design in order to promote cigarette smoking among women. [40]

The TPD2 introduces new rules that prescribe the dimensions of health warnings required on unit packs of cigarettes and specifies that the minimum number of cigarettes to be sold in a unit pack will be 20. This will proscribe slim "perfume" style unit packs and may therefore discourage women from starting to use/continuing to use tobacco products.

Disability

Sight and Literacy Difficulties

Cigarettes and RYO are already subject to regulations under TPD1 that prescribe the inclusion of health warnings (including picture warnings) that must cover a certain percentage of the pack. The TPD2 will introduce larger combined health warnings, specifying exact dimensions and consisting of picture and text, on such products. There is potential for these larger health warnings to communicate the health harms of tobacco smoking more clearly and effectively, which would particularly benefit people with literacy and sight difficulties.

Mobility

The TPD2 provides Member States with the option to prohibit cross-border trade of tobacco products and e-cigarettes into and out of the UK i.e. to ban businesses in the UK from selling products to consumers in other Member States via internet, telephone or mail-order and to ban businesses based in Member States from selling to consumers in the UK.

Whilst a decision has not yet been made on whether to ban such sales or not, if a ban is introduced there is potential for this to restrict people with mobility issues who may choose to buy their preferred choice of tobacco products or e-cigarettes online and where their preferred product may be purchased in the UK but not be available to buy from UK websites.

However, trade statistics show that internet sales only account for approximately 0.3% of all cigarette sales.[41] This figure covers both sales within the UK and cross border sales to other countries, so cross border sales will be less than 0.3%. This market has remained static between 2008-2013 which lends support to the view that cross-border sales are likely to represent a very small niche market.

Mental Health

Research demonstrates that smoking rates amongst people with mental health disorders are significantly higher than in the general population and there is growing evidence to show a

strong association between smoking and mental health disorders. [42,43,44,45] It is estimated that of the 10 million smokers in the UK in 2013 approximately 3 million had a mental disorder. [46] The 2010 Health Survey for England found that smoking prevalence amongst people with a long standing mental health disorder was 37% [47] compared to 20% in the general population [48] and that they smoke more heavily than people without a mental disorder [49,50,] consuming over 40% of all cigarettes smoked in the UK.[51]

Smoking is responsible for the largest proportion of the excess mortality experienced by people with mental illness.[52]

If the TPD2's overarching aims of reducing smoking initiation and prevalence were achieved then this should reduce health inequalities between those who suffer from mental illness and those who do not because the impact would be greater in those groups in which smoking prevalence is the highest: those with a long standing mental health disorder.

Research has found that individuals with a mental illness were more likely to have tried e-cigarettes and to be current users of e-cigarettes than those without a mental illness, and more susceptible to future use of e-cigarettes than smokers without. [53]

In some mental health units e-cigarettes have been used to support a move to 'smokefree'. The TPD2 introduces standards for e-cigarettes such as delivery of nicotine doses at consistent levels. In turn this could have an impact on the numbers of people with mental illness either continuing to use these products in their home environment, because they provide an acceptable and reliable alternative to smoking, or moving on to quit completely. If this proves to be the case, then health benefits will accrue in this population sub-group that finds quitting particularly difficult.[54] This might, in turn, narrow the health inequalities gap between people with and without mental illness. Whilst there is limited research available on the use of e-cigarettes as a cessation tool and therefore this is speculative at this stage, some research has demonstrated their benefit as a cessation tool. [55,56, 57]

Race

Compared to the general population, smoking rates are particularly high in Black Caribbean (37%) and Bangladeshi (36%) men. In women, smoking rates are generally much lower in ethnic minority groups compared to the general population with the exception of Black Caribbean (24%) and Irish (26%) populations. [58]

Whilst smoking rates vary considerably between ethnic groups it remains that, overall, smoking rates among ethnic minority groups are lower than those of the UK population as a whole. [59]

If the policy aims of reducing smoking initiation and prevalence were achieved then the impact may be greater in those groups in which smoking prevalence is the highest, such as in certain subsets of minority ethnic groups. In addition, the TPD2 will introduce certain measures that may have particular impact on ethnic minorities.

Health warnings/labelling

There are high smoking rates in certain ethnic groups such as Bangladeshi and Pakistani men [60] and these population groups may suffer disproportionately from health warnings that are only presented in English, where English may not be their first language and they may not understand the written health warnings. However, under current regulations cigarettes and

RYO are required to have a combined health warning (consisting of picture and text) as well as the written warning. Smokers who do not have English as a first language are likely to benefit from such picture warnings. The TPD2 maintains the requirement for combined health warnings, which will be required to cover a larger percentage of the surface area, both on the front and the back of packs. The retention, and enlargement, of the pictorial warnings will be most effective for smokers who may not understand the written health warnings.

Pregnancy

Smoking in pregnancy is linked to a number of negative health outcomes in babies and children including decreased birth weight, [61] perinatal mortality, [62] and increased risk of asthma and wheezing in young children. [63] There may also be implications for the long term physical growth and intellectual development of a child born to a mother who smoked during pregnancy. [64, 65]

According to the 2010 Infant Feeding Survey, 12% of mothers across the UK continued to smoke throughout pregnancy and strong interactions exist between socio-economic status and smoking during pregnancy, as well as between age and smoking during pregnancy. Across the UK, the highest rates of smoking in pregnancy were observed in women in routine and manual occupations and mothers under the age of 20 were found to be almost six times as likely as those aged 35 or over to have smoked throughout pregnancy.[66]

If this policy achieves its aims of reducing smoking initiation and prevalence, this would have a particular benefit in groups where there are high rates of smoking prevalence amongst pregnant women.

Sexual Orientation

Smoking rates are high among lesbian, gay and bisexual people and smoking rates in gay men are believed to be twice that of wider population levels.[67] If the policy aims of reducing smoking initiation and prevalence were achieved then the impact could be greater in those groups in which smoking prevalence is the highest.

Other

No effects of this policy have been identified for other groups, including for different religions and beliefs, or for carers or those undergoing gender reassignment.

Engagement and Involvement

A UK consultation will help to seek the views of interested people, businesses and organisations on how the TPD2 is to be implemented. This equalities analysis will be published alongside the consultation and we welcome views and additional evidence that will assist us to further consider the equalities aspects.

Summary of Analysis

The main aim of the TPD2 is to improve the functioning of the internal market and reduce overall prevalence rates of tobacco use in the EU. Provisions have been specifically aimed at reducing initiation rates in children and we would expect a particular impact in this subgroup. However the further restrictions, introduced by the TPD2, should also impact on overall smoking rates and may also reduce the inequalities in health that differential smoking rates amongst population subgroups create.

Whilst we expect that the implementation of the TPD2 should have a greater impact in those groups in which smoking prevalence is highest (lower socio-economic groups, those suffering from mental health issues, the LGBT community and members of certain ethnic minority groups), the Department recognises that individuals in some of these groups will also require support in order to quit. The TPD2 alone will not be sufficient to reduce smoking levels in these groups to that of the general population.

Alongside the implementation of the TPD2 the Government will continue to implement their wide ranging tobacco control plans across England, Wales, Scotland and Northern Ireland, which include other strategies aimed at reducing smoking rates and health inequalities, including investment in stop smoking services across the UK for those who want to quit. For example, action in the range of areas covered by the Tobacco Control Plan for England is likely to be synergistic and enhance the effects on health inequalities that we have identified in this assessment. The Tobacco Control Plan for England can be found here: https://www.gov.uk/government/publications/the-tobacco-control-plan-for-england. Similar tobacco control strategies are also in place in the Devolved Administrations, i.e. Scotland, Wales and Northern Ireland.

Overall, in its assessment of the impact on equality of this measure, the Department of Health has concluded that the policy would not lead to any unlawful discrimination, harassment or victimisation of any particular group by gender, race, religion, ethnicity, sexuality, sexual orientation or disability. It is a wide-ranging policy which has potential to advance equality of opportunity by reducing health inequalities.

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