



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. This equalities analysis also considers specific duties in Northern Ireland under Section 75 of the Northern Ireland Act 1998 and in Wales under the Welsh Commissioner's Welsh Language Standards.

The Department sought comment on this equalities analysis during public consultation from July to September 2015 and this document has been updated as new evidence has emerged, 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. This increases 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 stood at 8% in 15 year olds in England in 2014², 9% in 15 year olds in Scotland in 2013³, 9% in 15-16 year olds in Wales in 2013-14⁴ and 6.5% in 15 year olds in Northern Ireland in 2013.⁵ Targeting initiation in this group remains important as the majority of adult smokers in the UK start in their youth.⁶

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, such as those of lower socio-economic status.

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, for example, 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 16.⁷ Very few people started smoking for the first time after the age of 25 (around 95% of all

smokers started before the age of 25). It has been estimated that around 207,000 children aged between 11-15 start smoking every year in the UK. That equates to around 600 children of this age group starting smoking in the UK every day.⁸

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 will discourage children and young people from starting to use tobacco and related products.

Characterising flavours

Research, in a number of countries, has found that flavoured tobacco products are preferred by children and adolescents as well as experimenting smokers.^{9, 10, 11} 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;^{12, 13, 14}
- 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;¹⁵
- 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;^{16, 17, 18}
- 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;¹⁹
- 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;²⁰ and
- Some youths smoke menthol products because they perceive them to be less harmful than non-menthol cigarettes.²¹

In the UK, the market share of menthol is growing year on year. Menthol cigarettes accounted for a 7.4% share of retail volume sales in 2010 rising to 8.6% in 2014²² against a slowly declining rate of smoking in adults and a falling rate in children (15yrs) (12%- 8%) over the same time period.²³

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.

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.²⁴

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 2014 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.²⁵ 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. Data from England shows that in 2012 36% of pupils aged 11-15 years 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 20,²⁶ 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 10.²⁷ Data for Wales, Northern Ireland and Scotland is not available but may be similar to that of England.

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.²⁸

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 are 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.²⁹ 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 fewer than twenty cigarettes, may have a greater impact on deterring young people from smoking compared to adults.

Advertising of e-cigarettes

Article 20(5) of the TPD2 will ban advertising and promotion of e-cigarettes and re-fill containers, directly or indirectly on TV, on-demand television, radio, through information society services (this includes for example internet advertising and commercial e-mail) and in certain printed publications. In addition, sponsorship of television and radio programmes which promotes e-cigarettes, and product placement of e-cigarettes will be prohibited. The directive also requires the prohibition of sponsorship of events or activities or individuals involving or taking place in several Member States or otherwise having cross-border effects, with the aim or effect of promoting e-cigarettes.

Whilst there may be little or no impact on aggregate consumption of e-cigarettes following the partial ban on advertising and promotion, the restrictions could have a small positive impact in reducing the number of people under 18 initiating use of e-cigarettes and potentially becoming addicted to nicotine. The US Surgeon General's 2012 report stated that evidence is sufficient to conclude that there was a causal relationship between advertising and promotional efforts of the tobacco companies and the initiation and progression of tobacco use among young people.³⁰ It is possible that a similar relationship may become established between advertising and promotion of e-cigarettes and the initiation and progression of e-cigarette use among young people.

Awareness of e-cigarettes in the UK is high³¹ at 95% amongst smokers and 93% amongst non-smokers. Any impact of the advertising restrictions is therefore likely to be less related to the level of awareness of e-cigarettes generally but more about smokers not having all of the

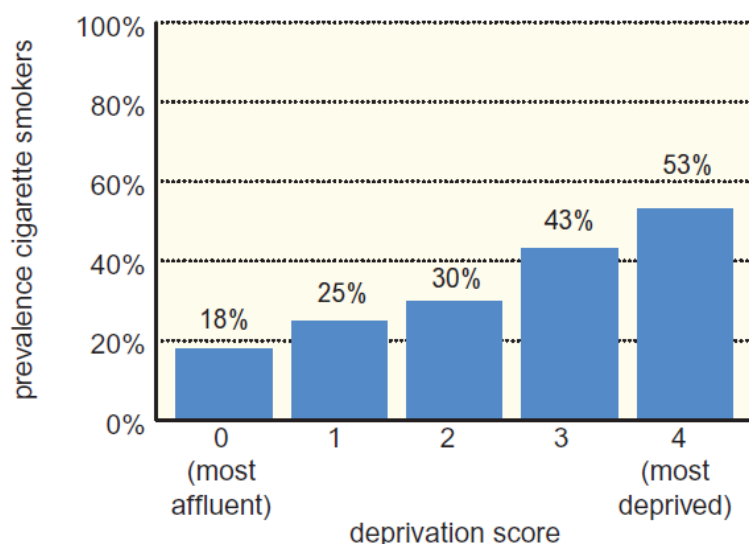
information on the range of products available, leading to a difficulty in finding the right product to enable them to quit smoking.

The ban on advertising may have a negative impact on current smokers whose health could benefit from switching from smoking tobacco to using e-cigarettes but, due to the high level of awareness, this may be small to insignificant.

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.³² Moreover, smoking prevalence is much higher among people in routine and manual occupations compared to people in managerial or professional occupations³³ and lower socio-economic status is associated with higher levels of nicotine dependence.³⁴ 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*³⁵ 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 follows that the impact would be greater in those groups in which smoking prevalence is the highest, such as those of low socio-economic status. 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 incomes¹⁰ 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,³⁶ although some smokers said that they would *'find a way to buy a menthol brand'* if menthol were banned,³⁷ highlighting the importance of the introduction of track and trace measures alongside 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).³⁸ 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.³⁹

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.⁴⁰ 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 fewer than twenty 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 have not yet been able to successfully quit smoking, remain addicted and will have to use a larger proportion of their disposable income, at any given time, to purchase tobacco products, rather than other essentials such as food or heating. On the other hand, this may have a positive impact on people of low socio-economic status who may be more likely to quit smoking due to the higher price of packets containing 20 cigarettes and pouches containing 30g of tobacco.

Gender

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.⁴¹ 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.⁴²

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."*⁴³

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.⁴⁴

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.

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.^{45,46,47,48} It is estimated that of the 10 million smokers in the UK in 2013 approximately 3 million had a mental disorder.⁴⁹

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 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.⁵⁰ Local Stop Smoking Services data, published in 2015, showed that those who chose to use e-cigarettes to support their quit attempts also showed the highest rate of success.⁵¹ A 66% success rate is recorded among smokers who use unlicensed products as part of their quit attempt. Whilst this quit rate is not generalisable to the whole population or to those with mental health conditions because of the likely selection biases both in terms of the quitters and the service providers, it does provide some evidence that because more people with mental health conditions chose to use these products they may benefit more.

In some mental health units in England e-cigarettes have been used to support a move to 'smokefree'. The TPD2 introduces product standards for e-cigarettes which may make mental health units more comfortable in allowing patient access to these devices. 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.⁵² This might narrow the health inequalities gap between people with and without mental illness.

Race

Compared to the general population, smoking rates are particularly high in Black Caribbean (37%) and Bangladeshi (36%) men in England. 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.⁵³

Whilst smoking rates vary considerably between ethnic groups, overall, smoking rates among ethnic minority groups are lower than those of the UK population as a whole.⁵⁴

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

In different regions and communities in the UK, languages other than English are the first language of the population and it is possible that people who speak these languages may not benefit to the same degree from health warnings which are presented in English.

For example in certain ethnic groups with high smoking rates, such as Bangladeshi and Pakistani men⁵⁵, these population groups may not benefit to the same degree from health warnings that are presented in English. However, under current regulations, cigarettes and RYO are required to carry 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,⁵⁶ perinatal mortality,⁵⁷ and increased risk of asthma and wheezing in young children.⁵⁸ 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.^{59, 60}

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.⁶¹

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.⁶² 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, for carers, those undergoing gender reassignment or for people of different political opinion.

Engagement and Involvement

A draft of this equalities analysis was published as part of a nine-week public consultation in July 2015. The analysis has subsequently been updated to reflect new statistics and to bring the assessment in line with amendments to the draft legislation.

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 impact of 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 UK Government and Devolved Administrations in Scotland, Wales and Northern Ireland will continue to implement their wide ranging tobacco control plans. These include a range of strategies aimed at reducing smoking rates and health inequalities, including investment in stop smoking services for those who want to quit. The Government will publish a new tobacco control strategy for England in summer 2016 to replace the Tobacco Control Plan for England which ran to December 2016. Tobacco control strategies are in place in the Devolved Administrations, i.e. Scotland, Wales and Northern Ireland. The Scottish Tobacco Control Strategy (www.gov.scot/tobaccofreegeneration); The Tobacco Control Action Plan for Wales (<http://gov.wales/docs/phhs/publications/120202planen.pdf>); and the 10 Year Tobacco Control Strategy in Northern Ireland (<https://www.dhsspsni.gov.uk/sites/default/files/publications/dhssps/tobacco-control-10-year-strategy.pdf>).

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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