

4th August 2014

Department of Health Standardised Packaging Consultation
PO Box 1126
Canterbury
CT1 9NB

Dear Sirs

Department Of Health's Consultation On The Introduction Of Regulations For Standardised Packaging Of Tobacco Products.

The Scottish Wholesale Association is the representative body of wholesale food and drink distributors in Scotland and speaks for member companies on all matters.

The Scottish Wholesale Association wishes to respond formally to the Consultation noted above for the following reasons:

Consultation Question

1. Do you have any observations about the report of the **Chantler Review** that you wish to bring to our attention?

Firstly, the Government has as a policy priority to support small businesses. This proposal creates new criminal offences for the retail and wholesale sector which is contrary to the stated priority.

Secondly, the Government has as a policy priority to reduce organised crime. The Scottish Wholesale Association held a Parliamentary Reception on Wednesday, 15th January 2014 which gave the trade an opportunity to successfully demonstrate the impact of the illicit tobacco trade in Scotland, and the Association raised its valid concerns regarding the impact of the consultation's objective in creating a commercial environment for easy and cheap product counterfeiting. The present packaging arrangements contribute towards frustrating counterfeiters by maintaining high barriers of entry to tobacco sales opportunities.

Thirdly, the Government in Scotland has committed to introduce plain packaging. Therefore uniquely, the Scottish trade is faced with the extra burden of dedicating resource to both consultations. The other parts of the UK have not faced this prospect and it will be apparent that the trade in Scotland has had to deal already with more comprehensive restrictions on tobacco displays plus there has been no time period to adequately assess its impact on the small independent retailers that wholesalers exclusively supply.

A shop in Scotland which has a 'selling area' smaller than 280 square metres, is classified as a 'small shop'. These shops are not required to fully comply with the law until 6th April 2015.

Fourthly and lastly, in his Independent Review entitled 'Standardised Packaging of Tobacco', Sir Cyril Chantler commented: 'I have not seen evidence that allows me to quantify the size of the likely impact of standardised packaging...'. Therefore, this statement will remain true for the UK during any parliamentary process. In the event that the proposals become law with new criminal offences being created, this set of proposals will remain singularly unique in having been made law without

such evidence having been considered (as it is not available for the UK). No peer-reviewed research evidence has been presented which demonstrates that reducing appeal of a pack of tobacco, because of plain packaging will lead to an actual reduction in smoking.

This is a simple statement which, in our view, requires to be addressed in any UK or Scottish Government response to the consultation process. The Association believes that as governments have previously rejected the introduction of plain packaging, this is because of the lack of evidence that it will work. The Association's view reflects the UK Government's previous rejection of the arguments made by the public health lobby. Our members would require a rationale for the creation of new criminal offences for the trade given the consistent rejection of the policy to introduce standard packaging for tobacco products. A change in this direction by government would remain a highly controversial decision going beyond enactment of new laws.

Our members foresee the inevitable damaging impact on the wholesale trade due to fewer retail visits as a result of upcoming additional burdens created by the EU Tobacco Products Directive (TPD2) which comes into effect in May 2016; which will, inter alia, ban packs of cigarettes of fewer than 20 sticks and all Roll Your Own Tobacco packs under 30g. Government will wish to consider this drop in trade. Larger packs will mean consumers will need to make fewer purchases per week, therefore reducing footfall. This commercial aspect of any decision to further promote a drop in trade should be considered.

Consultation Question

2. Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging, that you wish to bring to our attention?

The Impact Assessment entitled 'Standardised packaging of tobacco products IA No: 3080' and dated 17th June 2014 states:

"The objectives of standardised tobacco packaging would be to improve public health by discouraging young people from taking up smoking, supporting quitting among smokers who want to quit and helping people who have quit to avoid relapse back to smoking." This should be reflected by recognition by the Government of the lack of evidence in the UK that this policy will achieve this aim even as part of a package of legislation.

I also note that the authors of the assessment explain:

"There may also be wider benefits such as narrowing of health inequalities and a reduction in the levels of exposure to secondhand smoke which is particularly harmful to the health of children."

The impact assessment further states: "Research evidence suggests that standardised packaging of tobacco products can reduce the appeal of tobacco products, increase the effectiveness of health warnings on tobacco packages and reduce the ability of tobacco packages to mislead consumers about the harmful effects of smoking. It could also address the contribution smoking makes to the sustaining of socioeconomic health inequalities."

The impact assessment fails to take account of the already different and more restrictive set of measures in place in Scotland and outlined in the Tobacco and Primary Medical Services (Scotland) Act 2010 which shares these aims.

Incredibly, the impact assessment document makes no mention of the Scottish Act in its assessment. This has been noted by the Association and will reflect our view of the parity shown in not recognising, in a Government-prepared document, the statutory requirements in place for both the wholesale and retail trades in Scotland.

The assessment quotes the British Medical Association and the Impact of pro-smoking imagery as a key factor in youth smoking uptake. This will be seen as an extreme and ridiculous argument by the trade as there is no pro-smoking imagery in use in depots or stores in Scotland.

The 2014 Impact Assessment was awarded an 'Amber' rating by the Regulatory Policy Committee, indicating that HM Government's own regulatory experts had concerns with elements of the Impact Assessment that need to be addressed.

I would make the following two points in relation to the period of given to consult:

- 1) Six weeks is an extremely short consultation time, and does not leave businesses which are already exceptionally busy serving the needs of the Commonwealth Games in Scotland very much time whatsoever to digest the consultation document, Draft Regulations, Impact Assessment and Equalities Analysis; and to then write and submit their own response. For such a complex issue which could bring an enormous amount of consequences for legitimate businesses, more time (12 weeks) should have been allocated.
- 2) The Government has published this consultation over the summer holiday period, which will add an extra burden to many businesses and individuals who may be away during this time. This is not appropriate for such a serious piece of legislation given our previously stated concerns.

In relation to these points please refer to the Government's own Consultation Principles:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf

Within this document it says: *"Timeframes for consultation should be proportionate and realistic to allow stakeholders sufficient time to provide a considered response and where the consultation spans all or part of a holiday period policy makers should consider what if any impact there may be and take appropriate mitigating action."*

You will also wish to consider that there is recognition in the consultation that the measure would have no impact on existing smokers wishing to continue smoking.

Consultation question

3. Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?

The consultation document states in:

"5.8 We propose that standardised packaging requirements would apply only to the retail packaging of tobacco products; meaning tobacco packaging that will be, or is intended to be, used for the sale of the product to consumers. The draft regulations also extend to the retail packaging of multi-packs such as cartons of 10 cigarette packs. As set out in the 2012 consultation, we do not propose to

regulate or place restrictions on packaging that is used only within the tobacco trade, for example for stock management in a warehouse."

Given that the Regulations do not define or describe "a warehouse", it seems that this commitment has not been fully accommodated in the statutory provisions. This is concerning that a consultation document would make such an appropriate commitment by not making an accommodating legal definition in the Regulations. It is remiss not to have consulted earlier on this detail and the Association would make a point of requesting the Government to consider further opportunities to make proposals to ensure legal clarity. The wholesale trade is currently worth £25bn in the UK (source: Federation of Wholesale Distributors). This figure is set to grow to £32bn by 2018 (source: Institute of Grocery Distribution). The Scottish Government recognised the importance of legally defining our trade in the recent Tobacco legislation and it would have been helpful for the UK Government to have reflected upon this advice.

In the proposed Standardised Packaging of Tobacco Products Regulations it states:

Offences 20.—

- (1) A person who produces or supplies a tobacco product in breach of any provision of these Regulations is guilty of an offence.
- (2) A person guilty of an offence under this regulation— (a) is liable on summary conviction to imprisonment for a term not exceeding three months, or a fine, or both, or (b) on conviction on indictment to imprisonment for a term not exceeding 2 years, or a fine, or both.

It concerns the trade that the Government holds a view that the creation of new criminal offences for business owners with the possibility of a jail sentence is a proportional response to the issue of achieving the aims of standardised packaging for tobacco products. This is a most important impact on smaller independent retailers and the Government should respond to this concern.

Another regulation deals with the issue of a defence

Defence 22. In any proceedings for an offence under these Regulations against a person who supplies any tobacco product in breach of any provision of these Regulations, it is a defence that the person neither knew nor had reasonable grounds for suspecting that the tobacco product was supplied in breach of that provision.

The Government will be aware that there is a burden of proof on the Prosecution to prove guilt beyond a reasonable doubt in a criminal trial. The commercial impact of this approach given the stated defence would be that there will be very few circumstances in which the owner, director or proprietor of a business will escape conviction based on the standard of proof not being absolute. Business owners have enormous commercial challenges but the structure given here under regulation 22 means that it will typically be expected that business owners should be all knowing and all seeing in relation to tobacco products that may appear in their businesses for sale. This strict approach concerns us. The trade will come to a view that the Government wishes to achieve its public health aims by creating new crimes for the commercial sector.

In relation to the 'Explanatory Note' of the regulations, it would have been useful in communicating the objectives of the regulations to have had the explanatory note narrated in a more descriptive manner. Leaving this section blank is not helpful in communicating correctly and with care the final legal objectives of these new statutory provisions.

Since the Scottish Parliament was established in 1999, it has overseen:

- Legislation to ban tobacco advertising in 2002
- The first UK nation to ban smoking in public places in 2006
- Increased age for tobacco sales from 16 to 18 in 2007
- Implementation of the most robust tobacco display regulations in the UK: in force in large shops from 2013 and small shops from 2015
- Banned tobacco vending machines in April 2013
- Establishment of the only Tobacco Retail Register in the UK in 2011

Despite this list of new statutory provisions the Scottish Wholesale Association led, with other partners, a project to create the only available Fingertip Guide to the New Tobacco Display Laws in Scotland. This was an innovative and high-profile piece of work which highlights the trade's commitment to ensuring compliance with UK and Scottish statutory requirements. However, this leadership role in communicating compliance has to be balanced with a democratic right to stress to Government (both Scottish and UK) that the embodiment of these public health objectives in law creates additional strict liability offences for busy and responsible business people. At a time when both institutions have committed to reducing the regulatory burden it is a breach of that partnership to punish hard-working British businesses in the Courts for newly created offences which make the business of trade more difficult.

The Scottish Wholesale Association would support:

Option 1:

The Scottish Wholesale Association would support Option 1 as expressed in supporting the Impact Assessment which only requires changes to legislation to bring the UK in line with the European Tobacco Products Directive, to be implemented in 2016. The Association recognises that this proposal is subject to a legal challenge.

The Association is concerned by the pejorative tone set for this discussion in the Impact Assessment (Option 1 of the IA) which describes the European Tobacco Products Directive as the 'do nothing' option – which is outrageous given the serious impacts it will have that need to be taken into account by the trade. To state that any organisation supporting Option 1 wants to 'do nothing' is at the least unhelpful and at the most extremely disrespectful to hard-working British businesses which do their utmost to respect and implement the law.

As required by the World Health Organization's Framework Convention on Tobacco Control (FCTC), the Scottish Wholesale Association confirms that tobacco companies are supplier members of the Association and contribute to the Association's fee scheme and industry Awards. The tobacco companies have no influence in matters of public policy in the SWA.

Yours sincerely

EXECUTIVE DIRECTOR



Department
of Health



Llywodraeth Cymru
Welsh Government



The Scottish
Government
Rialtas na h-Alba



Department of
Health, Social Services
and Public Safety
www.dhsspsni.gov.uk

Consultation on the introduction of regulations for standardised packaging of tobacco products – Response Form

a. Are you responding (required):

- As a member of the public (go to question b)
- As a health or social care professional (go to question b)
- On behalf of a business or as a sole trader (go to question c)
- On behalf of an organisation (go to question c)

b. Please provide your details and contact information:

Name of respondent (required)

Address of respondent (required):

Contact email address (required):

Now go to question f

c. Please provide your organisation's details and contact information:

Name of organisation (required):

Newcastle Upon Tyne Hospitals Foundation Trust

Name of person providing submission (required):

[Redacted] [Redacted]

Job Title (required):

Public Health Programmes Coordinator

Contact address of organisation (required):

Health Improvement Team

Contact email address (required):

, New Croft House, Market Street East, Newcastle, NE6 1ND

Is this the official response of your organisation? (required):

Yes

No

d. If you are responding on behalf of a business, what type is it?

Tobacco retailer (supermarket)

Tobacco retailer (convenience store)

Tobacco retailer (other type of shop or business)

Specialist tobacconist

Duty free shop

- Wholesale tobacco seller
- Tobacco manufacturer
- Retailer not selling tobacco products
- Pharmaceutical industry
- Business involved in the design or manufacture of packaging
- Other (please provide details below)

If other, please tell us the type of business:

e. If you are responding on behalf of an organisation, what type is it?

- NHS organisation
- Health charity/NGO (working at national level)
- Local Authority
- Local Authority Trading Standards or Regulatory Services Department
- Local tobacco control alliance
- Retail representative organisation
- Industry representative organisation
- Other type of business representative organisation
- University or research organisation
- Other (please provide details below)

If other, please tell us the type of organisation:

f. Does your response relate to (required):

United Kingdom

England only

Scotland only

Wales only

Northern Ireland only

g. Do you, or the business or organisation you represent, have any direct or indirect links to, or receive funding from the tobacco industry? (required)

No

Yes (please describe below)

If yes, please describe:

The Newcastle Hospitals Trust is not in any way linked to the tobacco industry

h. If you do not wish your details to be identified in the summary report of consultation responses, please tick this box

Consultation questions

1. Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

The Newcastle upon Tyne Hospitals NHS Foundation Trust strongly supports standardised tobacco packaging. The Trust is committed to tackling smoking as the most preventable cause of ill health and disease and a major contributor to health inequalities. It is a member of the Smoke Free Newcastle tobacco control alliance and provides the commissioned NHS Stop smoking Service in Newcastle.

- a. The Newcastle Hospitals Trust welcome's the findings of Sir Cyril Chantler, particularly the impact that standardised tobacco packaging could have on uptake of smoking among young people
- b. Smoking is the leading cause of health inequalities. The richest smokers die earlier than the poorest non-smokers as found in Gruer at al (2009)(Ref 1) who concluded that the scope for reducing health inequalities related to social position is limited unless many smokers in lower social positions stop smoking.
- c. Tobacco use is the leading cause of premature death and preventable disease. Smoking remains the most preventable cause of premature death and ill health in Newcastle. It is the biggest single cause of health inequalities, ultimately killing one in two of its lifetime users. In Newcastle smoking is responsible for nearly 1 in 5 deaths of adults over the age of 35 (a total of 400 people per year) (Ref 2).
- d. Cancer Research UK estimates that 3 children every day become smokers in Newcastle (570 children in the UK) (Ref 3). A 2013 survey in the city revealed that 11% of Year 10 (14 -15 years old) pupils are already smoking 'occasionally' or 'regularly'(Ref 4). The Newcastle Hospitals Trust believes that standardised packs are urgently needed to protect children from tobacco industry marketing, helping to prevent future generations from becoming smokers. With two thirds of smokers becoming addicted before reaching adulthood standardised packaging will help to prevent the next generation from taking up this lethal product which kills one in two of its lifelong users. We believe that we need to do all we can to ensure that the numbers of young people taking up smoking reduces to negligible levels.
- e. We consider that the case for standardised packaging has been made, and that the Government should lay Regulations on standardised packaging,

under Section 94 of the Children and Families Act, before Parliament as soon as possible. Given that notification to the European Union of the Intended Regulations will take six months, there is now only a short time available to do this before the 2015 General Election.

- f. The Newcastle Hospitals Trust particularly welcomes Chantler's dismissal of tobacco industry scaremongering about the alleged impact of standardised packaging on the illicit tobacco trade. Chantler is not convinced by the tobacco industry's argument that standardised packaging would increase the illicit market, especially in counterfeit cigarettes. Recent figures from Australia have also indicated that the illicit market has not increased since the introduction of the measure and that tobacco use is at an all-time low (Ref 5).

References for Section Q1

1. <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2645845/>
2. Public Health England. <http://www.tobaccoprofiles.info/tobacco-control>
3. Based on figures analysed by Cancer Research UK from Smoking, drinking and drug use among young people in England in 2011.
4. Health Related Behaviour Survey of Newcastle Schools 2013. Newcastle City Council.
5. <http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-kff>

87.

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2. Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging that you wish to bring to our attention?
 - a. A considerable amount of new information on the potential effectiveness of standardised packaging since has emerged since the previous consultation in 2012.
 - b. Support for standardised packaging is at an all-time high with 69% of people in the North East in favour and only 9% opposing (Ref 6). Nationally, public support is equally high, and perhaps surprisingly more smokers support standard packs (32%) than oppose (30%) with the remainder ambivalent or undecided. Our experience of talking to smokers on this issue suggests most smokers are very keen for their children not to start.

c. Further measures to regulate tobacco are popular with the public – only 12% of people in the North East think the government is doing too much to tackle smoking (Ref 7).

d. There is still a worrying lack of awareness about the impact that smoking has on health. Research gathered during the development of the North East based 'Don't be the 1' campaign suggests that 90% of North East smokers underestimate the risk that smoking kills one in two of all long term smokers. When informed of the true risk (Ref 8) 65% admitted they find the true risk worrying and 43% said it is "very worrying."

e. 82% of smokers in the North East wish they had never started and 68% say they would like to be able to quit.

f. In Australia, research has shown that social norms in smoking behaviour are already beginning to change as a result of the implementation of standardised packaging. There has been a sharp rise in the number of calls to the Quitline New South Wales service(Ref 9) and that smokers are less willing to display their packs in public or to smoke in outdoor public places particularly where children are present (Ref 10).

g. Figures released by the Australian government in July have shown adult smoking rates have fallen significantly between 2010 and 2013 (Ref 11). In 2010 daily smoking prevalence amongst those aged 14 or older stood at 15.1% and this has now fallen to 12.8%. The latest survey was conducted before the Australian Government's tobacco tax increases in December 2013, ruling out price as the primary reason for the dramatic fall in smoking during this 12-month period. Standardised packaging is the only major policy change over this time period and is therefore the most likely reason for the significant fall in smoking prevalence.

h. The tobacco companies are spending considerable efforts in opposing any moves towards the introduction of standardised tobacco packaging. In the North East, JTI entered into a partnership arrangement with the Newcastle Evening Chronicle which featured three weeks' worth of JTI-funded advertising on illegal tobacco and published a series of articles generated by the company. Fresh was able to counter the misinformation provided by JTI and clearly outline that the illicit market is on a sustained long-term decline, that there is no evidence that standardised packaging would lead to an increase in the illicit trade and that all tobacco – legal or illegal – will kill one in two of its long term users.

i. The tobacco industry repeatedly claims that consumption of illicit tobacco will be increased by policies such as higher tax to reduce smoking and restricting tobacco promotion to reduce youth uptake, even though official figures show the illegal tobacco market has in fact decreased in the UK as a result of the introduction of such measures over a number of years. In November 2013 the chair of the Public Accounts Committee accused tobacco multinationals of deliberately oversupplying

European markets, with the tobacco smuggled back into the UK. Committee Chair Margaret Hodge said:

"The supply of some brands of hand-rolling tobacco to some countries in 2011 exceeded legitimate demand by 240 per cent. HMRC must be more assertive with these manufactures. So far it has not fined a single one of them.

j. The tobacco industry also claims that standardised tobacco packaging will be cheaper to counterfeit. In fact, the production costs of illicit cigarettes, including packaging, are very low, at around 20 US cents a pack (Ref 12). Counterfeiters are able to produce quality and apparently genuine packaging at low prices in a short time, therefore outside packaging is a very poor indicator of whether a pack of cigarettes is licit or illicit. Furthermore, if standardised packaging was introduced, enforcers would easily be able to identify counterfeit and smuggled branded packs and illicit white packs.

k. All security features on current packs will also be present on standardised packaging and additional international tracking and tracing mechanisms to tackle the illicit tobacco trade are required through Article 15 of the revised EU Tobacco Products Directive and Article 8 of the WHO FCTC Illicit Trade Protocol.

l. Comprehensive regional illicit tobacco programmes change the social norms around illicit tobacco, reducing the size of the illicit tobacco market, reducing the proportion of smokers buying illicit tobacco and increasing the public's likelihood to report intelligence. For example, in the North East between 2009 and 2013, following partnership development, three bursts of social marketing activity and enhanced intelligence and enforcement models:

- o the proportion of smokers buying illicit tobacco had dropped from 24% to 17%
- o the size of the illicit tobacco market had shrunk from 15% to 9%
- o the proportion of smokers who buy illicit tobacco believing that 'everybody does it' shrunk from 45% to 28%
- o the proportion of adults who are uncomfortable with the illicit tobacco trade rose from 57% to 70% (Ref 13).

m. A major Trading Standards survey in the North West of England has shown that fewer young children are accessing illicit tobacco products. Between 2011 and 2013 there were reductions in:

- o the proportion of young people who have bought cigarettes from sellers such as neighbours, car boots and ice-cream vans from 42% to 27%
- o the proportion of young people who have bought fake cigarettes, down from 28% to 22%
- o the proportion of young smokers who have ever bought single cigarettes, from 67% to 49% (Ref 14).

n. Fresh submitted the results of focus groups of smokers and non-smokers aged 18-24 during the original consultation, during which examples of Australian standardised packs were rated as likely to be most harmful and less attractive than

standardised packs, with many young people feeling their greatest potential lay in dissuading young experimenters, occasional smokers and non-smokers (the stated aim of the policy rather than existing adult smokers). Discussion with young people since then has revealed further potential impact standardised packs could have, including this film featuring two young female smokers from Gateshead, Tyne and Wear comparing examples of Australian standardised packs with current branded cigarettes.

"It tells you... like more what it can actually do to you. They've [branded packs] just got like... little pictures on the back that you can't see when you're buying them."

"It'll probably make us want to quit smoking... like I'd probably try more than what I ever have." (Ref 15)

o. Tobacco retailers in the UK have suggested that the introduction of standardised packaging means that it will take longer to serve customers and so convenience stores will lose custom. However, Wakefield M et al have reported that: "retailers quickly gained experience with the new plain packaging legislation, evidenced by retrieval time having returned to the baseline range by the second week of implementation and remaining so several months later. The long retrieval times predicted by tobacco industry funded retailer groups and the consequent costs they predicted would fall upon small retailers from plain packaging are unlikely to eventuate". (Ref 16)

References for Q2

6. YouGov 2014

7. YouGov 2014

8. The Doctors Study" (Doll R, Peto R, Wheatley K, Gray R, Sutherland I. Mortality in relation to smoking: 40 years observations on male British doctors. British Medical Journal 1994; 309:901-911).

9. <https://www.mja.com.au/journal/2014/200/1/association-between-tobacco-plain-packaging-and-quitline-calls-population-based>

10. <http://onlinelibrary.wiley.com/doi/10.1111/add.12466/abstract>

11. <http://www.aihw.gov.au/alcohol-and-other-drugs/ndshs/>

12.

http://www.cancerresearchuk.org/prod_consump/groups/cr_common/@nre/@pol/documents/generalcontent/smuggling_fullreport.pdf

13. http://www.illegal-tobacco.co.uk/wp-content/uploads/2014/03/NE_Illicit_Tobacco_Report_key_findings.pdf

14. http://tobaccofreefutures.org/wp-content/uploads/2013/08/8353_TSNW-Young-Persons-Alcohol-Tobacco-Report_130605_V3.pdf

15. <http://www.youtube.com/watch?v=R1AEH4Pemiw>

16. Wakefield M, Bayly M, Scollo M. Product retrieval time in small tobacco retail outlets before and after the Australian plain packaging policy: real-world study: Tobacco Control doi:10.1136/tobaccocontrol-2013-050987.

4. Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?

a. The Newcastle Hospitals Trust welcomes the overall recommendations of the consultation-stage impact assessment particularly its statement that the implementation of standardised tobacco packaging is worth pursuing now and that the cost of delaying a decision is too great in public health terms.

b. We welcome the decision to review the policy after five years which will allow time for early impacts to become clear although it needs to be borne in mind that long term impacts such as reduced youth uptake, reductions in smoking prevalence and improvements in public health will take many years to manifest.

3. Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations as drafted?

a. The Newcastle Hospitals Trust broadly welcomes the comprehensive draft regulations particularly in terms of:

- o The stipulated colour of tobacco packets
- o The minimum number of cigarettes or minimum weight of hand rolling tobacco that a packet can contain
- o The reassurance that these regulations will not affect other labelling requirements for tobacco products such as health warnings and fiscal marks
- o The scope of the regulations across the UK
- o The clarity of the regulations in relation to their impact on trade mark protection
- o The scope to include the changes required for Directive 2014/40/EU.

b. However there are a number of issues with the draft regulations that we would like to see addressed:

o The draft regulations apply only to cigarettes and hand-rolling tobacco. We believe that the regulations should also apply to specialist tobacco products including cigars, cigarillos and 'blunts'. The rationale for this exclusion is low rates of use, particularly by young people, and the provision is made that the regulations could be extended if young people become increasingly attracted to these types of tobacco. Our view is that this opportunity should not be missed to highlight to young people the dangers of these products before consumption increases and that the regulations should be extended now to include specialist tobacco products rather than when these products have become a problem so that there is a level playing field. The

danger posed by excluding such tobacco products from the regulations is that this might be interpreted as endorsement of the idea that they are in some way less harmful to health.

o The draft regulations do not propose requirements relating to the size or length of cigarettes. Evidence in the North East shows that young women in particular are attracted to slim cigarettes therefore regulations should be included to stipulate a minimum size of cigarette. This would also prevent any opportunity for slim cigarettes to be repositioned as cigarillos thereby becoming exempt from regulations given their specialist tobacco products status (unless this exemption is removed as recommended).

o The Newcastle Hospitals Trust urges consideration of risks around the industry using the sticks themselves as the final marketing device, and the regulations need to prohibit the sticks being decorated with brands, colours, patterns, images and logos.

o The draft regulations do not propose requirements relating to the size of cigarette or tobacco packets. Instead, the only stipulation in terms of size is 'cuboid' and this is open to interpretation. This is a real concern and a potential weakness in the regulations. Dimensions should be provided to ensure consistency and to prevent the tobacco manufacturers from determining the size themselves and using it as a means of product differentiation. In Australia, the dimensions stipulated are as follows and we recommend the UK government follows this model:

Physical features of cigarette packs

The dimensions of a cigarette pack, when the flip-top lid is closed, must not be:

- (a) height — less than 85 mm or more than 125 mm; and
- (b) width — less than 55 mm or more than 82 mm; and
- (c) depth — less than 20 mm or more than 42 mm.

o The requirements prevent packaging from producing a noise or scent but do not prohibit any smell arising from a permitted additive. Tobacco manufacturers will be innovating packaging now to ensure they can work around these regulations therefore we feel that any scent other than that which normally arises from tobacco products should be prohibited. This is particularly relevant for menthol cigarettes which, under the directive 2014/40/EU, have an exemption until 2020. The development of capsule cigarettes shows that the tobacco industry is still innovating in this area.

o The requirements only apply to retail packaging of tobacco products to retail packaging of tobacco products and not packaging that is used only within the tobacco trade, for example for stock management in a warehouse or wholesale premises. It would be preferable for the requirements to apply to all tobacco packaging to avoid any potential confusion over definitions of warehouses.

o To aid enforcement of the regulations, it would assist if images of the packages, currently in Appendix C of the consultation document, were placed in the body of the regulations. A similar approach is used in other legislation that has specific labelling or presentation requirements, for example the regulations on pack health warnings.

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4. Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?

a. The Newcastle Hospitals Trust welcomes the overall recommendations of the consultation-stage impact assessment particularly its statement that the implementation of standardised tobacco packaging is worth pursuing now and that the cost of delaying a decision is too great in public health terms.

b. We welcome the decision to review the policy after five years which will allow time for early impacts to become clear although it needs to be borne in mind that long term impacts such as reduced youth uptake, reductions in smoking prevalence and improvements in public health will take many years to manifest.

c. We understand the difficulty of apportioning value to certain outcomes from interventions but there are some statements within the impact assessment that are particularly difficult to accept including:

o "an additional benefit [of implementing standardised packaging] is the possible enhancement of price competition between tobacco companies and the potential for accelerated product innovation to exploit other avenues for product differentiation."

o "consumer surplus [identified as a cost] represents the loss of the ability of those who continue to smoke to gain the intangible benefit associated with

smoking a particular brand that only the packaging of that brand, as it is currently available, can produce."

The reality is that all cigarettes, regardless of brand or price, will kill one in two of its long-term users. Making products more affordable or more attractive cannot be judged to be a benefit. If, in practice, standardised packaging were to lead to some brand switching by consumers, from high price to low price cigarette brands, or if the tobacco industry were to respond to the introduction of standardised packaging by cutting prices, this should be dealt with quickly by additional increases in tobacco taxation, above those currently required by the duty escalator.

- d. We support any effective measures to maintain the costliness of tobacco in particular adjusting rates on tobacco duty, above those currently required by the duty escalator, given that price is the single most effective policy lever for reducing smoking prevalence available to governments. Peto (2013) (Ref 17). has recommended an approach to taxation that would have a significant impact on consumption: tripling inflation-adjusted specific excise taxes on tobacco which would approximately double the average price of cigarettes (and more than double prices of cheaper brands) which would reduce consumption by about a third and actually increase tobacco revenues by about a third. We can fully expect the tobacco industry to respond to standardised packaging by dropping prices to make smoking more affordable.
- e. Standardised packaging was introduced in Australia in conjunction with larger health warnings, and a sustained mass media campaign which, on a per capita basis cost the equivalent of £33.7 million a year in the UK. Australia is also committed to annual increases in tobacco taxation of 12.5 per cent over inflation each year for four years, starting in December 2013 (Ref 18).
- f. The impact assessment considers the potential costs that may arise through increases in the demand for and the supply of illicit tobacco. However, we draw the consultation team's attention to:

- o the findings of Chantler who is not convinced that standardised packaging would increase the illicit market and found no evidence that standardised packaging is easier to counterfeit.
- o evidence from Australia which has shown there to be no increase in the illicit tobacco trade since the measure was introduced while tobacco consumption has fallen
- o the conclusion of the Home Affairs Committee inquiry into tobacco smuggling which recommended that any risks in this area could be mitigated by increasing enforcement action
- o Peto's view (Ref 19) that use of specific excise taxes on tobacco (rather than ad valorem taxes), stronger tax administration, and practicable controls on organised smuggling can limit the problem. Even with some smuggling, large tax increases can substantially reduce consumption and increase revenue especially if supported by better tax enforcement
- o the impact that health-related social marketing can have on reducing smoking at population level and, in turn, reducing the illegal tobacco market, as seen in the North East, North West and South West where the illicit tobacco market share has reduced significantly
- g. The impact assessment also considers the costs for retailers and states that, anecdotally, the profit margins on the sale of tobacco may be relatively low. John McClurey, elected member for Gateshead Council and independent retailer in Newcastle, maintains that:

"most traders rely less and less on tobacco profits since the gross profit is so small. I make as much profit from a pack of chewing gum as a £6 pack of cigarettes. What my customers save by quitting or never starting to smoke, they can spend on other things. That means more money into the local economy."

- h. Standardised packaging was introduced in Australia on conjunction with larger health warnings and sustained mass media campaign, the equivalent of which would cost £33.7 million a year in the UK. Australia is also committed to annual increases in tobacco taxation of 12.5 per cent over inflation each year for four years from December 2013.

- i. Evidence demonstrates that tobacco control policies must be pursued in parallel and not in isolation if they are to have their best possible impact in reducing prevalence rates. The Newcastle Hospitals Trust therefore feels that it is important that the UK Government gives careful thought to how to maximise the public health benefits of standardised packaging, by:

 - o funding a sustained mass media campaign around the time that standardised packaging comes into effect
 - o ensuring that stop smoking services are adequately funded
 - o supporting enforcement through adequate funding of trading standards departments, regional partnerships against illicit trade, and work on illicit trade by HMRC and the Border Agency
 - o considering tax rises on tobacco products over and above the existing escalator, particularly to counteract any possible negative effects from brand-shifting or price cutting, and
 - o considering further levies on the industry, based on local sales data, and designed to fund stop smoking services and other tobacco control initiatives, and health costs caused by tobacco consumption.

- j. The benefits of introducing standardised packaging identified in the impact assessment far outweigh the costs, many of which can be quantified at the Newcastle level (Ref 20):

 - o Overall, the main smoking related diseases are conservatively estimated to cost the NHS across the Newcastle £14.11 million per year

- o The cost of smoking-related hospital admissions in the Newcastle alone is calculated to be nearly £8.82 million per year (Ref 21). The impact of smoking on hospitals is marked. There are an estimated 3,143 hospital appointments each year from Newcastle residents over the age of 35, as a consequence of the main smoking-related diseases. (Ref 22). This is significantly higher than the average across England. In 2013/14 The Newcastle upon Tyne Hospitals NHS Foundation Trust had approximately 109,165 inpatient episodes (elective and none elective admissions, excludes those admitted to children's services, day cases and outpatients). (Ref 23). We are aware that if the smoking prevalence in the inpatient population is similar to the wider community at 22.9%, it is estimated that in around 25,000 of these episodes, the patient was a smoker. This is likely to be a conservative estimate given the strong correlation between smoking and illness, and the likelihood that smoking prevalence amongst inpatients in the city is higher than that of the general population.

- k. In conclusion; The Newcastle Hospitals Trust supports the introduction of standardised packaging believing that would make an important positive contribution to reducing the harm caused by tobacco consumption and would urge its introduction within this parliament.

References for Q4

- 17. <http://www.nejm.org/doi/full/10.1056/NEJMra1308383>
- 18. <http://www.abc.net.au/news/2013-08-01/government-to-raise-5-billion-from-cigarette-tax-increase/4857244>
- 19. <http://www.nejm.org/doi/full/10.1056/NEJMra1308383>
- 20. NICE Return on Investment Tool for Tobacco Control
<http://www.nice.org.uk/ROI/tobacco>
- 21. NICE Return on Investment Tool for Tobacco Control
<http://www.nice.org.uk/ROI/tobacco>
- 22. NICE Return on Investment Tool for Tobacco Control
<http://www.nice.org.uk/ROI/tobacco>

23. Newcastle upon Tyne Hospitals NHS Foundation Trust data extraction - Inpatient episodes by admission method, directorate and smoking diagnosis April 2013-2014.
Created 14/4/14

Thank you for participating in this consultation.

The Department of Health and Devolved Administrations will only contact you should we seek further information about your response.

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The consultation will run for 6 weeks, from 26/06/14 to 07/08/14. Responses are invited from any interested group, company or person.

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[http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-](http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1)

[1](http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1)

- **Filling in the response form by downloading it at:**

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TobaccoPackaging@dh.gsi.gov.uk

- **Posting your response to**

Department of Health
Standardised Packaging Tobacco Consultation
PO Box 1126
CANTERBURY
CT1 9NB



Department
of Health



Llywodraeth Cymru
Welsh Government



The Scottish
Government
Riaghaitas na h-Alba



Department of
Health, Social Services
and Public Safety
www.dhsspsni.gov.uk

Consultation on the introduction of regulations for standardised packaging of tobacco products – Response Form

a. Are you responding (required):

- As a member of the public (go to question b)
- As a health or social care professional (go to question b)
- On behalf of a business or as a sole trader (go to question c)
- On behalf of an organisation (go to question c)

b. Please provide your details and contact information:

Name of respondent (required)

Address of respondent (required):

Contact email address (required):

Now go to question f

c. Please provide your organisation's details and contact information:

Name of organisation (required):

Public Health and Partnerships Committee of Aneurin Bevan University Health Board

Name of person providing submission (required):

[Redacted]

Job Title (required):

Independent Member, Aneurin Bevan University Health Board / Chair of Public Health & Partnerships Committee

Contact address of organisation (required):

Headquarters, St Cadoc's Hospital, Lodge Road, Caerleon, NP18 3XQ

Contact email address (required):

[Redacted]

Is this the official response of your organisation? (required):

Yes

No

d. If you are responding on behalf of a business, what type is it?

Tobacco retailer (supermarket)

Tobacco retailer (convenience store)

Tobacco retailer (other type of shop or business)

Specialist tobacconist

Duty free shop

- Wholesale tobacco seller
- Tobacco manufacturer
- Retailer not selling tobacco products
- Pharmaceutical industry
- Business involved in the design or manufacture of packaging
- Other (please provide details below)

If other, please tell us the type of business:

e. If you are responding on behalf of an organisation, what type is it?

- NHS organisation
- Health charity/NGO (working at national level)
- Local Authority
- Local Authority Trading Standards or Regulatory Services Department
- Local tobacco control alliance
- Retail representative organisation
- Industry representative organisation
- Other type of business representative organisation
- University or research organisation
- Other (please provide details below)

If other, please tell us the type of organisation:

f. Does your response relate to (required):

United Kingdom

England only

Scotland only

Wales only

Northern Ireland only

g. Do you, or the business or organisation you represent, have any direct or indirect links to, or receive funding from the tobacco industry? (required)

No

Yes (please describe below)

If yes, please describe:

h. If you do not wish your details to be identified in the summary report of consultation responses, please tick this box

Consultation questions

1. Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

There have been great strides forward in tobacco control over the last few decades which have resulted in falling smoking prevalence. However, this progress has been less pronounced in the areas of highest deprivation, contributing to health inequities that are a cause of great concern. Aneurin Bevan University Health Board (ABUHB) is responsible for providing healthcare services to approximately 700,000 residents, including some of the most deprived areas in Wales. 23% of adults in the area smoke, with much higher rates being observed in the most deprived communities.

There is a need for a continuing, concerted effort to reduce smoking prevalence and de-normalise smoking in society. The Public Health & Partnerships Committee of Aneurin Bevan University Health Board therefore believes that standardised packaging should be introduced if the available evidence supports the conclusion that the introduction of standardised packaging would be likely to:

- Lead to a reduction in the numbers of young people starting to consume tobacco; and
- Together with other policy initiatives, contribute significantly over time to a reduction in smoking prevalence rates.

Every day in Wales an estimated 39 teenagers (aged 11-15) try smoking cigarettes, introducing them to a truly deadly product (1). ASH Wales have consulted with children and young people from around Wales regarding packaging and branding and how this impacts upon their perception of the attractiveness of tobacco products. They were shocked by some of the shiny and "cool" looking cigarette packs and said they should not be sold in glamorous packaging that might tempt children to try smoking. They said some of the coloured packaging looked like they contained chewing gum, perfume, posh tissues and even Lego.

When shown samples of standardised packaging based upon the Australian example, these were some of their responses:

- "The packs will show what it actually does, they will say the truth." Female, aged 14, Prestatyn
- "It looks more medical. If you had a choice between that and the others you wouldn't choose it." Female, aged 14, Prestatyn
- "I've never smoked and now I never will." Male, aged 13, Swansea
- "They'll think the plain packs are horrible and won't want to end up like it." Male, aged 11, Blackwood
- "The warning is only on the back of the coloured ones and you don't have to read it." Female, aged 11, Blackwood

The Chantler Review, rightly, reported that the evidence does indeed support this conclusion. As Sir Cyril Chantler stated in his covering letter to the Secretary of

State: "it is in my view highly likely that standardised packaging would serve to reduce the rate of children taking up smoking" and "the body of evidence shows that standardised packaging, in conjunction with the current tobacco control regime, is very likely to lead to a modest but important reduction over time in the uptake and prevalence and thus have a positive impact on public health."

We welcome the response of Jane Ellison MP, Minister for Public Health, to the Chantler Review. She said that the report found standardised packaging was "very likely to have a positive impact" on public health. She went on to say: "In the light of the report and the responses to the previous consultation in 2012, I am minded to proceed with introducing regulations to provide for standardised packaging" and that she wished to "proceed as swiftly as possible". She also reported that the UK Government's Chief Medical Officer, Dame Sally Davies, had written to her supporting the conclusions of the Chantler Review and the introduction of standardised packaging (2).

We therefore consider that the case for standardised packaging has been made, and that the UK Government should lay Regulations on standardised packaging, under Section 94 of the Children and Families Act, before Parliament as soon as possible. Given that notification to the European Union of the intended Regulations will take six months, there is now only a short time available to do this before the 2015 UK General Election.

The UK Government and the devolved administrations should resist efforts by the tobacco industry and its surrogates to delay production of the final Regulations. In this consultation response we review some of the industry's arguments in response to the Chantler Review and show them to be either weak or entirely without foundation.

(1) Estimate calculated on figures from Welsh Health Behaviour in school-aged children Survey 2009/10

(2) House of Commons Hansard 3rd May 2014: Col 1018 et seq

2. Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging that you wish to bring to our attention?

Illicit Tobacco Trade: General

A principal tobacco industry argument against standardised packaging has been that it will inevitably lead to an increase in the illicit tobacco trade. There is no good reason to accept this argument, since there is no plausible mechanism of action, and indeed evidence published since the 2012 consultation suggests that it is false.

There is no plausible mechanism of action because all the key security features on existing packs of cigarettes would also be present on standardised packs. These include coded numbering and covert anti-counterfeit marks. Jane Ellison, Parliamentary Under-Secretary of State for Health, said in a November 2013 Parliamentary debate that: "I am grateful to those hon. Members who have made the point that if we were to adopt standardised packaging, it would not mean plain packaging. Approaches such as anti-smuggling devices could be built into standardised packaging, if we choose to go down that route." (3)

The production costs of illicit cigarettes (including packaging) are very low. In Paraguay costs can be as low as 5 US cents a pack, a Jin Ling pack in Kaliningrad or a Chinese counterfeit pack may cost about 20 cents a pack to produce. Counterfeiters are also able to produce quality and apparently genuine packaging at low prices in a short time. It follows that outside packaging is a very poor indicator of whether a pack of cigarettes is licit or illicit (4). The only obvious circumstances in which external packaging could be useful in this respect is precisely if standardised packaging is introduced – which would of course enable easy visual identification of "cheap white" brands (ones with no licit market in the UK) and diverted licit brands (where the first destination market was in a country without standardised packaging, and the product has been diverted into illicit channels).

Number codes will develop further into an international standard system because of the requirements of Article 15 of the revised EU Tobacco Products Directive and Article 8 of the Illicit Trade Protocol, a subsidiary treaty under the WHO Framework Convention on Tobacco Control, to which the UK is a Party.

Article 15 of the Tobacco Products Directive states that: "Member States shall ensure that all unit packets of tobacco products are marked with a unique identifier. In order to ensure the integrity of the unique identifier, it shall be irremovably printed or affixed, indelible and not hidden or interrupted in any form, including through tax stamps or price marks, or by the opening of the unit packet" (5).

Article 8.3 of the Illicit Trade Protocol states that: "With a view to enabling effective tracking and tracing, each Party shall require that unique, secure and non-removable identification markings (hereafter called unique identification markings), such as codes or stamps, are affixed to or form part of all unit packets and packages and any outside packaging of cigarettes within a period of five years and other tobacco products within a period of ten years of entry into force of this Protocol for that Party" (6).

It should be noted that Philip Morris International has developed a coding system called "Codentify", which the company has licensed for free to JTI, IT and BAT. The four tobacco multinationals have set up a "Digital Coding and Tracking Association", based in Zurich. According to PMI, the system is based on unique twelve digit codes, which enable enforcement authorities to determine key information including: date, time, factory and line of production and intended target market. Since the codes are based on a secure algorithm, it is claimed that it would be a simple matter to identify

"fake" codes on illicit packaging. PMI's promotional material claims that "Codentify" "makes the leap into the digital age and can meet the demands of governments that want to improve tax revenue collection, the robustness of verification processes and supply chain security ... When it comes to protecting government tax revenues, securing the supply chain and fighting illicit trade, Codentify offers a highly advanced, secure and cost-effective solution for the 21st century" (7).

Codentify (or any of a number of other systems that are not proprietary to the tobacco industry) could be used on standardised packs as readily as on branded ones. It is clear that the tobacco industry is promoting contradictory messages depending on which issue it is addressing: on the one hand it claims to have a robust coding system which enables it to identify counterfeit products, and on the other to claim that pack design is vital in combatting illicit trade.

Not surprisingly therefore Andrew Leggett, Deputy Director for Tobacco and Alcohol Strategy at HM Revenue and Customs has said about standardised packaging that "we're very doubtful that it would have a material effect [on counterfeiting and the illicit trade in tobacco]" (8). This conclusion was supported by the House of Commons Home Affairs Select Committee, in its report on the illicit tobacco trade published in June 2014. The Committee reported that: "We believe that the decision on standardised packaging should be driven by health reasons and the imperative need to reduce the numbers of young people who start smoking. We note the statement of Sir Cyril Chantler to the effect that he was not convinced that standardised packaging would bring about an increase in the illicit market; even if this were the case, we believe that the proper response would be a more vigorous effort on enforcement rather than any lessening in the Government's drive towards introducing standardised packaging" (9).

Illicit Tobacco Trade: Australia

The tobacco industry has repeatedly claimed that the level of illicit trade in Australia has increased since, and as a result of, the introduction of standardised packaging. For example, BAT told investors in March 2014 that total illicit activity in Australia had risen by more than 30 per cent since the introduction of standardised packaging (10).

These claims were examined during the Chantler Review and shown to be unsupported, a fact that was effectively admitted during Review meetings with representatives of the tobacco industry in Australia (11). The Australian Government and customs officials have also rejected tobacco industry claims that illicit trade in Australia has risen since the introduction of standardised packaging (12). In March 2014 the Sydney Morning Herald reported that there had been only one seizure of counterfeited plain packs since December 2012 (13).

In response to this article, the paper was contacted by Sonia Stewart, the former Head of Corporate Affairs & Legal for Imperial Tobacco Australia, who has now left the industry. In her job at IT Australia she had "commented numerous times in the media during 2011-2013 about the anticipated impact of plain packaging", claiming for example that "the legislation will make the counterfeiters' job both cheaper and easier by mandating exactly how a pack must look" (14). She wrote to the paper that "based on these figures from Australian Customs authorities, there doesn't appear to be any evidence that plain packaging itself has caused an increase in tobacco smuggling." She added: "Imperial Tobacco did expect to see an increase in tobacco smuggling because of plain packaging, but based on the figures from Australian Customs it looks like those predictions were simply wrong" (15).

Tobacco Consumption in Australia

The tobacco industry has also claimed that tobacco consumption in Australia has risen since the introduction of standardised packaging. Again, independent evidence does not support this proposition.

In November 2013 a study by the consultancy firm London Economics, funded by Philip Morris, reported that since the introduction of plain packaging in Australia their survey showed no statistically significant change in smoking prevalence. This report has been sharply criticised by, among others, the Cancer Council of Victoria, since:

- The report used an online survey panel, which was not representative of the general population (for example, the panel's smoking prevalence rate was higher than the Australian average)
- The survey had a sample size of 5,000, which could only demonstrate statistical significance if smoking prevalence rates had fallen by around two percentage points in less than a year, which would be a sharper decline than has ever been recorded in such a short period in the history of tobacco control policy. To measure a statistically significant decline of, for example half a percentage point, would have required a sample of around 90,000.

The tobacco industry in Australia has reported an increase in tobacco sales from 21.015bn sticks in 2012 to 21.074bn in 2013 (16), and the industry and its front groups in the UK have claimed that this showed standardised packaging was not working. Although the industry reported a small (0.28%) increase in sales year on year, they did not report the increase in the Australian population between 2012 and 2013. Adjusted for population, tobacco sales per person by their measure of consumption would in fact have fallen, from 920.4 per person in 2012 to 906.9 in 2013 (17).

The Australian Government's Department of Health has released figures showing that total consumption of tobacco and cigarettes in Australia in the first quarter of

2014 was the lowest ever recorded, as measured by estimated expenditure on tobacco products:

- \$5.135 billion in September 1959;
- \$3.508 billion in December 2012 (when standardised packaging was introduced); and
- \$3.405 billion in March 2014.

This is supported by figures from the Australian Treasury showing that tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012 when tobacco plain packaging was introduced. Clearances are an indicator of tobacco volumes in the Australian market (18).

26. In June 2014, Professor Ashok Kaul of the University of Saarland and Professor Michael Wolf of the University of Zurich published research funded by Philip Morris International, purporting to show that smoking prevalence had not been reduced in Australia by standardised packaging legislation in the first year since its implementation (19). Even if this analysis were correct, it would be largely irrelevant, since the primary purpose of the legislation is to discourage young people from starting to smoke, and thus contribute to reducing smoking prevalence rates over an extended period of time. A one year effect, even if the Kaul and Wolf methodology was adequate, would be unlikely to show up clearly in monthly prevalence data that is affected by a range of factors, including other tobacco control policies, seasonality, and unstable monthly estimates (some monthly sample sizes in the survey data set used by Kaul and Wolf are substantially smaller than others).

Other Evidence from Australia

JM Young et al, University of New South Wales and Cancer Institute New South Wales, reported in January 2014 that the introduction of standardised packaging in Australia in 2012 was associated with a sharp rise in the number of calls to the Quitline New South Wales service (20). Statistical modelling to screen out the impact of other factors on the number of calls (such as health advertising campaigns, changes in price, etc) suggested that the number of calls to Quitline NSW rose by 75% from the week before standardised packs were first introduced in the Australian market to four weeks later.

M Wakefield et al, Cancer Council Victoria, Annenberg School for Communication Pennsylvania and South Australian Health and Medical Research Institute University of Adelaide, reported in 2013 that smokers in Australia were less willing to display their packs in public and smoke in outdoor areas since plain packaging was introduced. Researchers counted patrons, smokers and tobacco packs at cafes, restaurants and bars with outdoor seating for several months both before and after the introduction of standardised packaging. They found that pack display on tables declined by 15% after plain packaging, which was mostly due to a 23% decline in the percentage of patrons who were observed smoking. The study also found that the

declines in pack display and patrons observed smoking were stronger in venues where children were present (21).

Tobacco retailers in the UK have suggested that the introduction of standardised packaging means that it will take longer to serve customers and so convenience stores will lose custom. However, Wakefield et al have reported that: "retailers quickly gained experience with the new plain packaging legislation, evidenced by retrieval time having returned to the baseline range by the second week of implementation and remaining so several months later. The long retrieval times predicted by tobacco industry funded retailer groups and the consequent costs they predicted would fall upon small retailers from plain packaging are unlikely to eventuate".

- (3) Hansard: backbench business debate. 7 November 2013 column 477
- (4) Joossens L. Smuggling, the Tobacco Industry and Plain Packs Cancer Research UK, Nov. 2012
- (5) Text of the revised EU Tobacco Products Directive: Article 15
- (6) Text of the Illicit Trade Protocol: Article 8.3
- (7) 19 http://www.pmi.com/eng/documents/Codentify_E_Brochure_English.pdf
- (8) Oral evidence to the House of Lords European Union Sub Committee (Home Affairs) on 24th July 2013.
- (9) Home Affairs Select Committee First Report on Tobacco Smuggling: paragraph 44
- (10) Plain packaging making 'no impact' on Australian smokers, say tobacco chiefs: The Australian 4th March 2014
- (11) Chantler Review, Notes-of-Australia-based-meetings: see for example exchange with Mark Connell of BAT Australia, page 38pp
- (12) See p.48 of the Explanatory Memorandum to the Australian Excise Tariff Amendment (Tobacco) Bill 2014 and p.6 of Sir Cyril Chantler's report.
- (13) Amy Corderoy, "Tobacco industry claims on impact of plain packaging go up in smoke," Sydney Morning Herald, 12 March 2014, accessed April 2014
- (14) Australia cigarette plain packaging law upheld by court: BBC Business News Online, 15 August 2012
- (15) Sonia Stewart, Unpublished Letter to the Sydney Morning Herald, 12 March 2014
- (16) Labor's plain packaging fails as cigarette sales rise: The Australian. 6 June 2014
- (17) Is Smoking Increasing in Australia?: Guardian Datablog. 6 June 2014
- (18) Tobacco facts and figures: Australian Department of Health. 19 June 2014
- (19) The (Possible) Effect of Plain Packaging on Smoking Prevalence in Australia: A Trend Analysis: University of Zurich Department of Economics, Working Paper no 165
- (20) Young JM et al. Association between tobacco plain packaging and Quitline calls: a population-based, interrupted time-series analysis Medical Journal of Australia 2014
- (21) Addiction, 109: doi: 10.1111/add.12466

(22) Wakefield M, Bayly M, Scollo M. Product retrieval time in small tobacco retail outlets before and after the Australian plain packaging policy: real-world study: Tobacco Control doi:10.1136/tobaccocontrol-2013-050987.

3. Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations as drafted?

The ABUHB Public Health & Partnerships Committee welcome the draft regulations, which we consider, with the exception of the exclusion of specialist tobacco products as discussed below, are comprehensive and fit for purpose.

However, we believe that the regulations should also apply to specialist tobacco products including cigars and cigarillos. While we note the explanation for their exclusion is their low rate of use by young people, we consider that it sets an unhelpful example if any smoked tobacco products are excluded from the regulations, since this might be interpreted as endorsement of the idea that they are in some way less harmful to health.

It is not clear why the regulations do not specify the size of cigarette or tobacco packets. In the Australian regulations, the dimensions are stipulated, and we suggest that this may be useful in preventing any attempt to circumvent the intent of the regulations by introducing an element of branding.

4. Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?

For the reasons stated above we do not agree with the inclusion in "other key non-monetised costs" of "possible losses from a potential increase in consumption of illicit product and/or product legitimately bought outside the UK".

We do not understand the rationale for including "lost consumer surplus" as an unquantified potential cost of standardised packaging. In paragraph 21, this is defined as "the loss of the ability of those who continue to smoke to gain the intangible benefit associated with smoking a particular brand that only the packaging of that brand, as it is currently available, can produce". We note that no attempt is made to describe the alleged "intangible benefit", for the very good reason, we would suggest, that it is illusory.

In economic theory, consumer surplus is usually defined as the difference between the total amount that consumers are willing and able to pay for a good or service and the total amount that they actually do pay. If, in practice, standardised packaging were to lead to some brand switching by consumers, from high price to low price cigarette brands, or if the tobacco industry were to respond to the introduction of standardised packaging by cutting prices, this should be dealt with quickly by additional increases in tobacco taxation, above those currently required by the duty escalator.

Standardised packaging was introduced in Australia in conjunction with larger health warnings, and a sustained mass media campaign which, on a per capita basis cost the equivalent of £33.7 million a year in the UK. Australia is also committed to annual increases in tobacco taxation of 12.5 per cent over inflation each year for four years, starting in December 2013 (23).

Tobacco control policies must be pursued in parallel and not seriatim if they are to have their best possible effect in reducing prevalence rates. It is therefore important that the UK Government and devolved administrations give careful thought to how to maximise the public health benefits of standardised packaging, by:

- funding a sustained mass media campaign around the time that standardised packaging comes into effect
- ensuring that stop smoking services are adequately funded in every locality
- supporting enforcement through adequate funding of trading standards departments, regional partnerships against illicit trade, and work on illicit trade by HMRC and the Border Agency
- considering tax rises on tobacco products over and above the existing escalator, particularly to counteract any possible negative effects from brand-shifting or price cutting, and
- considering further levies on the industry, based on local sales data, and designed to fund stop smoking services and other tobacco control initiatives, and health costs caused by tobacco consumption.

(23) <http://www.abc.net.au/news/2013-08-01/government-to-raise-5-billion-from-cigarette-tax-increase/4857244>

(24) Smokefree Action Coalition

(25) The poll total sample size was 1,093 adults. Fieldwork was undertaken by YouGov between 5th and 14th March 2014. The survey was carried out online. The figures have been weighted and are representative of all Welsh adults (aged 18+). Respondents were shown what a standard pack could look like, including larger health warnings as in Australia.

Thank you for participating in this consultation.

The Department of Health and Devolved Administrations will only contact you should we seek further information about your response.

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TobaccoPackaging@dh.gsi.gov.uk

- **Posting your response to**

Department of Health
Standardised Packaging Tobacco Consultation
PO Box 1126
CANTERBURY
CT1 9NB

From: [REDACTED]
Sent: 06 August 2014 10:32
To: Tobacco Packaging
Subject: Regarding the initiatives to introduce generic packaging for tobacco products in Ireland and the United Kingdom
Attachments: Generic packaging for tobacco.pdf

Regarding the Initiatives to introduce generic packaging for tobacco products in Ireland and the United Kingdom

The Lithuanian Group of the International Association for the Protection of Intellectual Property (AIPPI) believes that trademark protection is one of the core intellectual property rights of industrial companies. Therefore we note, that initiatives to introduce generic (standardised) packaging for tobacco products, in Ireland and the United Kingdom, have no reasoned proof as to their effectiveness, they raise issues pertaining to their legality and compliance with international agreements, and they must not be supported at national level.

In view of the above, Lithuanian Group of the International Association for the Protection of Intellectual Property supports joint statement of IP Associations and points to the need for regulatory solutions to ensure effective protection of intellectual property rights:

"The signatories of this Statement, leading organisations whose aims include the safeguarding of the integrity of European Trade Mark and Design laws and the proper protection of trademarks and designs in the EU, have been following the developments on 'plain packaging' since the adoption of the Australian legislation, imposing plain packaging requirements for tobacco products, in 2012. At the EU level, the signatories of this Statement have continuously expressed their concerns about such laws, in particular in March 2014 (http://www.ecta.org/IMG/pdf/joint_statement_plain_packaging_ie_uk_march_2014.pdf). It should be emphasised that during the revision process of the Tobacco Products Directive (adopted in March 2014) the EU Parliament and the Council, sent strong signals to the EU Commission and the EU Member States by rejecting the introduction of extreme measures against Intellectual Property Rights (IPRs) such as mandatory plain packaging. It is to be noted the Dutch Health Minister has recently stated to his own Parliament, when reflecting on the issue of plain packaging, that *"such a measure should be thoroughly evaluated first, particularly the effects on health and intellectual property rights."*

It cannot be stated often enough, that registered trademarks, and the 'goodwill' created by their long use on products, are rights of property, which are to be treated like any other property. As such they are protected not only under trade mark laws (in the EU based on the Harmonization Directive) but also under the Article 1 of the First Protocol of the ECHR and Article 17 of the Charter of Fundamental Rights of the EU. The provisions of the TRIPS Agreement are of particular relevance. Although TRIPS permits measures necessary for the protection of public health, such measures must comply with other provisions, including Article 20 of TRIPS, which prohibits unjustifiable encumbrances on trade marks by 'special requirements' which are detrimental to the capability of trade marks to distinguish the products of one undertaking from those of another. Basically, plain packaging laws amount to an indirect legislative expropriation of these valuable property rights. Even where there is a need to achieve important public objectives such as health, any proposed legislation and/or policy options should not deviate from maintaining an appropriate balance with legitimate intellectual property rights, obtained in respect of lawful products.

It is most unfortunate, and indeed undesirable, that the Irish Government should be proceeding with this legislation at a time when the effectiveness of the Australian plain packaging law is at least uncertain and indeed is being seriously called into question. According to some media reports, tobacco sales volumes have increased since its introduction, reversing the trend of decline of recent years, whilst the illicit tobacco trade has also increased significantly. Even more seriously, the Australian law is currently the subject of challenges by five countries before

the WTO, on the ground that it contravenes provisions of TRIPS and the Technical Barriers to Trade Agreement. The Government of New Zealand, which also has been contemplating plain packaging, has decided at this stage that it will not proceed until at least the challenge before the WTO is resolved.

Finally, the signatories of Statement wish to emphasise that these concerns do not only apply in respect of tobacco products. Already there have been suggestions that similar measures, as have been proposed for tobacco products, might be applied to alcoholic drinks and to other products that are considered unhealthy. To adopt any plain packaging requirements would be setting a precedent for other products.

The signatories of this Statement call upon the UK Government and Parliament not to proceed with the introduction of this legislation and upon the other EU Member States to express their concerns to the EU Commission and the UK Government."

President of AIPPI Lithuanian Group



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Tarptautinės Intelektinės
Nuosavybės Apsaugos
Asociacijos Lietuvos Grupė

Lithuanian Group of the International
Association for the Protection of
Intellectual Property



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Regarding the initiatives to introduce generic packaging for tobacco products in Ireland and the United Kingdom

The Lithuanian Group of the International Association for the Protection of Intellectual Property (AIPPI) believes that trademark protection is one of the core intellectual property rights of industrial companies. Therefore we note, that initiatives to introduce generic (standardised) packaging for tobacco products, in Ireland and the United Kingdom, have no reasoned proof as to their effectiveness, they raise issues pertaining to their legality and compliance with International agreements, and they must not be supported at national level.

In view of the above, Lithuanian Group of the International Association for the Protection of Intellectual Property supports joint statement of IP Associations and points to the need for regulatory solutions to ensure effective protection of intellectual property rights:

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It is most unfortunate, and indeed undesirable, that the Irish Government should be proceeding with this legislation at a time when the effectiveness of the Australian plain packaging law is at least uncertain and indeed is being seriously called into question. According to some media reports, tobacco sales volumes have increased since its introduction, reversing the trend of decline of recent years, whilst the illicit tobacco trade has also increased significantly. Even more seriously, the Australian law is currently the subject of challenges by five countries before the WTO, on the ground that it contravenes provisions of TRIPS and the Technical Barriers to Trade Agreement. The Government of New Zealand, which also has been contemplating plain packaging, has decided at this stage that it will not proceed until at least the challenge before the WTO is resolved.

Finally, the signatories of Statement wish to emphasise that these concerns do not only apply in respect of tobacco products. Already there have been suggestions that similar measures, as have been proposed for tobacco products, might be applied to alcoholic drinks and to other products that are considered unhealthy. To adopt any plain packaging requirements would be setting a precedent for other products.

The signatories of this Statement call upon the UK Government and Parliament not to proceed with the introduction of this legislation and upon the other EU Member States to express their concerns to the EU Commission and the UK Government."





Department
of Health



Llywodraeth Cymru
Welsh Government



The Scottish
Government
Riaghaltas na h-Alba



Department of
Health, Social Services
and Public Safety
www.dhsspsni.gov.uk

Consultation on the introduction of regulations for standardised packaging of tobacco products – Response Form

a. Are you responding (required):

- As a member of the public (go to question b)
- As a health or social care professional (go to question b)
- On behalf of a business or as a sole trader (go to question c)
- On behalf of an organisation (go to question c)

b. Please provide your details and contact information:

Name of respondent (required)

Address of respondent (required):

Contact email address (required):

Now go to question f

c. Please provide your organisation's details and contact information:

Name of organisation (required):

Kirklees Council (public health, environmental health and the cabinet lead for public health) and Locala Stop Smoking Service

Name of person providing submission (required):



Job Title (required):

Health Improvement Practitioner Advanced

Contact address of organisation (required):

Public Health
Kirkgate Buildings, Byram Street, Huddersfield, HD1 1BY

Contact email address (required):



Is this the official response of your organisation? (required):

Yes

No

d. If you are responding on behalf of a business, what type is it?

Tobacco retailer (supermarket)

Tobacco retailer (convenience store)

Tobacco retailer (other type of shop or business)

Specialist tobacconist

- Duty free shop
- Wholesale tobacco seller
- Tobacco manufacturer
- Retailer not selling tobacco products
- Pharmaceutical industry
- Business involved in the design or manufacture of packaging
- Other (please provide details below)

If other, please tell us the type of business:

e. If you are responding on behalf of an organisation, what type is it?

- NHS organisation
- Health charity/NGO (working at national level)
- Local Authority
- Local Authority Trading Standards or Regulatory Services Department
- Local tobacco control alliance
- Retail representative organisation
- Industry representative organisation
- Other type of business representative organisation

University or research organisation

Other (please provide details below)

If other, please tell us the type of organisation:

Locala Stop Smoking Service

f. Does your response relate to (required):

United Kingdom

England only

Scotland only

Wales only

Northern Ireland only

g. Do you, or the business or organisation you represent, have any direct or indirect links to, or receive funding from the tobacco industry? (required)

No

Yes (please describe below)

If yes, please describe:

- h. If you do not wish your details to be identified in the summary report of consultation responses, please tick this box

Consultation questions

1. Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

1. Smoking prevalence amongst adults within Kirklees is currently at 19%, with 10% of 14 year olds smoking weekly or more. We also know that there is higher smoking prevalence in areas of high deprivation and that smoking prevalence is a significant cause of health inequalities between specific population groups. A summary of this is detailed below:

Population group	Smoking prevalence
Kirklees	19%
Routine and manual workers	24%
Asthma	24%
Chronic Obstructive Pulmonary Disorder (COPD)	26%
Depression	31%
Pregnant non South Asian women	17%
Women of childbearing age	21%
Residents of Dewsbury	24%
Residents of Batley	21%
Residents of Huddersfield South	21%

Despite best local efforts to reduce smoking prevalence and support the prevention of smoking uptake amongst young people, we feel that national legislation, such as standardised packaging, is essential in order to support our efforts around prevention of uptake in children and young people.

2. We believe that standardised packaging should be introduced if the available evidence supports the conclusion that the introduction of standardised packaging would be likely to:

- Lead to a reduction in the numbers of young people starting to consume tobacco; and
- Together with other policy initiatives, contribute significantly over time to a reduction in smoking prevalence rates.

3. The Chantler Review, rightly, reported that the evidence does indeed support this conclusion. As Sir Cyril Chantler stated in his covering letter to the Secretary of State: "it is in my view highly likely that standardised packaging would serve to reduce the rate of children taking up smoking" and "the body of evidence shows that

standardised packaging, in conjunction with the current tobacco control regime, is very likely to lead to a modest but important reduction over time in the uptake and prevalence and thus have a positive impact on public health."

4. We welcome the response of Jane Ellison MP, Minister for Public Health, to the Chantler Review. She said that the report found standardised packaging was "very likely to have a positive impact" on public health. She went on to say: "In the light of the report and the responses to the previous consultation in 2012, I am minded to proceed with introducing regulations to provide for standardised packaging" and that she wished to "proceed as swiftly as possible". She also reported that the Government's Chief Medical Officer, Dame Sally Davies, had written to her supporting the conclusions of the Chantler Review and the introduction of standardised packaging.

5. We therefore consider that the case for standardised packaging has been made, and that the Government should lay Regulations on standardised packaging, under Section 94 of the Children and Families Act, before Parliament as soon as possible. Given that notification to the European Union of the intended Regulations will take six months, there is now only a short time available to do this before the 2015 General Election.

6. The Government should resist efforts by the tobacco industry and its surrogates to delay production of the final Regulations. In this consultation response we review some of the industry's arguments in response to the Chantler Review and show them to be either weak or entirely without foundation.

2. Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging that you wish to bring to our attention?

Illicit Tobacco Trade: General

7. A principal tobacco industry argument against standardised packaging has been that it will inevitably lead to an increase in the illicit tobacco trade. There is no good reason to accept this argument, since there is no plausible mechanism of action, and indeed evidence published since the 2012 consultation suggests that it is false.

8. There is no plausible mechanism of action because all the key security features on existing packs of cigarettes would also be present on standardised

packs. These include coded numbering and covert anti-counterfeit marks. Jane Ellison, Parliamentary Under-Secretary of State for Health, said in a November 2013 Parliamentary debate that: "I am grateful to those hon. Members who have made the point that if we were to adopt standardised packaging, it would not mean plain packaging. Approaches such as anti-smuggling devices could be built into standardised packaging, if we choose to go down that route."

9. The production costs of illicit cigarettes (including packaging) are very low. In Paraguay costs can be as low as 5 US cents a pack, a Jin Ling pack in Kaliningrad or a Chinese counterfeit pack may cost about 20 cents a pack to produce. Counterfeiters are also able to produce quality and apparently genuine packaging at low prices in a short time. It follows that outside packaging is a very poor indicator of whether a pack of cigarettes is licit or illicit. The only obvious circumstances in which external packaging could be useful in this respect is precisely if standardised packaging is introduced – which would of course enable easy visual identification of "cheap white" brands (ones with no licit market in the UK) and diverted licit brands (where the first destination market was in a country without standardised packaging, and the product has been diverted into illicit channels).

10. Number codes will develop further into an international standard system because of the requirements of Article 15 of the revised EU Tobacco Products Directive and Article 8 of the Illicit Trade Protocol, a subsidiary treaty under the WHO Framework Convention on Tobacco Control, to which the UK is a Party.

11. Article 15 of the Tobacco Products Directive states that: "Member States shall ensure that all unit packets of tobacco products are marked with a unique identifier. In order to ensure the integrity of the unique identifier, it shall be irremovably printed or affixed, indelible and not hidden or interrupted in any form, including through tax stamps or price marks, or by the opening of the unit packet."

12. Article 8.3 of the Illicit Trade Protocol states that: "With a view to enabling effective tracking and tracing, each Party shall require that unique, secure and non-removable identification markings (hereafter called unique identification markings), such as codes or stamps, are affixed to or form part of all unit packets and packages and any outside packaging of cigarettes within a period of five years and other tobacco products within a period of ten years of entry into force of this Protocol for that Party".

13. It should be noted that Philip Morris International has developed a coding system called "Codentify", which the company has licensed for free to JTI, IT and BAT. The four tobacco multinationals have set up a "Digital Coding and Tracking Association", based in Zurich. According to PMI, the system is based on unique twelve digit codes, which enable enforcement authorities to determine key information including: date, time, factory and line of production and intended target market. Since the codes are based on a secure algorithm, it is claimed that it would be a simple matter to identify "fake" codes on illicit packaging. PMI's promotional material claims that "Codentify" "makes the leap into the digital age and can meet

the demands of governments that want to improve tax revenue collection, the robustness of verification processes and supply chain security ... When it comes to protecting government tax revenues, securing the supply chain and fighting illicit trade, Codentify offers a highly advanced, secure and cost-effective solution for the 21st century".

14. Codentify (or any of a number of other systems that are not proprietary to the tobacco industry) could be used on standardised packs as readily as on branded ones. It is clear that the tobacco industry is promoting contradictory messages depending on which issue it is addressing: on the hand it claims to have a robust coding system which enables it to identify counterfeit products, and on the other to claim that pack design is vital in combatting illicit trade.

15. Not surprisingly therefore Andrew Leggett, Deputy Director for Tobacco and Alcohol Strategy at HM Revenue and Customs has said about standardised packaging that "we're very doubtful that it would have a material effect [on counterfeiting and the illicit trade in tobacco]". This conclusion was supported by the House of Commons Home Affairs Select Committee, in its report on the illicit tobacco trade published in June 2014. The Committee reported that: "We believe that the decision on standardised packaging should be driven by health reasons and the imperative need to reduce the numbers of young people who start smoking. We note the statement of Sir Cyril Chantler to the effect that he was not convinced that standardised packaging would bring about an increase in the illicit market; even if this were the case, we believe that the proper response would be a more vigorous effort on enforcement rather than any lessening in the Government's drive towards introducing standardised packaging."

Illicit Tobacco Trade: Australia

16. The tobacco industry has repeatedly claimed that the level of illicit trade in Australia has increased since, and as a result of, the introduction of standardised packaging. For example, BAT told investors in March 2014 that total illicit activity in Australia had risen by more than 30 per cent since the introduction of standardised packaging introduction.

17. These claims were examined during the Chantler Review and shown to be unsupported, a fact that was effectively admitted during Review meetings with representatives of the tobacco industry in Australia. The Australian Government and customs officials have also rejected tobacco industry claims that illicit trade in Australia has risen since the introduction of standardised packaging. In March 2014 the Sydney Morning Herald reported that there had been only one seizure of counterfeit plain packs since December 2012

18. In response to this article, the paper was contacted by Sonia Stewart, the former Head of Corporate Affairs & Legal for Imperial Tobacco Australia, who has now left the industry. In her job at IT Australia she had "commented numerous times

in the media during 2011-2013 about the anticipated impact of plain packaging", claiming for example that "the legislation will make the counterfeiters' job both cheaper and easier by mandating exactly how a pack must look". She wrote to the paper that "based on these figures from Australian Customs authorities, there doesn't appear to be any evidence that plain packaging itself has caused an increase in tobacco smuggling." She added: "Imperial Tobacco did expect to see an increase in tobacco smuggling because of plain packaging, but based on the figures from Australian Customs it looks like those predictions were simply wrong."

Tobacco Consumption in Australia

19. The tobacco industry has also claimed that tobacco consumption in Australia has risen since the introduction of standardised packaging. Again, independent evidence does not support this proposition.

20. In November 2013 a study by the consultancy firm London Economics, funded by Philip Morris, reported that since the introduction of plain packaging in Australia their survey showed no statistically significant change in smoking prevalence. This report has been sharply criticised by, among others, the Cancer Council of Victoria, since:

- The report used an online survey panel, which was not representative of the general population (for example, the panel's smoking prevalence rate was higher than the Australian average)
- The survey had a sample size of 5,000, which could only demonstrate statistical significance if smoking prevalence rates had fallen by around two percentage points in less than a year, which would be a sharper decline than has ever been recorded in such a short period in the history of tobacco control policy. To measure a statistically significant decline of, for example half a percentage point, would have required a sample of around 90,000.

21. The tobacco industry in Australia has reported an increase in tobacco sales from 21.015bn sticks in 2012 to 21.074bn in 2013, and the industry and its front groups in the UK have claimed that this showed standardised packaging was not working. Although the industry reported a small (0.28%) increase in sales year on year, they did not report the increase in the Australian population between 2012 and 2013. Adjusted for population, tobacco sales per person by their measure of consumption would in fact have fallen, from 920.4 per person in 2012 to 906.9 in 2013.

22. The Australian Government's Department of Health has released figures showing that total consumption of tobacco and cigarettes in Australia in the first quarter of 2014 was the lowest ever recorded, as measured by estimated expenditure on tobacco products:

- \$5.135 billion in September 1959;

- \$3.508 billion in December 2012 (when standardised packaging was introduced); and
- \$3.405 billion in March 2014.

23. This is supported by figures from the Australian Treasury showing that tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012 when tobacco plain packaging was introduced. Clearances are an indicator of tobacco volumes in the Australian market,

24. In June 2014, Professor Ashok Kaul of the University of Saarland and Professor Michael Wolf of the University of Zurich published research funded by Philip Morris International, purporting to show that smoking prevalence had not been reduced in Australia by standardised packaging legislation in the first year since its implementation. Even if this analysis were correct, it would be largely irrelevant, since the primary purpose of the legislation is to discourage young people from starting to smoke, and thus contribute to reducing smoking prevalence rates over an extended period of time. A one year effect, even if the Kaul and Wolf methodology was adequate, would be unlikely to show up clearly in monthly prevalence data that is affected by a range of factors, including other tobacco control policies, seasonality, and unstable monthly estimates (some monthly sample sizes in the survey data set used by Kaul and Wolf are substantially smaller than others).

Other Evidence from Australia

25. Young JM et al, University of New South Wales and Cancer Institute New South Wales, reported in January 2014 that the introduction of standardised packaging in Australia in 2012 was associated with a sharp rise in the number of calls to the Quitline New South Wales service. Statistical modelling to screen out the impact of other factors on the number of calls (such as health advertising campaigns, changes in price, etc) suggested that the number of calls to Quitline NSW rose by 75% from the week before standardised packs were first introduced in the Australian market to four weeks later.

26. Wakefield M et al, Cancer Council Victoria, Annenberg School for Communication Pennsylvania and South Australian Health and Medical Research Institute University of Adelaide, reported in 2013 that smokers in Australia were less willing to display their packs in public and smoke in outdoor areas since plain packaging was introduced. Researchers counted patrons, smokers and tobacco packs at cafes, restaurants and bars with outdoor seating for several months both before and after the introduction of standardised packaging. They found that pack display on tables declined by 15% after plain packaging, which was mostly due to a 23% decline in the percentage of patrons who were observed smoking. The study also found that the declines in pack display and patrons observed smoking were stronger in venues where children were present.

27. Tobacco retailers in the UK have suggested that the introduction of standardised packaging means that it will take longer to serve customers and so

convenience stores will lose custom. However, Wakefield M et al have reported that: "retailers quickly gained experience with the new plain packaging legislation, evidenced by retrieval time having returned to the baseline range by the second week of implementation and remaining so several months later. The long retrieval times predicted by tobacco industry funded retailer groups and the consequent costs they predicted would fall upon small retailers from plain packaging are unlikely to eventuate".

3. Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations as drafted?

28. We welcome the draft regulations, which we consider, with the exception of the exclusion of specialist tobacco products as discussed below, are comprehensive and fit for purpose.

29. However, we believe that the regulations should also apply to specialist tobacco products including cigars and cigarillos. While we note the explanation for their exclusion is their low rate of use by young people, we consider that it sets an unhelpful example if any smoked tobacco products are excluded from the regulations, since this might be interpreted as endorsement of the idea that they are in some way less harmful to health.

30. It is not clear why the regulations do not specify the size of cigarette or tobacco packets. In the Australian regulations, the dimensions are stipulated, and we suggest that this may be useful in preventing any attempt to circumvent the intent of the regulations by introducing an element of branding.

4. Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?

31. For the reasons stated above we do not agree with the inclusion in "other key non-monetised costs" of "possible losses from a potential increase in consumption of illicit product and/or product legitimately bought outside the UK".

32. We do not understand the rationale for including "lost consumer surplus" as an unquantified potential cost of standardised packaging. In paragraph 21, this is defined as "the loss of the ability of those who continue to smoke to gain the intangible benefit associated with smoking a particular brand that only the packaging of that brand, as it is currently available, can produce". We note that no attempt is made to describe the alleged "intangible benefit", for the very good reason, we would suggest, that it is illusory.

33. In economic theory, consumer surplus is usually defined as the difference between the total amount that consumers are willing and able to pay for a good or service and the total amount that they actually do pay. If, in practice, standardised packaging were to lead to some brand switching by consumers, from high price to low price cigarette brands, or if the tobacco industry were to respond to the introduction of standardised packaging by cutting prices, this should be dealt with quickly by additional increases in tobacco taxation, above those currently required by the duty escalator.

34. Standardised packaging was introduced in Australia in conjunction with larger health warnings, and a sustained mass media campaign which, on a per capita basis cost the equivalent of £33.7 million a year in the UK. Australia is also committed to annual increases in tobacco taxation of 12.5 per cent over inflation each year for four years, starting in December 2013.

35. Tobacco control policies must be pursued in parallel and not seriatim if they are to have their best possible effect in reducing prevalence rates. It is therefore important that the UK Government gives careful thought to how to maximise the public health benefits of standardised packaging, by:

- funding a sustained mass media campaign around the time that standardised packaging comes into effect
- ensuring that stop smoking services are adequately funded in every locality

- supporting enforcement through adequate funding of trading standards departments, regional partnerships against illicit trade, and work on illicit trade by HMRC and the Border Agency
- considering tax rises on tobacco products over and above the existing escalator, particularly to counteract any possible negative effects from brand-shifting or price cutting, and
- considering further levies on the industry, based on local sales data, and designed to fund stop smoking services and other tobacco control initiatives, and health costs caused by tobacco consumption.

Conclusions

36. Standardised packaging is backed by the Smokefree Action Coalition, which is an alliance supported over 250 organisations including medical Royal Colleges and other medical organisations, health and children's charities, the Chartered Institute of Environmental Health, the Trading Standards Institute and others. The consensus of medical professionals, public health and other relevant experts is that it would make an important positive contribution to reducing the harm caused by tobacco consumption.

37. Standardised packaging is also popular with the public. A poll on the issue by YouGov, conducted for ASH in March 2014, found that overall 64% of adults in Great Britain were in favour of standardised packaging. There was majority support across age groups, genders and social classes. It is clear that most people believe that this policy, combined with other tobacco control initiatives, is an important way to prevent the next generation of young people from starting to smoke.

38. Section 94 of the Children and Families Act 2014 (Regulation of retail packaging etc of tobacco products) was passed overwhelmingly in both the House of Lords (nem con) and House of Commons (24 MPs voted against), following a strong cross-Party campaign in support of the policy. It therefore demonstrably has majority support in Parliament.

39. Opposition to standardised packaging has been driven and financed by the tobacco industry, which requires young people to start smoking in large numbers every year, as its previous consumers quit or die prematurely from smoking-related disease.

40. Following the six week consultation on the draft regulations, the Government will then have to notify the European Union of the draft Regulations, under the Technical Standards and Regulations Directive 98/34/EC. This process can take up to six months. Therefore, time is now short if Parliament is to get the opportunity to vote on the Regulations before the General Election. If this opportunity were now to

be missed, it would be widely understood as a public health disaster and as suggesting that the tobacco industry still has excessive influence at the heart of Government.

Thank you for participating in this consultation.

The Department of Health and Devolved Administrations will only contact you should we seek further information about your response.

How to get involved in the consultation

The consultation will run for 6 weeks, from 26/06/14 to 07/08/14. Responses are invited from any interested group, company or person.

Respondents are encouraged to provide their views online, but responses can be made in any of the following ways:

Completing the online form on the Department of Health website at:

[http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-](http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1)

[1](http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1)

- **Filling in the response form by downloading it at:**

<https://www.gov.uk/government/consultations>

- **Emailing your response to:**

TobaccoPackaging@dh.gsi.gov.uk

- **Posting your response to**

Department of Health
Standardised Packaging Tobacco Consultation
PO Box 1126
CANTERBURY
CT1 9NB

Consultation on the introduction of regulations for standardised packaging of tobacco products

Response from Kirklees Council (Public Health, Environmental Health and Cabinet lead for Public Health) and Locala Stop Smoking Service.

Consultation Question 1: Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

1. Smoking prevalence amongst adults within Kirklees is currently at 19%, with 10% of 14 year olds smoking weekly or more. We also know that there is higher smoking prevalence in areas of high deprivation and that smoking prevalence is a significant cause of health inequalities between specific population groups¹. A summary of this is detailed below:

Population group	Smoking prevalence
Kirklees	19%
Routine and manual workers	24%
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Residents of Huddersfield South	21%

Despite best local efforts to reduce smoking prevalence and support the prevention of smoking uptake amongst young people, we feel that national legislation, such as standardised packaging, is essential in order to support our efforts around prevention of uptake in children and young people.

2. We believe that standardised packaging should be introduced if the available evidence supports the conclusion that the introduction of standardised packaging would be likely to:

¹ Kirklees Joint Strategic Needs Assessment, 2013, Kirklees Council

- Lead to a reduction in the numbers of young people starting to consume tobacco; and
 - Together with other policy initiatives, contribute significantly over time to a reduction in smoking prevalence rates.
3. The Chantler Review, rightly, reported that the evidence does indeed support this conclusion. As Sir Cyril Chantler stated in his covering letter to the Secretary of State: *"It is in my view highly likely that standardised packaging would serve to reduce the rate of children taking up smoking"* and *"the body of evidence shows that standardised packaging, in conjunction with the current tobacco control regime, is very likely to lead to a modest but important reduction over time in the uptake and prevalence and thus have a positive impact on public health."*
 4. We welcome the response of Jane Ellison MP, Minister for Public Health, to the Chantler Review. She said that the report found standardised packaging was *"very likely to have a positive impact"* on public health. She went on to say: *"In the light of the report and the responses to the previous consultation in 2012, I am minded to proceed with introducing regulations to provide for standardised packaging"* and that she wished to *"proceed as swiftly as possible"*. She also reported that the Government's Chief Medical Officer, Dame Sally Davies, had written to her supporting the conclusions of the Chantler Review and the introduction of standardised packaging.²
 5. We therefore consider that the case for standardised packaging has been made, and that the Government should lay Regulations on standardised packaging, under Section 94 of the Children and Families Act, before Parliament as soon as possible. Given that notification to the European Union of the intended Regulations will take six months, there is now only a short time available to do this before the 2015 General Election.
 6. The Government should resist efforts by the tobacco industry and its surrogates to delay production of the final Regulations. In this consultation response we review some of the industry's arguments in response to the Chantler Review and show them to be either weak or entirely without foundation.

Consultation Question 2: Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging, that you wish to bring to our attention?

Illicit Tobacco Trade: General

7. A principal tobacco industry argument against standardised packaging has been that it will inevitably lead to an increase in the illicit tobacco trade. There is no good reason to accept this argument, since there is no plausible mechanism of action, and indeed evidence published since the 2012 consultation suggests that it is false.

² House of Commons Hansard 3rd May 2014: Col 1018 et seq

8. There is no plausible mechanism of action because all the key security features on existing packs of cigarettes would also be present on standardised packs. These include coded numbering and covert anti-counterfeit marks. Jane Ellison, Parliamentary Under-Secretary of State for Health, said in a November 2013 Parliamentary debate that: *"I am grateful to those hon. Members who have made the point that if we were to adopt standardised packaging, it would not mean plain packaging. Approaches such as anti-smuggling devices could be built into standardised packaging, if we choose to go down that route."*³
9. The production costs of illicit cigarettes (including packaging) are very low. In Paraguay costs can be as low as 5 US cents a pack, a Jin Ling pack in Kaliningrad or a Chinese counterfeit pack may cost about 20 cents a pack to produce. Counterfeiters are also able to produce quality and apparently genuine packaging at low prices in a short time. It follows that outside packaging is a very poor indicator of whether a pack of cigarettes is licit or illicit.⁴ The only obvious circumstances in which external packaging could be useful in this respect is precisely if standardised packaging is introduced – which would of course enable easy visual identification of "cheap white" brands (ones with no licit market in the UK) and diverted licit brands (where the first destination market was in a country without standardised packaging, and the product has been diverted into illicit channels).
10. Number codes will develop further into an international standard system because of the requirements of Article 15 of the revised EU Tobacco Products Directive and Article 8 of the Illicit Trade Protocol, a subsidiary treaty under the WHO Framework Convention on Tobacco Control, to which the UK is a Party.
11. Article 15 of the Tobacco Products Directive states that: *"Member States shall ensure that all unit packets of tobacco products are marked with a unique identifier. In order to ensure the integrity of the unique identifier, it shall be irremovably printed or affixed, indelible and not hidden or interrupted in any form, including through tax stamps or price marks, or by the opening of the unit packet."*⁵
12. Article 8.3 of the Illicit Trade Protocol states that: *"With a view to enabling effective tracking and tracing, each Party shall require that unique, secure and non-removable identification markings (hereafter called unique identification markings), such as codes or stamps, are affixed to or form part of all unit packets and packages and any outside packaging of cigarettes within a period of five years and other tobacco products within a period of ten years of entry into force of this Protocol for that Party"*.⁶
13. It should be noted that Philip Morris International has developed a coding system called "Codentify", which the company has licensed for free to JTI, IT and BAT. The four tobacco multinationals have set up a "Digital Coding and Tracking Association", based in Zurich. According to PMI, the system is based on unique twelve digit codes, which enable enforcement authorities to determine key information including: date, time, factory and line of production and intended target market. Since the codes are based on a secure algorithm, it is claimed that it would be a simple matter to identify "fake" codes on illicit packaging. PMI's promotional material claims that "Codentify".... *"makes the leap into the digital age and can meet the demands of governments that want to improve tax revenue collection, the robustness of*

³ Hansard: backbench business debate. 7 November 2013 column 477

⁴ Joossens L. *Smuggling, the Tobacco Industry and Plain Packs* Cancer Research UK, Nov. 2012

⁵ Text of the revised Eu Tobacco Products Directive: Article 15

⁶ Text of the Illicit Trade Protocol: Article 8.3

verification processes and supply chain security ... When it comes to protecting government tax revenues, securing the supply chain and fighting illicit trade, Codentify offers a highly advanced, secure and cost-effective solution for the 21st century".⁷

14. Codentify (or any of a number of other systems that are not proprietary to the tobacco industry) could be used on standardised packs as readily as on branded ones. It is clear that the tobacco industry is promoting contradictory messages depending on which Issue it is addressing: on the hand it claims to have a robust coding system which enables it to identify counterfeit products, and on the other to claim that pack design is vital in combatting illicit trade.
15. Not surprisingly therefore Andrew Leggett, Deputy Director for Tobacco and Alcohol Strategy at HM Revenue and Customs has said about standardised packaging that *"we're very doubtful that it would have a material effect [on counterfeiting and the illicit trade in tobacco]"*.⁸ This conclusion was supported by the House of Commons Home Affairs Select Committee, in its report on the Illicit tobacco trade published in June 2014. The Committee reported that: *"We believe that the decision on standardised packaging should be driven by health reasons and the imperative need to reduce the numbers of young people who start smoking. We note the statement of Sir Cyril Chantler to the effect that he was not convinced that standardised packaging would bring about an increase in the illicit market; even if this were the case, we believe that the proper response would be a more vigorous effort on enforcement rather than any lessening in the Government's drive towards introducing standardised packaging."*⁹

Illicit Tobacco Trade: Australia

16. The tobacco industry has repeatedly claimed that the level of illicit trade in Australia has increased since, and as a result of, the introduction of standardised packaging. For example, BAT told investors in March 2014 that total illicit activity in Australia had risen by more than 30 per cent since the introduction of standardised packaging.¹⁰
17. These claims were examined during the Chantler Review and shown to be unsupported, a fact that was effectively admitted during Review meetings with representatives of the tobacco industry in Australia.¹¹ The Australian Government and customs officials have also rejected tobacco industry claims that illicit trade in Australia has risen since the introduction of standardised packaging.¹² In March 2014 the *Sydney Morning Herald* reported that there had been only one seizure of counterfeit plain packs since December 2012.¹³
18. In response to this article, the paper was contacted by Sonia Stewart, the former Head of Corporate Affairs & Legal for Imperial Tobacco Australia, who has now left the industry. In her job at IT Australia she had "commented numerous times in the media during 2011-2013 about

7 http://www.pml.com/eng/documents/Codentify_E_Brochure_English.pdf

8 Oral evidence to the House of Lords European Union Sub Committee (Home Affairs) on 24th July 2013.

9 *Home Affairs Select Committee First Report on Tobacco Smuggling*; paragraph 44

10 *Plain packaging making 'no impact' on Australian smokers, say tobacco chiefs*; The Australian 4th March 2014

11 *Chantler Review, Notes-of-Australia-based-meetings*: see for example exchange with Mark Connell of BAT Australia, page 38pp

12 See p.48 of the Explanatory Memorandum to the Australian Excise Tariff Amendment (Tobacco) Bill 2014 and p.6 of Sir Cyril Chantler's report.

13 Amy Corderoy, *"Tobacco industry claims on impact of plain packaging go up in smoke," Sydney Morning Herald*, 12 March 2014, accessed April 2014

the anticipated impact of plain packaging", claiming for example that "the legislation will make the counterfeiters' job both cheaper and easier by mandating exactly how a pack must look".¹⁴ She wrote to the paper that "based on these figures from Australian Customs authorities, there doesn't appear to be any evidence that plain packaging itself has caused an increase in tobacco smuggling." She added: "Imperial Tobacco did expect to see an increase in tobacco smuggling because of plain packaging, but based on the figures from Australian Customs it looks like those predictions were simply wrong."¹⁵

Tobacco Consumption in Australia

19. The tobacco industry has also claimed that tobacco consumption in Australia has risen since the introduction of standardised packaging. Again, independent evidence does not support this proposition.

20. In November 2013 a study by the consultancy firm London Economics, funded by Philip Morris, reported that since the introduction of plain packaging in Australia their survey showed no statistically significant change in smoking prevalence. This report has been sharply criticised by, among others, the Cancer Council of Victoria, since:

- The report used an online survey panel, which was not representative of the general population (for example, the panel's smoking prevalence rate was higher than the Australian average)
- The survey had a sample size of 5,000, which could only demonstrate statistical significance if smoking prevalence rates had fallen by around two percentage points in less than a year, which would be a sharper decline than has ever been recorded in such a short period in the history of tobacco control policy. To measure a statistically significant decline of, for example half a percentage point, would have required a sample of around 90,000.

21. The tobacco industry in Australia has reported an increase in tobacco sales from 21.015bn sticks in 2012 to 21.074bn in 2013,¹⁶ and the industry and its front groups in the UK have claimed that this showed standardised packaging was not working. Although the industry reported a small (0.28%) increase in sales year on year, they did not report the increase in the Australian population between 2012 and 2013. Adjusted for population, tobacco sales per person by their measure of consumption would in fact have fallen, from 920.4 per person in 2012 to 906.9 in 2013.¹⁷

22. The Australian Government's Department of Health has released figures showing that total consumption of tobacco and cigarettes in Australia in the first quarter of 2014 was the lowest ever recorded, as measured by estimated expenditure on tobacco products:

- \$5.135 billion in September 1959;
- \$3.508 billion in December 2012 (when standardised packaging was introduced); and
- \$3.405 billion in March 2014.

23. This is supported by figures from the Australian Treasury showing that tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012 when tobacco plain

¹⁴ Australia cigarette plain packaging law upheld by court: BBC Business News Online, 15 August 2012

¹⁵ Sonia Stewart, Unpublished Letter to the *Sydney Morning Herald*, 12 March 2014

¹⁶ Labor's plain packaging fails as cigarette sales rise: The Australian, 6 June 2014

¹⁷ Is Smoking Increasing in Australia?: Guardian Datablog, 6 June 2014

packaging was introduced. Clearances are an indicator of tobacco volumes in the Australian market.¹⁸

24. In June 2014, Professor Ashok Kaul of the University of Saarland and Professor Michael Wolf of the University of Zurich published research funded by Philip Morris International, purporting to show that smoking prevalence had not been reduced in Australia by standardised packaging legislation in the first year since its implementation.¹⁹ Even if this analysis were correct, it would be largely irrelevant, since the primary purpose of the legislation is to discourage young people from starting to smoke, and thus contribute to reducing smoking prevalence rates over an extended period of time. A one year effect, even if the Kaul and Wolf methodology was adequate, would be unlikely to show up clearly in monthly prevalence data that is affected by a range of factors, including other tobacco control policies, seasonality, and unstable monthly estimates (some monthly sample sizes in the survey data set used by Kaul and Wolf are substantially smaller than others).

Other Evidence from Australia

25. Young JM et al, University of New South Wales and Cancer Institute New South Wales, reported in January 2014 that the introduction of standardised packaging in Australia in 2012 was associated with a sharp rise in the number of calls to the Quitline New South Wales service.²⁰ Statistical modelling to screen out the impact of other factors on the number of calls (such as health advertising campaigns, changes in price, etc) suggested that the number of calls to Quitline NSW rose by 75% from the week before standardised packs were first introduced in the Australian market to four weeks later.
26. Wakefield M et al, Cancer Council Victoria, Annenberg School for Communication Pennsylvania and South Australian Health and Medical Research Institute University of Adelaide, reported in 2013 that smokers in Australia were less willing to display their packs in public and smoke in outdoor areas since plain packaging was introduced. Researchers counted patrons, smokers and tobacco packs at cafes, restaurants and bars with outdoor seating for several months both before and after the introduction of standardised packaging. They found that pack display on tables declined by 15% after plain packaging, which was mostly due to a 23% decline in the percentage of patrons who were observed smoking. The study also found that the declines in pack display and patrons observed smoking were stronger in venues where children were present.²¹
27. Tobacco retailers in the UK have suggested that the introduction of standardised packaging means that it will take longer to serve customers and so convenience stores will lose custom. However, Wakefield M et al have reported that: *"retailers quickly gained experience with the new plain packaging legislation, evidenced by retrieval time having returned to the baseline range by the second week of implementation and remaining so several months later. The long*

18 Tobacco facts and figures: Australian Department of Health. 19 June 2014

19 The (Possible) Effect of Plain Packaging on Smoking Prevalence in Australia: A Trend Analysis: University of Zurich Department of Economics, Working Paper no 165

20 Young JM et al. Association between tobacco plain packaging and Quitline calls: a population-based, interrupted time-series analysis Medical Journal of Australia 2014

21 *Addiction*, 109: doi: [10.1111/add.12466](https://doi.org/10.1111/add.12466)

*retrieval times predicted by tobacco industry funded retailer groups and the consequent costs they predicted would fall upon small retailers from plain packaging are unlikely to eventuate".*²²

Consultation Question 3: Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?

28. We welcome the draft regulations, which we consider, with the exception of the exclusion of specialist tobacco products as discussed below, are comprehensive and fit for purpose.
29. However, we believe that the regulations should also apply to specialist tobacco products including cigars and cigarillos. While we note the explanation for their exclusion is their low rate of use by young people, we consider that it sets an unhelpful example if any smoked tobacco products are excluded from the regulations, since this might be interpreted as endorsement of the idea that they are in some way less harmful to health.
30. It is not clear why the regulations do not specify the size of cigarette or tobacco packets: In the Australian regulations, the dimensions are stipulated, and we suggest that this may be useful in preventing any attempt to circumvent the intent of the regulations by introducing an element of branding.

²² Wakefield M, Bayly M, Scollo M. Product retrieval time in small tobacco retail outlets before and after the Australian plain packaging policy: real-world study: *Tobacco Control* doi:10.1136/tobaccocontrol-2013-050987.

Consultation Question 4: Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?

31. For the reasons stated above we do not agree with the inclusion in "other key non-monetised costs" of "possible losses from a potential increase in consumption of illicit product and/or product legitimately bought outside the UK".
32. We do not understand the rationale for including "lost consumer surplus" as an unquantified potential cost of standardised packaging. In paragraph 21, this is defined as "the loss of the ability of those who continue to smoke to gain the intangible benefit associated with smoking a particular brand that only the packaging of that brand, as it is currently available, can produce". We note that no attempt is made to describe the alleged "intangible benefit", for the very good reason, we would suggest, that it is illusory.
33. In economic theory, consumer surplus is usually defined as the difference between the total amount that consumers are willing and able to pay for a good or service and the total amount that they actually do pay. If, in practice, standardised packaging were to lead to some brand switching by consumers, from high price to low price cigarette brands, or if the tobacco industry were to respond to the introduction of standardised packaging by cutting prices, this should be dealt with quickly by additional increases in tobacco taxation, above those currently required by the duty escalator.
34. Standardised packaging was introduced in Australia in conjunction with larger health warnings, and a sustained mass media campaign which, on a per capita basis cost the equivalent of £33.7 million a year in the UK. Australia is also committed to annual increases in tobacco taxation of 12.5 per cent over inflation each year for four years, starting in December 2013.²³
35. Tobacco control policies must be pursued in parallel and not seriatim if they are to have their best possible effect in reducing prevalence rates. It is therefore important that the UK Government gives careful thought to how to maximise the public health benefits of standardised packaging, by:
 - funding a sustained mass media campaign around the time that standardised packaging comes into effect
 - ensuring that stop smoking services are adequately funded in every locality
 - supporting enforcement through adequate funding of trading standards departments, regional partnerships against illicit trade, and work on illicit trade by HMRC and the Border Agency
 - considering tax rises on tobacco products over and above the existing escalator, particularly to counteract any possible negative effects from brand-shifting or price cutting, and
 - considering further levies on the industry, based on local sales data, and designed to fund stop smoking services and other tobacco control initiatives, and health costs caused by tobacco consumption.

²³ <http://www.abc.net.au/news/2013-08-01/government-to-raise-5-billion-from-cigarette-tax-increase/4857244>

Conclusions

36. Standardised packaging is backed by the Smokefree Action Coalition, which is an alliance supported over 250 organisations including medical Royal Colleges and other medical organisations, health and children's charities, the Chartered Institute of Environmental Health, the Trading Standards Institute and others.²⁴ The consensus of medical professionals, public health and other relevant experts is that it would make an important positive contribution to reducing the harm caused by tobacco consumption.
37. Standardised packaging is also popular with the public. A poll on the issue by YouGov, conducted for ASH in March 2014, found that overall 64% of adults in Great Britain were in favour of standardised packaging. There was majority support across age groups, genders and social classes.²⁵ It is clear that most people believe that this policy, combined with other tobacco control initiatives, is an important way to prevent the next generation of young people from starting to smoke.
38. Section 94 of the Children and Families Act 2014 (Regulation of retail packaging etc of tobacco products) was passed overwhelmingly in both the House of Lords (nem. con) and House of Commons (24 MPs voted against), following a strong cross-Party campaign in support of the policy. It therefore demonstrably has majority support in Parliament.
39. Opposition to standardised packaging has been driven and financed by the tobacco industry, which requires young people to start smoking in large numbers every year, as its previous consumers quit or die prematurely from smoking-related disease.²⁶
40. Following the six week consultation on the draft regulations, the Government will then have to notify the European Union of the draft Regulations, under the Technical Standards and Regulations Directive 98/34/EC. This process can take up to six months.²⁷ Therefore, time is now short if Parliament is to get the opportunity to vote on the Regulations before the General Election. If this opportunity were now to be missed, it would be widely understood as a public health disaster and as suggesting that the tobacco industry still has excessive influence at the heart of Government.

24 Smokefree Action Coalition

25 The poll total sample size was 12,269 adults. Fieldwork was undertaken by YouGov between 5th and 14th March 2014. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+). Respondents were shown what a standard pack could look like, including larger health warnings as in Australia.

26 The pro-smoking group FOREST, which receives virtually all its funding from the tobacco industry, have hired the marketing agency Kreate to collect "digital signatures" for the "Hands off Our Packs" petition to the Prime Minister. Kreate describes itself as "an experiential agency that specialises in the delivery and staffing of face-to-face experiences". Agencies have also been commissioned directly by BAT to run a six week, "anti-plain packs roadshow", aiming to sign up 100,000 people to oppose plain packs. The company is reported to have allocated £500,000 to the activity. Over 100 people a day will be working on this campaign. ASH recommends that consultation responses generated in this way should be regarded by the Government as constituting a single response on behalf of the tobacco industry.

From:
Sent:
To:
Subject:

[REDACTED]

If Australia have found that plain packaging does not stop people from smoking why are we wasting time in debating it. Cameron has destroyed every thing he has touched, Post office Railways and is in the process of killing the NHS. Why dont the ministers debate on stopping under age drinking, Booze destroys families and look at the alcohol damage it does to people. What about the murders that are linked to drinking. If you go ahead with this crazy idea you are putting a lot of pensioners income in jeopardy and that could cost you a lot of money in benefits. I noticed that young people are curious at what is behind the doors where packs of cigarettes are kept and that is in several supermarkets. You are going to give gangs a great opportunity to bring in a lot of fake cigs which you know are real killers with what they are made from. Don't be foolish and pass this bill, show that you have some common sense and go for the alcohol drinkers instead.

[REDACTED]

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Consultation on the introduction of regulations for standardised packaging of tobacco products



Response from the British Lung Foundation

About:

1. One person in five in the UK is affected by lung disease with millions more at risk. The British Lung Foundation (BLF) is the UK's lung charity working to champion respiratory health by: offering support to all those affected by lung disease, campaigning for greater awareness and positive change in the nation's lung health, and funding vital research, so that new treatments and cures can help save lives. The BLF does not receive any funding from the tobacco industry.

Consultation Questions:

Q1. Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

2. The BLF welcomed the outcome of the review conducted by Sir Cyril Chantler, which analysed all the available evidence on the effectiveness of standardised packaging of tobacco products as a policy to reduce long-term smoking rates. Sir Cyril met with a variety of stakeholders on both sides of the debate and travelled to Australia before he came to the conclusion that standardised packaging should be implemented in the UK. The Government must now keep its promise and act on Sir Cyril's recommendation.
3. Standardised packaging for tobacco products would produce a long-term decline in smoking rates by reducing the appeal of the branding and marketing of tobacco products to children and young people. In his report, Sir Cyril states: *"Although the number of children taking up smoking has been falling since the 1990s, an estimated 207,000 children aged 11-15 still take up smoking each year in the United Kingdom. If this rate were reduced even by 2%, for example, it would mean 4,000 fewer children took up smoking each year, greatly improving their health outcomes."*
4. Tobacco is a deadly and addictive product, killing half of its long-term users. The BLF believes that even a small reduction in children taking up smoking would be worthwhile if it helped to bring down long-term smoking rates and de-normalised the habit over time. Furthermore, children are not able to make an informed choice about the dangers of their future addiction and therefore any policy which would help to protect children from a life-long addiction to tobacco should be favoured. Standardised packaging is currently the best proposal available to prevent the next generation from becoming addicted to tobacco products.

5. Evidence suggests that people who started smoking younger, tend to be heavier smokers later on, and are therefore at higher risk of developing smoking-related diseases. Among current heavy smokers (20 cigarettes or more per day), 58% started smoking regularly before they were 16 years of age compared with 44% of current moderate smokers (10-19 cigarettes a day) and 35% of current light smokers (under 10 cigarettes a day).¹
6. In his report, Sir Cyril found that standardised packaging is likely to be very effective at changing smoking behaviour: *"I see the importance of Stirling [Review] as being the consistency of its results on appeal, salience and perceptions of harm, most notably that standardised packaging is less appealing than branded packaging. This evidence is direct and not reliant on stated intentions. Evidence from other spheres shows a strong non-conscious link between appeal and subsequent behaviour regardless of stated intentions. I therefore conclude that, by reducing its appeal, standardised packaging would affect smoking behaviour."*
7. At the time of the publication of the Chantier report, Public Health Minister Jane Ellison MP confirmed that she "is minded to proceed with introducing regulations to provide for standardised packaging" and that she intended to proceed "as swiftly as possible".
8. Standardised packaging has been shown to be popular with the public. A poll by YouGov found that 64% of adults in Great Britain were in favour of standardised packaging with only 11% opposed it. There was majority support across age groups, genders and social classes.²
9. Standardised packaging has been shown to have overwhelming support in Parliament, with Section 94 of the Children and Families Act 2014 having passed in the House of Lords and House of Commons, where only 24 MPs voted against the legislation.
10. Opposition to standardised packaging has been driven and financed by the tobacco industry, which needs young people to start smoking in large numbers every year, to replace previous consumers lost through quitting or dying prematurely from smoking-related disease.
11. Following the six-week consultation on the draft regulations, the Government will then have to notify the European Union of the draft regulations. Since, this process can take up to six months, it is paramount that regulations are laid before Parliament as quickly as possible to give an opportunity for a vote to take place on the regulations before the General Election. If this opportunity were now to be

¹ Chapter 1 – Smoking, General Lifestyle Survey Overview - a report on the 2011 General Lifestyle Survey.

² Poll conducted by ASH in March 2014. The poll total sample size was 12,269 adults. Fieldwork was undertaken by YouGov between 5th and 14th March 2014. The survey was carried out online. The figures have been weighted and are representative of all GB adults (aged 18+). Respondents were shown what a standard pack could look like, including larger health warnings as in Australia.

missed, it would be widely accepted as a public health disaster and as suggesting that the tobacco industry still has excessive influence at the heart of Government.

Q2. Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging, that you wish to bring to our attention?

Tobacco consumption in Australia

12. The policy of introducing standardised packaging for all tobacco products is designed to be a long-term strategy, which aims to produce a decline in smoking rates over time, as fewer children and young people take up smoking.
13. However, recently published evidence from the Australian Government's National Drugs Strategy Household Survey, shows that smoking rates have dropped by 15% between 2010 (when smoking prevalence stood at 15.1%) and 2013 (when prevalence dropped to 12.8% of the general population). This indicates that the removal of branding seems to have had a wider effect than just on children and young people, also perhaps encouraging existing smokers to quit. This large 24,000-person survey was conducted in Autumn 2013 but finished before the introduction of tax rises on 1st December. It therefore measured a large drop in smoking rates after the introduction of standardised packaging for tobacco products, but did not include the effect of new higher tobacco duties.
14. In contrast, London Economics consultancy published a study in November 2013 showing that there was no statistical change in the number of smokers in Australia since the introduction of standardised packaging.³ This study was funded by Phillip Morris International and has been widely criticised for its methodology. For instance, the online survey panel was not deemed to be representative of the general population and the survey sample size of 5,000 was too small to show smaller declines in smoking prevalence for the size of the Australian population.⁴
15. It is also worth noting that the policy of introducing standardised packaging for tobacco products is designed to be a long-term strategy, which aims to produce a decline in smoking rates over time, as fewer children and young people get addicted to smoking.
16. The tobacco industry in Australia has also reported an increase in tobacco sales from 21.015bn sticks in 2012 to 21.074bn in 2013.⁵ Although the industry reported a small (0.28%) increase in sales year on year, they did not report the increase in the Australian population between 2012 and 2013. Adjusted for population, tobacco

³ An analysis of smoking prevalence in Australia, London Economics consultancy, November 2013.

⁴ Cancer Council Victoria, Comments of the Phillip Morris funded London Economics report "An analysis of smoking prevalence in Australia: final", 2013, Cancer Council Victoria: Melbourne.

⁵ Kerr, C. Labor's plain packaging fails as cigarette sales rise: *The Australian*. 6 June 2014

sales per person by their measure of consumption would in fact have fallen, from 920.4 per person in 2012 to 906.9 in 2013.⁶

17. However, the Australian Government's Department of Health figures show that the total consumption of tobacco and cigarettes in Australia in the first quarter of 2014 was the lowest ever recorded, as measured by estimated expenditure on tobacco products. It was \$3.508 billion in December 2012 (when standardised packaging was introduced) and \$3.405 billion in March 2014.⁷
18. This is further supported by figures from the Australian Treasury showing that tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012 when tobacco plain packaging was introduced.⁸
19. An Australian study published in January 2014 showed that the introduction of standardised packaging in Australia in 2012 was associated with a sharp rise in the number of calls to the Quitline New South Wales service.⁹ Even when adjusted for other factors, such as health advertising campaigns happening at the time and changes in price of cigarettes, the number of calls to Quitline NSW rose by 75% between the week before standardised packs were first introduced and four weeks later.
20. Another Australian study reported in 2013 that smokers in Australia were less willing to display their packs in public and smoke in outdoor areas since plain packaging was introduced. Researchers counted numbers of smokers and tobacco packs displayed openly at cafes, restaurants and bars with outdoor seating for several months both before and after the introduction of standardised packaging. They found that pack display on tables declined by 15% after standardised packaging was introduced, which was mostly due to a 23% decline in the percentage of patrons who were observed smoking. The study also found that the declines in pack display and patrons observed smoking were greater in venues where children were present.¹⁰

Importance of a package of measures

21. It is vital that standardised packaging is implemented together with other tobacco control measures, as part of a comprehensive strategy, to ensure that it is most effective at bringing smoking rates down. Wider measures such as tobacco taxation increases and awareness raising campaigns need to accompany the implementation

⁶ *Is Smoking Increasing in Australia?*: *Guardian Datablog*. 6 June 2014

⁷ *Tobacco key facts and figures*, Department of Health, Australian Government (last checked on 22 July 2014)

⁸ *Tobacco facts and figures*: Australian Department of Health. 19 June 2014

⁹ Young JM et al. *Association between tobacco plain packaging and Quitline calls: a population-based, interrupted time-series analysis* *Medical Journal of Australia* 2014; 200: 29-32

¹⁰ Zacher, M et al. *Personal tobacco pack display before and after the introduction of plain packaging with larger pictorial health warnings in Australia: an observational study of outdoor café strips* *Addiction*, 2014; 109: 653-663 - doi: [10.1111/add.12466](https://doi.org/10.1111/add.12466)

plan. Other measures could include better supporting enforcement of illicit tobacco trade by the Border Agency and HMRC.

22. In Australia, standardised packaging was introduced in conjunction with other measures, including larger health warnings and a sustained mass media campaign. Australia also committed to annual increases in tobacco taxation of 12.5 per cent over inflation each year for four years, which started in December 2013.¹¹
23. Given that the Department of Health's *Tobacco Control Plan for England* will need to be renewed by the end of 2015, it would be sensible to include stronger comprehensive measures in the plan to work in conjunction with the introduction of standard packs in May 2016.
24. The current tobacco control plan for England "Healthy lives, healthy people" also seeks to achieve a decrease in smoking to 18.5 % by 2016. Other countries such as Scotland and Ireland, which have adult smoking rates similar to that in England, have recently adopted much more ambitious targets to reduce smoking to less than 5% by 2034 and 2025 respectively.¹² England must also have a longer-term ambitious target, with measures which would complement the introduction of standardised packaging for tobacco products, in order to reduce smoking rates over time.
25. The BLF welcomes the implementation date for the regulations in May 2016 to coincide with a package of measures falling out of the EU Tobacco Directive, which were passed earlier this year.

Arguments on illicit trade

26. The tobacco industry has put forward several arguments about why standardised packaging will not work in practice. One of these is the possible increase of illicit supply of tobacco. However, given that all the key security features will be the same on standardised packaging as on current branded packs, it is highly unlikely that illicit trade would be affected by the introduction of standardised packaging. Furthermore, a further set of security measures, such as unique identifiers, coded numbering and anti-counterfeit marks, are due to be introduced from May 2016 as part of the implementation of the EU Tobacco Products Directive.
27. A number of official comments suggest that the effect of standardised packaging on illicit trade is likely to be non-existent. The HMRC stated that standardised packaging is "not going to create any new risks" on illicit tobacco and Andrew Leggett, Deputy Director for HM Revenue and Customs, has expressed strong doubts about any material effects of standardised packaging on illicit trade.¹³

¹¹ News article, 1 Aug 2013, ABC News website.

¹² CREATING A TOBACCO-FREE GENERATION, A Tobacco Control Strategy for Scotland, The Scottish Government, Edinburgh 2013.

¹³ Oral evidence to the House of Lords European Union Sub Committee (Home Affairs) on 24th July 2013.

28. Furthermore, the Home Affairs Select Committee report on Tobacco Smuggling concluded: *"We believe that the decision on standardised packaging should be driven by health reasons and the imperative need to reduce the numbers of young people who start smoking. We note the statement of Sir Cyril Chantler to the effect that he was not convinced that standardised packaging would bring about an increase in the illicit market; even if this were the case, we believe that the proper response would be a more vigorous effort on enforcement rather than any lessening in the Government's drive towards introducing standardised packaging."*¹⁴

Q3. Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?

29. The BLF welcomes these draft regulations as drafted, with the exception of the exclusions attached to specialist tobacco products.

30. The reason given for excluding specialist tobacco products from standardised packaging regulations is the low number of young people using these products, yet smoking cigars, cigarillos, beedis and pipes produces similar ill health for the principal user and those around them. All tobacco products should be included in the regulations for standardised packaging to avoid any possible loopholes or of the impression that products excluded from regulations are somehow less harmful. A full definition of exactly which tobacco products are 'specialist' should also be included for clarity of the regulations.

31. With regards to the enforcement of the regulations, the BLF agrees that there should be no upper limit for fines imposed on those who breach the regulations. However, we believe there should be minimum fine amounts. This will ensure that there are good incentives for compliance with the law. Minimum fines should be set at varying and proportionate levels to ensure they are high enough to be of consequence to individuals, organised groups and to corporations. A corporation or organised group may be selling branded packs in much larger quantities than an individual and there needs to be recognition given to the severity of the breach.

32. We believe that further details need to be provided on how these regulations will apply to corporations and enterprises, and in particular how cases will be dealt with where there is a director or senior person liable for the breach, rather than the corporation itself.

Q4. Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation stage impact assessment?

Illicit trade and cross border shopping

¹⁴ Home Affairs Select Committee First Report on Tobacco Smuggling: paragraph 44

33. For the reasons stated in answer to Q.2 above we do not believe that the evidence justifies inclusion of "possible losses from a potential increase in consumption of illicit product and/or product legitimately bought outside the UK".
34. The UK previously introduced a major change in packaging and labelling in advance of the rest of Europe by introducing coloured picture warnings on packs from 1 October 2008. This change to pack design in fact led to a decline in both cross border shopping and illicit trade over the period between introduction and full implementation from October 2008 to September 2010.¹⁵ The Impact Assessment document acknowledges that cross border shopping rates are mostly influenced by external factors such as the £/€ exchange rate and the number of passenger journeys (point 131). Therefore, just as with graphic warnings, standardised packaging is unlikely to have a significant impact.

¹⁵ Table 6 – Historic Clearances, Tobacco Bulletin – November 2013, HM Revenue and Customs.



Department
of Health



Llywodraeth Cymru
Welsh Government



The Scottish
Government
Riaghaidas na h-Alba



Department of
Health, Social Services
and Public Safety
www.dhsspsni.gov.uk

Consultation on the introduction of regulations for standardised packaging of tobacco products – Response Form

a. Are you responding (required):

- As a member of the public (go to question b)
- As a health or social care professional (go to question b)
- On behalf of a business or as a sole trader (go to question c)
- On behalf of an organisation (go to question c)

b. Please provide your details and contact information:

Name of respondent (required)

N/A

Address of respondent (required):

N/A

Contact email address (required):

N/A

Now go to question f

c. Please provide your organisation's details and contact information:

Name of organisation (required):

CONSUMER PACKAGING MANUFACTURERS ALLIANCE (CPMA)

Name of person providing submission (required):

[REDACTED]

Job Title (required):

DIRECTOR

Contact address of organisation (required):

BEACON VIEW, 19 GHYLL WOOD, ILKLEY, WEST YORKSHIRE LS29 9NR

Contact email address (required):

[REDACTED]

Is this the official response of your organisation? (required):

Yes

No

d. If you are responding on behalf of a business, what type is it?

Tobacco retailer (supermarket)

Tobacco retailer (convenience store)

Tobacco retailer (other type of shop or business)

Specialist tobacconist

Duty free shop

- Wholesale tobacco seller
- Tobacco manufacturer
- Retailer not selling tobacco products
- Pharmaceutical industry
- Business involved in the design or manufacture of packaging
- Other (please provide details below)

If other, please tell us the type of business:

e. If you are responding on behalf of an organisation, what type is it?

- NHS organisation
- Health charity/NGO (working at national level)
- Local Authority
- Local Authority Trading Standards or Regulatory Services Department
- Local tobacco control alliance
- Retail representative organisation
- Industry representative organisation
- Other type of business representative organisation
- University or research organisation
- Other (please provide details below)

If other, please tell us the type of organisation:

f. Does your response relate to (required):

United Kingdom

England only

Scotland only

Wales only

Northern Ireland only

g. Do you, or the business or organisation you represent, have any direct or indirect links to, or receive funding from the tobacco industry? (required)

No

Yes (please describe below)

If yes, please describe:

THE UK PACKAGING INDUSTRY HAS TRADED WITH THE TOBACCO INDUSTRY FOR MANY DECADES

h. If you do not wish your details to be identified in the summary report of consultation responses, please tick this box

Consultation questions

1. Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

The Chantler Review published in 2014 stated that standardised 'plain' packaging would have a positive impact on public health but failed to provide any evidence throughout that this is the case. It went on also to state that 'branded packaging plays an important role in encouraging young people to smoke' - but provided no evidence to support this view.

It is also highly subjective in quoting .. 'it is highly likely that standardised packaging would serve to reduce the rate of children taking up smoking'.

The Chantler Review throughout used phrases and statements that are not substantiated.

Because there is no evidence to support the view that packaging influences smoking uptake and trends in young people leaves the whole proposal to introduce the plain packaging measure as being deeply flawed.

In conclusion the Chantler Review stated that .. 'research cannot prove conclusively that a single intervention such as standardised packaging of tobacco products will reduce smoking prevalence'. This being the case the proposal should be dropped and not proceeded with any further until conclusive evidence becomes available rather than important and far reaching decisions being made upon the basis of extrapolations from hypothetical research.

The illicit trade argument was dismissed by the Chantler Review but statistics from Australia now indicate a sizeable increase in this trade since the introduction of plain standardised packaging in December 2012.

The Government throughout this whole process stated that any decision to introduce plain packaging would be based upon evidence - but there is nothing conclusive to support such a decision.

2. Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging that you wish to bring to our attention?

The Impact Assessment records figures which the packaging industry does not recognise and have not been quantified within the report - a prime example being Page 7 Point 18 quoting the enormous figure £27.2bn as a gain from plain packaging with little or no supporting data and which in the context of things is considered to be

highly misleading. This figure cannot be further commented upon and appears to be totally spurious. In a similar way in the Summary on Page 3 a time saving of 1.5 second per retail transaction is quoted which is in direct contrast with information and consumer comments from Australia that retail transaction times have increased and which has resulted in consumers just stating 'please just give me the cheapest'!

The commoditisation of a prime consumer product has also not been considered within the total cost to individual packaging companies. The operations in Bradford, West Yorkshire (MPS/Chesapeake and Weidenhammer Packaging) and close neighbours (Parkside Flexibles) in Normanton, West Yorkshire will both see reductions in further investment and the introduction of plain packaging will threaten their business futures. The current types of added value tobacco packaging produced are the mainstay of the operations and once denied to them and replaced by a general standardised product specification they will have a much reduced and limited market.

The statements contained throughout the I.A. by the NGO's especially Cancer Research UK and ASH are taken as facts whereas when industry figures and reports where quoted are always perceived as being 'tainted' even when carried out by reputable international accountancy organisations.

The Tobacco Advertising and Promotion Act 2002 does not state that packaging is advertising and as such it should not be treated as such. In addition when the retail display ban is extended in 2015 the role of packaging promotion will be further diminished, if not totally eliminated and this was not significantly highlighted in the I.A.

The I.A. further does not consider alternative strategies to reduce the uptake of smoking by young people or the experiences from other countries e.g. Germany. The German Government's Federal Health Centre in Berlin produced reports in 2012 publicising evidence that their extensive education programme into health awareness has produced positive significant results. (Source: Survey on Youth Affinity for Drugs - BZgA - 2012). These reductions in smoking take-up and the reduction of young people between 12-17 years trying a cigarette reduced from 71.7% to 40.1%. The emphasis in Germany on providing education, cultural awareness and helping reduce pressure from their peers of young people who want to smoke has been seen to work in a country with no overall smoking ban, no display ban and no vending machine ban. Why not try this option first without resorting to additional regulation which is to date unproven ?

The I.A. also fails to consider the technicalities of packaging manufacturing and the complexity that the packs include within their specifications. A move to a simple 'plain packaging' print specification from sophisticated in-line gravure printing operation is totally ignored. As are considerations to the other forms of packaging for tobacco and for the manufacturers of other products e.g. pouches, laminates, plastic boxes, rigid boxes, spirally wound board and tin containers.

All these manufacturers, largely producing to world class standards, will lose jobs, apprenticeship opportunities for young people and general employment by local supporting services many of which are located in the major industrial areas of the country.

Finally, linked to this, is the illicit trade and, in contrast to the Chantler Review that there is no evidence of an increase in Australia, the latest figures from independent sources quote quite the contrary. The Manchester, Illicit white product, is seeing a sizeable growth within that market together with the initial observation of 'counterfeit illicit white' products e.g. Spoonbill.

The latest HMRC revenue loss figures in the UK also mirrors this upward trend of the illicit trade -- all of which has been largely not recorded or financially quantified within the I.A..

3. Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations as drafted?

The UK packaging industry has been deeply involved in the European Union - Tobacco Products Directive-2 discussions emanating out of Brussels earlier this year.

The specification details and interpretation of the TPD-2 have not yet properly been confirmed and the industry is awaiting information from DG Sanco and the Tobacco Regulatory Committee 'panel of experts' regarding greater detail on a number of points.

Secondary legislation from the European Commission could influence what packaging manufacturers can produce and guidance along these lines is very important for both business investment and for security of employment. A case in point concerns the situation relating to tax stamps and labelling positioning for pouches, stand up pouches, cylindrical cans and cuboid containers where a lack of information is delaying investment decisions. The introduction of standardised 'plain packaging' into the UK, at this time, will compound an already complex problem.

It would be very sensible for the industry to initially determine the TPD-2 requirements before pushing ahead with standardised 'plain' packaging implementation and all the additional changes that would be needed concerning this introduction.

When considering further regulatory measures...it should sensibly be asked what evaluation has taken place on measures so far introduced?...With the Display Ban what has been the effect so far of the ban?...Who measured it? And how?

The failure of the I.A. to address these basic regulatory issues is a fundamental weakness and questions the need for more excessive regulation at this time.

Is the extra regulation necessary and will it be effective ?.

4. Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?

On the subject of Policy Objectives (Page 7 of the Consultation Document) it was stated that an estimated 207,000 children between 11-15 take up smoking each year but there is no supporting evidence with figures quoted presumably from those with vested interests in promoting such a figure. Who estimated the figure and how was it calculated ?

The Statement that hand rolling tobacco is very popular among young smokers is in contrast to the EU - Tobacco Products 2 (TPD-2) which recognised that Roll-Your-Own products were largely an 'older persons' product and relaxed the requirement that only pouches were to be used by later allowing both cuboid and cylindrical containers in the final draft for Fine Cut loose tobacco. The I.A. fails to recognise these technical features relating to the packaging industry and the effect of the measure onto the producers of the extensive range of other packaging products.

Equalities Analysis

Relating to AGE ---

---- the Tobacco Control Plan -- Equalities Analysis for England (Page 5) quotes ... 'young people who live with smokers are much more likely to become smokers' -- Question -- What has that statement got to do with packaging ?.....this statement within the I.A. has far more to do with why people smoke and start smoking and which is admitted to be a very complex subject that has largely been overlooked in the whole plain packaging debate.

Relating to SEX (Page 9) --

----the comment that smoking cigarettes from certain types packages influences women, is only a perception, and can be interpreted as being sexist.

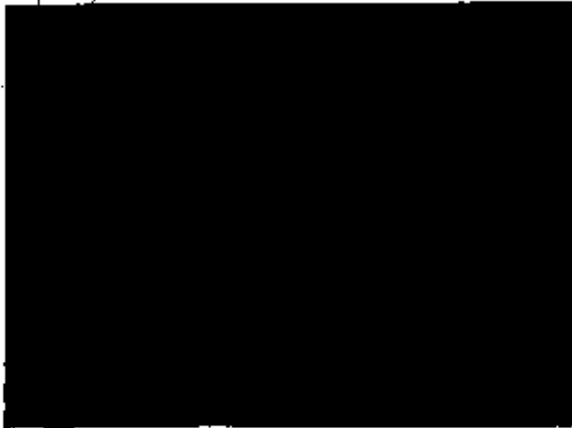
This matter is also largely irrelevant as the TPD will outlaw all 'cosmetic type' cigarette packs from May 2016 and in furthering this point where does the I.A. consider the question of attractiveness ?.... How do you define it and distinguish

levels of it ? This is a fundamental feature relating to pack design and again has not been covered in the I.A.

The I.A. and associated reports do not address the issue which is fundamental to the whole question ofWhat is the effectiveness of plain packaging ?

What evidence is there that it will work?

This concludes the response by the Consumer Packaging Manufacturers Alliance and it can be confirmed that a hard written copy of this response has been sent by Royal Mail to the address recorded in the consultation document.



Thank you for participating in this consultation.

The Department of Health and Devolved Administrations will only contact you should we seek further information about your response.

How to get involved in the consultation

The consultation will run for 6 weeks, from 26/06/14 to 07/08/14. Responses are invited from any interested group, company or person.

Respondents are encouraged to provide their views online, but responses can be made in any of the following ways:

Completing the online form on the Department of Health website at:

[http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-](http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1)

[1](http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1)

- **Filling in the response form by downloading it at:**

<https://www.gov.uk/government/consultations>

- **Emailing your response to:**

TobaccoPackaging@dh.gsi.gov.uk


- **Posting your response to**

Department of Health
Standardised Packaging Tobacco Consultation
PO Box 1126
CANTERBURY
CT1 9NB

[Redacted]

From: [Redacted]
Sent: 06 August 2014 10:51
To: Tobacco Packaging
Subject: Standardised Packaging

Dear sirs. Please do not introduce plain standardised packaging for cigarettes and tobacco. It will only increase illegal imported cigarettes as shown already by Australia. Thanks [Redacted]

 This email is free from viruses and malware because avast! Antivirus protection is active.

This email was received from the Internet and scanned by the Government Secure Intranet anti-virus service supplied by Vodafone in partnership with Symantec.

DH users see Computer virus guidance on Delphi under Security in DH, for further details. In case of problems, please call the IT support helpdesk.

Amcor Tobacco Packaging

Submission to the Department
of Health on the policy initiative
*standardised packaging of
tobacco products: draft
regulations*

6 August 2014

Executive Summary

Amcor is a global leader in responsible packaging solutions supplying rigid and flexible packaging products to the food, beverage, healthcare, tobacco, home and personal care industries. With over 150 years of history and experience supplying thousands of customers across 43 jurisdictions, we are pleased to share our packaging expertise and insights as part of this consultation. Amcor has 4 regional and sales offices and 8 manufacturing sites across the UK. We make this submission as an independent packaging manufacturer and standalone, publicly traded company representing our own high standards on responsible packaging.

Packaging plays an important role in society. Amcor's applied corporate values focus on the core theme of 'responsible packaging' - i.e. packaging's ability to 'protect, inform, perform'. In other words, the ability of packaging to ensure product safety and integrity, inform and educate the consumer, and deliver performance features that enhance the product itself.

Amcor fully supports the objectives of the UK Government to improve public health by reducing the harmful effects of smoking. We understand that the Department of Health's overall objective of Standardised Packaging is to reduce smoking rates, discourage young people from taking up smoking, and reduce exposure to second-hand smoke.

Amcor also understands that the Department of Health seeks to be at the forefront of public health policies and tobacco regulation specifically. As the global leader in consumer packaging, and in line with our strong commitment to responsible packaging, Amcor is in a unique position to provide qualified and fact-based feedback to the Government on the practical implications of the proposed policy.

Amcor has major concerns around the current draft policy and believes that Standardised Packaging will lead to dangerous consequences. We provide fact-based evidence to support our view that creating a standardised approach to tobacco packaging in the UK would result in an escalation of trade in illicit and counterfeit tobacco products¹. We believe that these dangerous consequences would defeat the purpose of the proposed legislation, as lack of differentiation between genuine and fake cigarette packaging would lead to tobacco products becoming cheaper on average, easier to purchase, access, and copy, which ultimately puts public health, and specifically children, at risk.

As outlined in more detail in Amcor's response to the Consultation's third question, '*Comment on the practicalities of implementing the draft regulation*', we believe that packaging differentiation and complexity is the best natural deterrent against illicit tobacco trade. Operating within parameters set by the Government, this implies differentiated branding on tobacco packaging in combination with highly complex print features that alternate on a regular basis.

Given the inconclusive evidence around the public health benefits of Australia's plain packaging implementation versus the well documented health risks related to counterfeit products, Amcor believes that Standardised Packaging should not be implemented. The UK Government should rather focus on a solution that maintains, if not increases, the level of packaging complexity, including security, brand and design features that can be changed on a regular basis. This would act as a more effective shield against the criminal organisations driving illicit tobacco trade.

Amcor is willing and ready to work with the Department of Health on understanding the impact of various options available for implementing tobacco packaging regulations. Amcor is a longstanding member of leading industry bodies such as the European Carton Makers Association (ECMA) that have an established track record of supporting policy solutions, working with a range of national governments and European Union institutions.

¹ Although Amcor usually observes the technical differences between the industry terms 'illicit whites', 'contraband' and 'counterfeit cigarettes', this submission uses the terms 'counterfeit', 'contraband' and 'illicit' interchangeably. This submission also focuses on illicit trade via the smuggling of cigarettes, rather than domestic creation of counterfeit cigarettes.

Introduction

Amcor appreciates the opportunity to respond to the Government of the UK on its consultation 'Standardised Packaging of tobacco products: draft regulations', released by the Department of Health on 26th June 2014.

This submission provides answers to the key questions posed by the Department of Health, i.e.:

- Amcor's observations on the Chantler Review
- Additional information since the 2012 consultation
- Comments on the practicalities of implementing the draft regulations

This paper builds on Amcor's previous submission dated 9th August 2012, which is attached to this paper, while introducing new evidence and insights to support Amcor's recommendations.

In line with Amcor's submission in 2012, we believe that an introduction of Standardised Packaging in the UK would have the following three negative consequences:

1. **Rise of illicit trade:** Standardised Packaging lowers barriers of entry into the tobacco market, leading to *de facto* creation of scale benefits for criminal organisations trading in counterfeit tobacco
2. **Greater health risks:** Consumers exposed to hazardous contents in illicit tobacco products
3. **Loss of authentication:** Standardised Packaging limits the ability of consumers to authenticate and differentiate between legitimate and illicit tobacco products

Apart from putting public health at risk through contaminated and poisonous counterfeit tobacco products, Standardised Packaging has the unintended side effect of diverting funds from excise taxes into the hands of the global counterfeiting industry.

1 Amcor's observations on the Chantler Review

1.1 Standardised Packaging would lower the barriers of entry to the counterfeit market

In section 5.10 of Sir Chantler's review, he states that,

'...it is possible that some consumers put off by Standardised Packaging may become more attracted to purchasing contraband.'

He continues to state that illicit trade is mainly driven by the availability of illicit products and that restrictions placed on supply by border controls will be the main driver to constrain the size of the illicit market.

Amcor believes that lighter border controls represent an incomplete solution, as they only address the symptoms rather than the root causes of illicit trade. In fact, recent data from the UK and Australia suggest that illicit tobacco trade is on the rise (see section 2.1 and 2.2 for further data below).

To successfully combat illicit trade, and especially counterfeit products, the Government must limit the incentives for criminal organisations to engage in illicit trade. Such incentives are created through (i) Above-average excise taxes that push consumers to purchase cheaper products, coupled with (ii) Lower packaging entry barriers that make it easier to counterfeit tobacco products.

In our expert opinion, the printing technologies and assets used to manufacture standardised tobacco packaging are considerably less sophisticated and capital intensive than assets required for complex tobacco packaging. Hence, packaging complexity sets a high barrier of entry for counterfeiters.

To illustrate, Amcor produces complex tobacco packaging on high quality, Swiss and German-made gravure machinery, which are operated by experts with decades of experience in the printing industry. To match these world class assets and capabilities, criminal organisations would have to commit to an upfront investment of at least £10 million, as well as basic tooling costs of >£25,000 for every new pack design².

After the printing process, further complexity is added through a range of other processes which, when in combination, are particularly difficult to counterfeit:

Embossing: A 'male' embossing plate with a crest or a logo is pressed down on to the substrate, while at the same time a 'female' counter plate is fixed underneath the substrate. This results in a shaped three dimensional image on the packaging.

Foil stamping: metallic materials (commonly aluminium) are lifted off a roll and applied to the carton board substrate in the required design. This applies a unique look to premium products or it can be used to coat entire folding carton blanks.

Varnishes and lacquers: applied at the end of the printing process using one of three different technologies: (a) solvent-based with drying by evaporation of solvents; (b) water-based with drying by evaporation of water; (c) inert UV cured with drying by UV wave light. This protective layer ensures that printed colours are protected from mechanical impacts such as scratches, and that the final product is protected from inks and other chemicals.

Cutting and creasing: a die is created which has both cutting blades (that slice through the carton board) together with creasing blades (with blunted ends), which are used to create flat 'carton blanks' i.e. non-assembled cartons.

Standardised Packaging would remove the requirements for this type of high quality machinery, as the simplified design (i.e. no varnish, no embossing, or foil stamping, etc.) can be run on less complex machinery, such as a digital printer. Standardised cigarette packaging would therefore lower the bar for replicating cigarette packs and expose the UK even further to counterfeiters that would target the country with illicit and hazardous products.³

1.2 Negative effects of higher excise taxes coupled with Standardised Packaging

In point 16 of his summary, Sir Chantler discusses the risk that Standardised Packaging may lead to a shift to low-priced cigarettes. The removal of branding on packs would lead to a decrease in brand loyalty, a shift to low-priced cigarettes and a subsequent fall in average cigarette prices caused by industry price wars. As a consequence of the lower prices, cigarette consumption would increase. Sir Chantler suggests that increased excise taxes could be used to counter the shift to low-priced cigarettes. He states:

[In Australia,] there is some evidence of trading down towards cheaper brands. Were all this to change, the Government can in any case mitigate any price reduction by increasing tobacco taxes.⁴

Amcor believes that increasing excise tax would actually encourage illicit trade by:
(i) Providing an incentive for price-sensitive consumers to downgrade to harmful illegal products and (ii) Creating a profit incentive for illegal manufacturers of tobacco products.

² This figure reflects tooling costs for printing cylinders, embossing cylinder, die-cutting and creasing equipment.

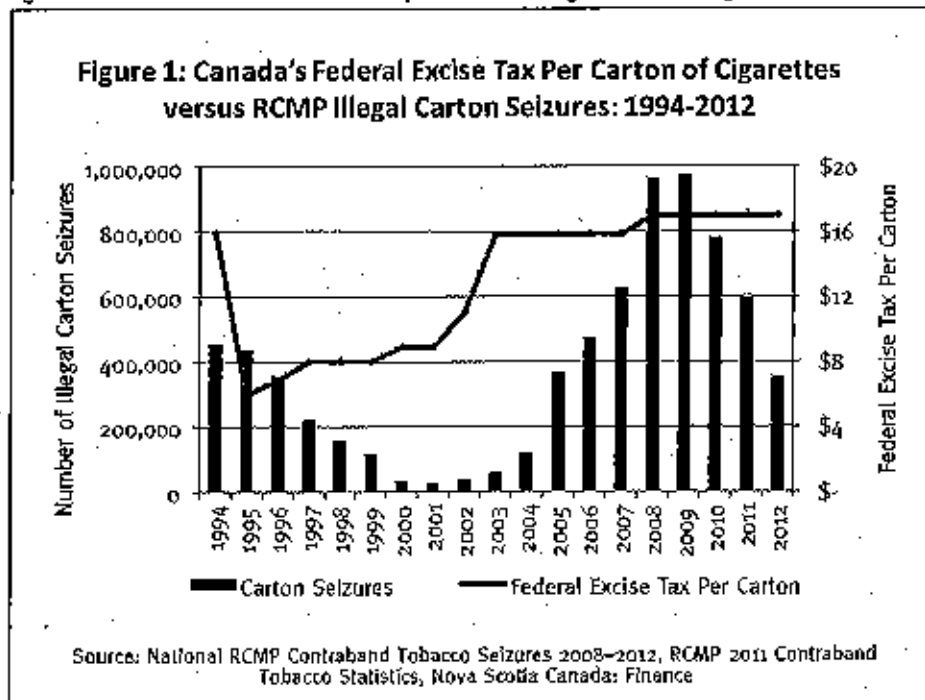
³ For more detail on complex printing technologies, please refer to section 4.4 of Amcor's submission to the Department of Health on 9 August 2012

⁴ Report of the Independent Review undertaken by Sir Cyril Chantler, *Standardised Packaging of Tobacco*, p.6

This is outlined in the report: *"The Effect of Cigarette Tax Rates on Illicit Trade: Lessons Learned in Canada"*, commissioned by the independent think tank *Reason Foundation*. In the same line of evidence, econometric analysis conducted by business school HEC Montreal showed that each additional Canadian dollar in total applicable tobacco taxes raises the propensity to switch to illicit cigarettes by ~5%.

Drawing on Canada's experience with varied excise tax levels between 1994 and 2012, data points to a strong correlation between high excise tax and high levels of criminal tobacco activity. The following figure illustrates federal excise tax rates for the 1994 to 2012 period and the seizure levels of illicit cigarettes by the Canadian police.

Figure 1: Canada's federal excise tax per carton of cigarettes vs illegal carton seizures⁵



2 Additional Information since the 2012 Consultation

2.1 Volatility of Illicit trade in the UK

As documented in Amcor's submission during the 2012 public consultation period, our key concern over the current draft legislation is around the significant risk counterfeit products pose to public health.

On 3 July 2014, Amcor received a letter from Jane Ellison MP, the Rt. Hon Parliamentary Under-Secretary of State for Public Health. This document included reference to data published by HM Revenue and Customs on the size of the UK illicit tobacco market. The letter stated that 'the size of the illicit tobacco market [...] has fallen significantly over

⁵ K. Furnick, C. Malcolm and A. Randazzo of the Reason Foundation (2014), Policy Brief 113, *The Effect of Cigarette Tax Rates on Illicit Trade: Lessons Learned in Canada*

recent years⁶. However, the data set provided for the period of 2012-2013 actually showed an increase of almost 30% year-on-year, marking the first increase in illicit trade in the UK since 2004.

Table 1: HMRC data, Cigarettes: Illicit market HMRC estimates⁷

Illicit Market Shares		2011-12	2012-13
Upper estimate	% of market	12%	13%
	Bn sticks	5.5	8.0
Mid-point estimate	% of market	7%	9%
	Bn sticks	3.5	4.0

This data suggests an increase of at least 500 million illicit cigarettes being consumed annually by UK citizens, significantly raising the risk to public health⁸. These figures are also aligned with conclusions of Euromonitor International, a non-partisan market research company, which states that illicit trade penetration will be >13% in the UK by 2018⁹. This data shows that the UK continues to battle rising illicit trade, and Amcor believes that Standardised Packaging will further exacerbate this problem.

2.2 Australian Standardised Packaging data is Inconclusive

Amcor believes that the experience of Australia with standardised tobacco packaging carries limited insights for the UK policy. Further to this, the differences between the two countries highlight the greater potential threat that illicit trade poses to the UK.

Australia's Border and Customs Protection Service has seen a continuous year-on-year increase in sea cargo detections of illicit tobacco specifically in the form of cigarette sticks:

Table 2: Tobacco Detections in Sea Cargo, Australia BPC Service¹⁰

	2011-12	2012-13
Number of detections	45	76
Loose tobacco (tonnes)	177	183
Cigarettes (mn sticks)	141	200

⁶ Letter from Jane Ellison to Peter Konieczny, 3rd July 2014, FMPO000865988

⁷ HM Revenue and Customs data, Official Statistics Release: Tobacco tax gap estimates 2012-13, October 11th 2013 Note that only Upper and Mid-Point Estimates have been included here, as these are the estimates most referred to in the primary document.

⁸ For more evidence on the possible serious health issues linked with smoking of illicit tobacco products, please refer to Section 2.3 below.

⁹ Data retrieved from Euromonitor International: Illicit Trade Penetration Forecast: % breakdown, July 2014

¹⁰ Australian Customs and Border Protection Service—Annual Report 2012-2013: Tobacco Smuggling; accounts for 99% of all illicit trade detections in Australia annually

The Australian Customs and Border Protection Report 2013 further states:

Detection figures over [...] the previous two years, indicate a gradual increase in detections of illicit cigarettes [...] due to a combination of reasons including [...] the more immediate return on investment available from illicit cigarettes in comparison to loose-leaf tobacco, which often requires further processing.

Amcor believes that the negative effects of Standardised Packaging will be more severe in the UK, a larger market more susceptible to counterfeit smuggling. In 2013, Australia had less than 5% illicit trade penetration (~600 million sticks¹¹), whereas the UK faced 12% illicit trade penetration (~3.5 billion sticks)¹². The deeper-seated structure of the illicit tobacco syndicate in the UK offers counterfeiters a more attractive target market. This point is also recognised by the Australian Department of Health, where they state:

It is likely that part of the reason that Australia has a significantly smaller illicit tobacco market than the UK (and a number of other countries), is that there is not such a large-scale, organised distribution network for illicit tobacco in Australia as compared with the UK.¹³

Amcor believes that the UK's proximity to the European continent means it is more susceptible to illicit trade. Due to the multiple possible entry points for smugglers, such as the 21 exposed harbours outlined by the Industry and Parliament Trust and Associated British Ports (ABP)¹⁴, the UK is naturally more exposed to cigarette trafficking.

In addition, if other European countries opt for regulation allowing higher levels of pack complexity, the UK will become a soft entry point for criminal organisations. Through the introduction of Standardised Packaging, the UK will house a tobacco market which does not have the added security of differentiated, constantly changing pack designs like those in surrounding countries. As a result, the UK will become one of the most attractive tobacco markets for counterfeiters due to the lower packaging complexity standards.

2.2.1 Advocating legislation based on strong evidence

The evidence provided by both anti- and pro-tobacco stakeholders on the effectiveness of Standardised Packaging is far from conclusive. Proponents of Standardised Packaging in Australia, for example, point to a 2.3% drop in daily smoking rates from 2010 to 2013. However, this coincided with one of the largest tobacco price hikes in Australian history when excise taxes rose by 25% in April 2010. Given the price elasticity observed and documented in several countries, such as Russia, the correlation is rather driven by excise tax than Standardised Packaging¹⁵.

As such, Australia cannot be used as an exact analogy to predict the effect of Standardised Packaging in the UK given the inconclusive data, the unique geographic position and proximity of the respective countries, and the different levels of risk exposure to organised illicit trade. As a global packaging expert, Amcor would suggest prudence

¹¹ Data retrieved from Euromonitor International: Illicit Trade Penetration; % breakdown, July 2014

¹² This figure assumes the estimate of illicit trade penetration in 2013 from HMRC

¹³ As stated by Australian Department of Health on the 11th March 2014; *Notes of Australia Based Meetings, Chantler Review*, p6, point 6

¹⁴ Industry and Parliament Trust: *Working together to fight the illicit tobacco trade*, August 2013

¹⁵ 'A rise in price of 10% is estimated to produce a fall in volume of 4%' – Euromonitor International, *Tobacco in Western Europe*, February 2014, p.23

and patience in finalising the policy on Standardised Packaging to allow for further fact-based discussion.

2.3 Risks of counterfeit products on public health

Ancor firmly believes that standardised packs will lead to a significant increase in counterfeit availability, which represents increased health risks, especially for underaged consumers, who will find it even more difficult to differentiate legal from illicit products.

In an investigation by the BBC, illegal cigarettes bought by researchers were scientifically tested and reported to have the highest levels of toxins recorded in the UK to date. The cigarettes contained 30 times more lead than the average legal cigarette, meaning that a 'pack-a-day' smoker would inhale the equivalent of 600 cigarettes in just 24 hours¹⁶.

As stated by the Center for Regulatory Effectiveness, Washington D.C., a great percentage of these products are created in Asia, where they are produced cheaply before being imported into Western Europe¹⁷. The following statement, taken from a report by the Chinese government tobacco Monopoly Bureau in Shandong, describes the products involved in the creation of illicit cigarettes:

Many counterfeit cigarette manufacturers use [...] inferior quality products, even waste or contaminated waste products. Studies show that counterfeit cigarette combustion will produce a large quantity of 3,4-benzopyrene and other carcinogenic substances. Counterfeit cigarettes contain "benfisia tabaci" eggs that, once inhaled, will be like "pork tapeworm" as chronic parasitic in humans.¹⁸

To inform and protect the general public from the risks of such counterfeit products, Ancor believes that tobacco packaging should clearly differentiate legal and authentic product from counterfeit product. This can be achieved through increased feature differentiation, allowing for unique security and branding features that could be further enhanced through frequent design changes.

2.3.1 Potential for particular health risk to underage smokers

Ancor is aware that the Department of Health and this policy are especially focused on the wellbeing of children and limiting the uptake of smoking by the underaged.

According to independent research on counterfeit products, undertaken by the audit firm PWC, 81% of the British public believe it is either 'easy' or 'very easy' to buy counterfeit cigarettes¹⁹. Of the current smoking population in the UK, young people (18 - 35) are >70% more likely to buy illicit products than adults over 35. The underaged - and especially first-time smokers - are significantly less likely to be aware of the differences between illicit products and those sold by a licensed vendor. Simultaneously, younger people who either earn less, or are not yet employed, are more likely to be price sensitive. Therefore the lack of pack complexity characteristic of Standardised Packaging, coupled with a lack of disposable income, establishes a dangerous link between the underaged and illicit tobacco products.

¹⁶ BBC: *The BBC exposes tobacco crime gangs*; 18th January 2011

¹⁷ Center for Regulatory Effectiveness, *The Countervailing Effects of Counterfeit Cigarettes*, July 2011

¹⁸ Shandong Provincial Tobacco Monopoly Bureau, *Cigarette Counterfeiting, Problems and Thoughts on Countermeasures*, 28th March 2011

¹⁹ Price Waterhouse Cooper: *Counterfeit goods in the UK: Who is buying what, and why?* October 2013; p.2

This is aligned with data found in The Hughes Study, published in the European Journal of Public Health, which shows that counterfeit cigarettes are a significant source of tobacco for underage smokers. It states,

... many relied on friends and family to obtain cigarettes, and had bought foreign, fake or single cigarettes; methods of access that are much harder to control through government intervention.²⁰

As stated by the same report,

This gives cause for concern; such products are more affordable than commercial cigarettes for young people on restricted incomes, and fake cigarettes are known to contain higher levels of tar, nicotine and carbon monoxide, as well as high toxic metal concentrations that could be damaging to health.²¹

For further details on the health risks associated with illicit tobacco, please refer to our 2012 submission attached.

3 Comment on the practicalities of implementing the draft regulations

Packaging complexity is a natural deterrent against counterfeiting

As a global expert of packaging and related product regulation, Amcor believes there are two potential options to protect a product against counterfeiting:

- **Option 1:** Tobacco packaging with security features that are pre-determined and regulated by the Government, similar to legal tender bank notes, and produced by a single authorised manufacturer who has monopoly access rights to the technology and security features. However, this option is not viable. The effectiveness of this system relies on the protection of intellectual property around packaging security features with limited access to the technology. Also, a uniform packaging security standard that does not consistently change makes it easier for counterfeiters to bypass security features and scale criminal activities over time. Additionally, this option creates antitrust issues with negative consequences for the European packaging industry.

Option 2: Tobacco packaging with unique and complex brand design features that are changed regularly by the brand owners and their packaging suppliers. Packaging designs continue to operate within clearly defined Government parameters, as seen with the enforcement of Graphic Health Warnings today. In our expert view, Option 2 is both effective and sustainable. It protects tobacco products against counterfeiting by employing differentiated packaging with unique brand features. The combination of differentiated packaging and regularly changing security features is much more difficult for criminal organisations to replicate due to the level of packaging and printing technology and expertise required. This system is aligned with the revised Tobacco Products

²⁰ The Hughes Study, Smoking behaviours, access to cigarettes and relationships with alcohol in 15- and 16-year-old schoolchildren in North West England, European Journal of Public Health, 9th February 2010, p.5

Directive of the European Union and the policy direction followed by the majority of national governments, where there are clear guidelines on Graphic Health Warnings as well as other packaging features.

Sir Chantler mentions that not all consumers of illicit cigarettes purchase these by accident. The purpose of any security or complexity feature is not to stop consumers who consciously seek to purchase illicit products from doing so, but to protect those consumers who aim to purchase legal tobacco products, and to provide them with their right as a consumer to distinguish illegal from genuine products.

Furthermore, the inability to determine counterfeit from genuine product may also undermine the healthy social stigma against smoking fake cigarettes. If consumers are unable to tell which products are illegal, it is likely that fewer will be put off by social pressures - such as being perceived as 'cheap', using poor quality products, or being uninterested in personal health. This could ultimately lead to a further increase in the consumption of dangerous illicit cigarettes.

Summary

To conclude, drawing on Amcor's global experience and expertise in the packaging industry, we believe that the policy on Standardised Packaging in its current draft bears several risks:

- **Rise of illicit trade:** Standardised Packaging lowers barriers of entry into the tobacco market, leading to *de facto* creation of scale benefits for criminal organisations trading in counterfeit tobacco
- **Greater health risks:** counterfeit tobacco exposes consumers to hazardous ingredients of unknown origin
- **Loss of authentication:** Standardised Packaging limits the ability of consumers to authenticate and differentiate between legitimate and illicit tobacco products

In addition to putting public health at risk through contaminated and poisonous tobacco products, Standardised Packaging has the unintended economic effect of diverting funds from excise taxes into the hands of global criminal organisations. It also represents a significant intervention into two major industries (not only the tobacco, but also the packaging industry), which may result in serious negative consequences. Therefore, the policy should be carried out only with careful thought and considerable risk mitigation.

Amcor has an established track record of informing and working with national governments and European Union institutions on packaging policy. In the context of standardised tobacco packaging, we want to ensure that the UK Government is fully aware of the risks posed by the proposed policy. Amcor would be pleased to work alongside the Department of Health in order that future tobacco packaging regulations are safe, effective, and aligned with the objectives of Government.

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Letter PMPO000865988 from Jane Ellison MP to Peter Konieczny, dated 3rd July 2014

Amcor Tobacco Packaging

Submission to the Department of
Health on the *standardised*
packaging of tobacco products
policy initiative

9 August 2012



Tobacco Packs Consultation
Department of Health
7th Floor
Wellington House
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London
SE1 8UG

Via Email: tobacopacks@dh.gsi.gov.uk

Dear Sir or Madam,

Amcor appreciates the opportunity to present this paper, which responds to the Consultation Paper released by the Department of Health on the policy initiative of *standardised packaging of tobacco products*.

Amcor is the global leader in responsible packaging solutions, supplying a broad range of packaging products to enhance the products consumers use in everyday life. We believe that this places us in a unique position to illustrate the potential impacts of the proposed policy.

We would appreciate the opportunity to discuss the issues we have raised in this paper directly with the Department of Health.

Yours sincerely,

Peter Konieczny
President
Amcor Tobacco Packaging

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Executive Summary

At Amcor, we fully support the objectives of the policy initiative on packaging of tobacco products to improve public health by reducing smoking and its harmful effects.

However, we submit that there are a number of significant implications and unintended consequences of the proposed policy. We are strongly of the view that standardised packaging of tobacco products would have significant impacts on the level of counterfeit tobacco products available in the United Kingdom (UK), which would run contrary to the objectives of the proposed policy.

In this submission, we have outlined and provided evidence to support our view that moving to a generic approach to tobacco packaging in the UK would result in both an increase in the level of counterfeit tobacco in the market and an escalation in the level of illicit trade of tobacco products within the country. In particular, we believe that this impact would defeat the purpose of the policy, as some cigarettes would become cheaper, easier to purchase and access, and ultimately become even more dangerous to public health.

The key impacts identified in this submission are as follows:

Lower barriers of entry to the counterfeit tobacco market

The move to a generic approach to packaging would lower the barriers of market entry for counterfeiters, as under the conditions proposed in the consultation paper, there would be only one pack design to replicate. Furthermore, the level of technical difficulty and requirements to produce tobacco packaging would be substantially reduced. The upfront investment required for counterfeiters to enter the market would also be significantly lowered should the proposal go ahead.

Creation of scale in the counterfeit market

The proposed uniform requirement for tobacco packaging would provide the opportunity and incentives for the creation of scale in the counterfeit tobacco market in the UK.

The UK tobacco market would effectively transition from a market with a large number of brands and distinct product differentiation to a wide open market using a generic pack for all brands.

This would create a single, generic tobacco brand in the UK market. As a result, the counterfeit tobacco market would become substantially larger in the country. The parameters for participation in the market would be reduced from the need to recreate multiple pack designs and formats, to only having to recreate one uniform, simple pack design and format.

By increasing the opportunity and incentive to create scale that does not exist in the current market, the proposed policy's capacity to expand the counterfeit tobacco market cannot be underestimated.

Limited capacity to authenticate and differentiate between products

Moving to a generic approach to tobacco packaging would also fundamentally change the role that packaging plays in enabling consumers and others to authenticate and differentiate between tobacco products. As such, we contend that the proposed policy would reduce the capacity of:

- i. consumers; to verify the product they are purchasing is authentic,
- ii. manufacturers; to include anti-counterfeiting cues, and
- iii. enforcement authorities; to recognise counterfeit tobacco products.

Generic packaging will also ensure that tobacco is seen as a commodity and hence the key point of difference will be price.

Greater health risk to consumers

Counterfeit cigarettes are not produced under regulated conditions and as such there are no controls over hygiene, ingredient composition or the level of toxic materials. Research from other countries highlights that, unlike legal tobacco products, which are manufactured and sold in compliance with strict regulatory requirements such as health warnings and maximum tar and nicotine levels, illicitly traded products, are produced partly or fully outside of this regulatory framework.¹

Lost excise revenue

Cigarettes are considered by the World Health Organisation to be the most widely smuggled legal consumer product globally.² Illicit trade of tobacco products in the UK is already a significant problem and is estimated to have resulted in lost excise revenue of approximately £1.27 billion in 2011.³

Conclusion

The adoption of a generic approach to tobacco packaging (with the intended aim being that consumers would not perceive any difference between tobacco products or brands) would inevitably change the underlying economic structure of the UK's tobacco market.

As outlined herein, if passed, the policy would result in a major escalation in the level of counterfeit tobacco products in the UK, with the associated adverse impacts on consumers, and the wider community.

As such, we submit that the policy initiative of standardised packaging of tobacco products should not be adopted in the UK.

¹ International Tax and Investment Center, *The Illicit Trade in Tobacco Products and How to Tackle It*, page 3, January 2010

² World Health Organisation 2009b, *Report on the global tobacco epidemic*, Chapter 16, Geneva

³ Calculated from Euromonitor International statistics: illicit trade penetration and total duty on cigarettes in the UK, 2011

1 Amcor Limited

This section outlines Amcor's experience and role in the global packaging market.

1.1 Introduction

Amcor Limited appreciates the opportunity to respond to the Government of the UK on its consultation on standardised tobacco packaging released by the Department of Health, on 16 April 2012.⁴

As the global leader in consumer packaging and in line with our strong commitment to responsible packaging, we believe that Amcor is in a unique position to advise the Government on the potential practical implications of this policy initiative as it relates to packaging.

At the outset, we wish to confirm that we fully support the objectives of the standardised tobacco packaging initiative, as it relates to the reduction of tobacco consumption for health reasons, and particularly as it relates to children. However, we believe there are a number of significant implications and serious unintended consequences of this policy initiative in its current form, which would lead to an increase in counterfeit cigarettes and illicit trade, and further health risks to the public.

This paper provides a short background on consumer packaging, the role of responsible packaging in the retail market, and illustrates the potential impact of the policy initiative as it is currently designed.

Specifically, this submission is set out as follows:

- *Chapter 1: Amcor* – outlines our experience and role in the global packaging market.
- *Chapter 2: Consumer packaging industry* – provides details of how the global packaging market operates and the role it provides in the protection and integrity of a product.
- *Chapter 3: Counterfeiting* – details the international market for counterfeit packaging.
- *Chapter 4: Impacts of the standardised tobacco packaging policy* – illustrates some of the potential impacts of the proposed policy.
- *Chapter 5: Conclusion* – summarises our overall position on the implications of the policy initiative.

1.2 About us

Amcor is a global leader in responsible packaging solutions, supplying a broad range of packaging products to enhance the products consumers use in everyday life. Amcor also provides packaging related supplies, offers exclusive capabilities and innovative design services that are at the forefront of the packaging industry.

Founded in Australia almost 150 years ago, Amcor has grown both organically and through complementary acquisitions into a large, multinational manufacturer, operating in 43 countries.

⁴ Department of Health, Consultation Paper 'Consultation on standardised tobacco packaging', 16 April 2012

1.3 Our global operations

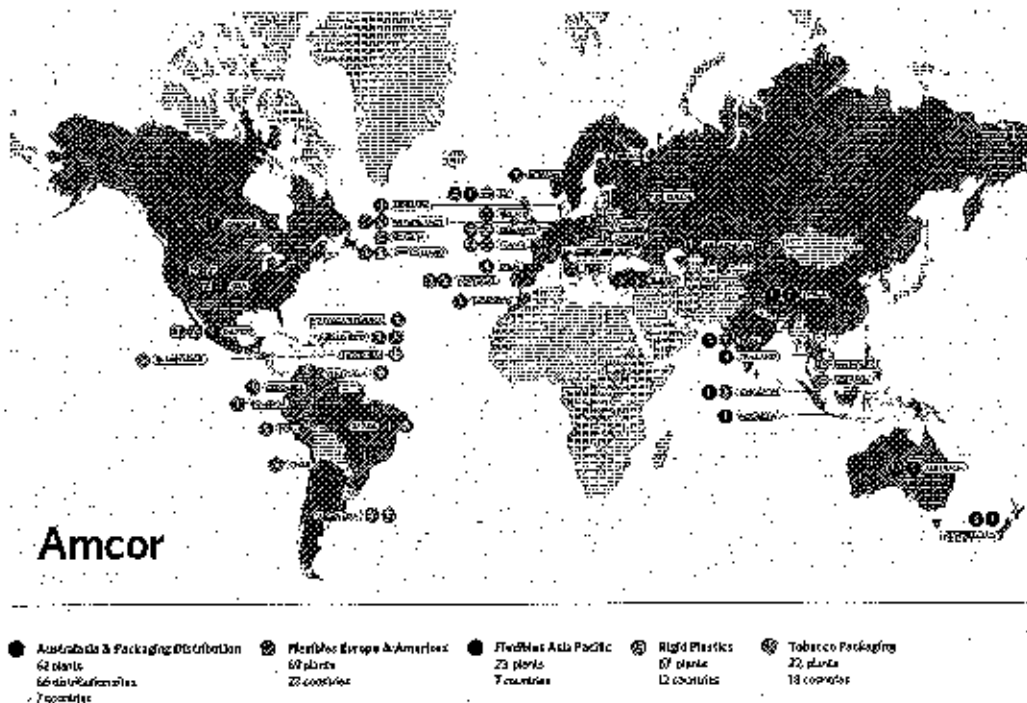
Amcor has 300 sites globally, with sales of approximately £8 billion and employs 33,000 employees worldwide. An overview of our operations is shown in Figure 1.

Most Amcor sites specialise in specific sectors of the packaging market. As the world's largest packaging company, we offer customers the highest standards in innovative packaging solutions, reliable service and partnerships built on excellence.

We supply some of the largest consumer companies in the world. Amongst our main products and services are PET plastic containers for beverage applications, glass products, flexible packaging for the food, healthcare and pharmaceutical markets, tobacco packaging, corrugated boxes and a North American distribution business.

Amcor is headquartered in Australia. With a market cap of £5.7 billion, Amcor is placed in the top 30 listed companies on the Australian Securities Exchange (ASX). Amcor has approximately 70,000 shareholders.

Figure 1: Location of plants and distribution sites



1.4 Our operations in the UK

Amcor has 4 regional and sales offices and 9 manufacturing sites across the UK. An outline of our UK-based operations is as follows:

- *Amcor Flexibles* supplies innovative packaging for fresh foods such as meat and bread, processed foods such as confectionery, and wholesale quantities of foods such as bulk fruits, as well as converting and distributing pharmaceutical packaging.
- *Amcor Tobacco Packaging* is the worldwide leader in tobacco packaging, producing various standard and complex tobacco packaging solutions such as hinge-lid cartons, speciality pack formats, shells and slides, soft label paper packs, inner frames, display cartons and RYO (roll your own) booklet covers. Amcor Tobacco Packaging has 22 plants in 18 countries, and specifically, one dedicated plant in Bristol.

1.5 Responsible packaging

Social Responsibility is one of Amcor's core values, and we believe in responsible packaging. In the next chapter, we will illustrate how responsible packaging protects products throughout the supply chain and communicates important information about the product. Most relevant to this discussion is the role packaging plays in ensuring the integrity and authenticity of the product.

We submit that the role of responsible packaging must be considered in order to understand the potential impact of the standardised packaging policy initiative.

2 Consumer packaging industry

This section outlines the role that responsible packaging plays in the protection and integrity of consumer products.

2.1 Introduction

It is indisputable that consumer packaging is an important component of the promotion, sale and marketing of any consumable product, enabling point-of-purchase differentiation in the marketplace. In addition, packaging plays a significant role in the supply of consumable goods, by protecting the contents of packaged goods throughout their supply chain, ultimately ensuring product safety for consumers. Packaging also provides consumers with important product information and finally, packaging ensures that consumers can recognise the authenticity of a product.

2.2 The role of responsible packaging

Responsible packaging performs a range of functions in addition to the marketing of a product. Specifically, it can:

- Physically protect a product as it travels the supply chain, ensuring product safety for consumers.
- Protect the integrity and authenticity of a product.
- Provide information that assists the consumer during selection and use of a product.
- Enhance the product's functionality (e.g. child-resistant, senior-friendly products).
- Improve the sustainability of a product and/or its packaging.

The following section outlines these functions in more detail.

2.2.1 Protection of product in the supply chain

Consumable products travel long distances and pass through a number of critical points along the supply chain. As Figure 2 illustrates, responsible packaging plays a vital role in protecting a product as it completes this journey.

Adequate protection of a product ensures that it is not damaged during transportation. There can be large wastage costs incurred if the investment made in a product is lost. These costs are ultimately passed on to the consumer.

In addition, packaging ensures that the product is safe for use by the end consumer.

Figure 2 illustrates a number of other important functions such as ensuring a product is not tampered with and allowing a product to be tracked.

2.2.3 Informing consumers

Responsible packaging informs consumers about the details of a product. Such information can include its composition and ingredients and instructions for use. It can also include information relating to identification such as the batch number, and the date of production or expiry. Importantly, packaging can inform consumers of the origin of a product, which supports consumers to make decisions regarding the quality and suitability of a product for their purposes.

In addition, responsible packaging enables the communication of consumer safety information, such as handling procedures and health warnings, if relevant, to be displayed.

2.2.4 Provides functionality

Packaging can provide functional elements that support the supply and use of consumer products. Features such as barcodes and Radio Frequency Identification tags offer cost reductions and improve efficiency through certain parts of the supply chain by automating common processes such as product routing.

Packaging can offer more sophisticated functionality such as changing colour to indicate that a temperature-sensitive product (such as a vaccine), has been exposed to temperatures outside of the specified range.

At point-of-use by consumers, packaging functions such as pouring devices, child-resistant closures and resealing mechanisms, such as zip-locks, allow ease-of-use and consumer protection.

2.2.5 Packaging's sustainability benefits

Responsible packaging reduces waste by protecting products and extending their shelf-life, preserving the resources that are invested in a product.

The Food and Agriculture Organisation of the United Nations released a report in May 2011 that puts the amount of food lost or wasted each year as roughly one third of that produced, approximately 1.3 billion tonnes.⁶ In industrialised countries more than 40% of losses happen at the retail or consumer level. A large contributor to this waste is consumer behaviour, with food thrown away when 'best-before' dates expire. Using packaging to extend the 'best-before' date of products can reduce waste by keeping products fresh for longer and therefore more likely to be consumed prior to expiration.

⁶ Jenny Gustavsson, Christel Cederberg, Ulf Sonesson, Robert van Otterdijk, Alexandre Meybeck, 'Global Food Losses and Food Waste', published in 2011 by Food and Agriculture Organization of the United Nations

3 Counterfeiting

This section highlights the drivers for counterfeiting and its impact on the market.

3.1 Counterfeiting of goods

The counterfeiting of consumer products is a major issue across most countries. In our experience, counterfeit products are also a strategic issue for most of our customers.

Given the widespread nature of counterfeit products, anti-counterfeiting is a major component of managing brand integrity, to both safeguard the value of brands and to protect and maintain consumer safety.

As noted in statistics published on 24 July 2012 by the European Commission, there is a continuous upward trend in the amount of shipments suspected of violating intellectual property rights.⁶ According to the European Commission, the increase in detention cases involving products for daily use poses significant concerns regarding the potential risks for public health and safety. The economic drivers for counterfeiting are strong and it is becoming an increasingly important strategic issue internationally. The International Tax and Investment Center outlines that the two key drivers for illicit trade simply put, are consumers trying to save money and criminals trying to make money.⁷

As outlined in Box 1 below, in its 2007 report *The Economic Impact of Counterfeiting and Piracy*, the Organisation of Economic Cooperation and Development (OECD) provides an overview of the economic drivers and impacts of counterfeiting and piracy. This report also raises as a major concern, evidence linking counterfeiting and piracy to organised crime.⁸

Box 1: Economic drivers and impacts of counterfeiting

<p>Economic drivers – Counterfeiters and pirates target the supply of products where profit margins are high, taking into account the risks of detection, the potential penalties, the size of the markets that could be exploited and the technological and logistical challenges in producing and distributing products. On the demand side, consumers either:</p> <ul style="list-style-type: none">(i) – Unwillingly buy counterfeit or pirated products thinking they have purchased genuine items.(ii) – Knowingly buy lower priced counterfeit or pirated products. The degree to which consumers knowingly buy counterfeit or pirated products depends on the characteristics of the products concerned. For example, consumers who would knowingly purchase counterfeit garments without any hesitation may have no interest in purchasing counterfeit pharmaceutical products. <p>Economic impacts – Counterfeiting and piracy are longstanding problems which are growing in scope and magnitude. They are of concern to governments because of (i) the negative impact that they can have on innovation; (ii) the threat they pose to the welfare of consumers; and (iii) the substantial resources that they channel to criminal networks, organised crime and other groups that disrupt and corrupt society. They are of concern to business because of the impact that they have on (i) sales and licensing; (ii) brand value and reputation; and (iii) the ability of firms to benefit from the breakthroughs they make in developing new products. They are of concern to consumers because of the significant health and safety risks that substandard counterfeit and pirated products could pose to those who consume them.</p>
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⁶ Report on EU customs enforcement of intellectual property rights: Results at the EU border – 2011, Taxation and Customs Union, European Union 2012

⁷ International Tax and Investment Center, *The Illicit Trade in Tobacco Products and How to Tackle It*, page 4, 5 May 2010

⁸ OECD (2007) *The Economic Impact of Counterfeiting and Piracy*, page 16

In our operational experience, product manufacturers' anti-counterfeiting strategies are primarily based on the following two elements:

- Packaging design – shape, artwork and manufacturing difficulty.
- Constant change and SKU (stock-keeping unit) proliferation – items are under constant evolution and there can be up to several items per brand family.

Both of these elements addressed simultaneously – packaging design along with constant changes and updates – provide multiple hurdles for counterfeiters, making it more challenging for them to follow the market and replicate products.

In our experience, it is only by this constant evolution of the package that product manufacturers are able to increase the reproduction complexity or provide any type of defence to counterfeiting. If either of these two elements become static, a product becomes easier for counterfeiters to duplicate.

4 Impacts of a standardised tobacco packaging policy

This section outlines Amcor's view of the likely impacts of the policy initiative based on our practical understanding of international consumer packaging markets.

4.1 Our understanding of the purpose of the policy initiative

We understand that the Department of Health and Devolved Administration's overall objective of standardised packaging is to prevent advertising and/or promotion of tobacco products via their packaging. As outlined in the Consultation Paper, the purpose of the policy is to achieve the following:

- Discourage young people from taking up smoking.
- Encourage people to give up smoking.
- Help people who have quit, or who are trying to quit, to avoid relapse back to smoking.
- Reduce people's exposure to secondhand smoke from tobacco products.

We further understand that standardised tobacco packaging is seen as a possible contributor to the following health policy objectives:

- Reduce the appeal of tobacco products to consumers.
- Increase the effectiveness of health warnings on the packaging of tobacco products.
- Reduce the ability of tobacco packaging to mislead consumers about the harmful effects of smoking.
- Have a positive effect on smoking-related attitudes, beliefs, intentions and behaviours, particularly among children and young people.

4.2 How the policy initiative is intended to achieve this purpose

We understand that the policy initiative aims to achieve its purpose by removing tobacco industry logos, brands, colours and promotional text appearing on cigarette packets.

The specific standardised packaging requirements with respect to cigarette package design as outlined in the Consultation Paper and Impact Assessment would encompass the following:

- *Prescribed colour of internal and external packaging* – details would be set out by the Government in the future.
- *Standard colour and typeface of the text on the pack (including brand names)* – details would be set out by the Government in the future.
- *Branding, advertising or promotion* – regulation would prohibit branding, advertising or promotion on the outside or inside of packs, or attached to the package, or on individual

tobacco products themselves ('branding' includes logos, colours or other features associated with a tobacco brand).

- *Standard package shape and manufacture with particular materials* – details would be set out by the Government in the future.
- *Information and markings on the pack (brand and product name, quantity of product in the packaging etc.)* – the Government would set out the details on information and markings specifically allowed on packs in the future.
- *Wrapper* – any wrapper around the pack would need to be transparent and colourless, without any markings.

4.3 Amcor's view on the implications of the policy

Based on the policy's proposed requirements, we understand that the Government's aim is for all tobacco products to be of the same appearance. As such, consumers would be unable to perceive any significant visible difference between tobacco brands and products.

The potential practical effects of the Government's proposal would be the creation of a generic approach to tobacco packaging. Our view is that the potential implications of a generic approach would include:

- Lower barriers to entry to the counterfeit tobacco market.
- Creation of scale in the counterfeit market.
- Limited capacity to authenticate and differentiate between products.
- Greater health risk to consumers.
- Lost excise revenues.

Each of these potential implications is discussed below.

4.4 Lower barriers of entry to the counterfeit tobacco market

Tobacco packaging makes use of various requirements and specifications, which not only distinguish products but also minimise the potential for counterfeiting. These include:

- Different pack shapes and sizes.
- Different colours, shades of colours, types of varnishes and number of colours on a pack.
- Different types of packaging material (i.e. types of substrate).
- Other features such as embossing, debossing, hot foil stamping, etc.
- Serial coding.

However, under a generic packaging approach there would be:

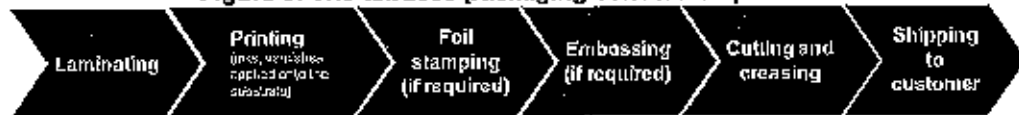
- One pack size.
- Same standard artwork.
- Static design features.

- Limited number of standard colours and varnishes.

Depending on the product packaging specification, the production process can involve several steps or stages.

An overview of the steps taken to convert processed carton board into tobacco packaging is set out in Figure 3.

Figure 3: The tobacco packaging conversion process



Tobacco packaging consists of boxes made from carton board or corrugated micro-flute board called 'substrate', which is usually multi-layered, and which are then printed and/or coated, and cut into carton 'blanks' (flat non-assembled cartons) as part of an overall process known as 'conversion'. These blanks are then shipped in flat form to the converter's (Amcor's) customers. The carton blanks incorporate creases, which enable the carton to be assembled or formed at the customer's site, at the same time as the customer's product is packed into the cartons.

Printing can then be undertaken by way of two different technologies:

- *Gravure*: a laterally reversed image is etched or engraved into the surface of a copper printing cylinder in cellular cavities. The printing cylinder rotates in a bath of ink and a flexible blade removes excess ink, leaving the surface clean, with ink only in the depressions. The carton board passes between the inked printing cylinder and a rubber/polymer coated 'impression cylinder'. The etched areas then release the ink to print on to the packaging material.
- *Offset Lithography*: the printing image is carried on a plate. The surface of the plate has areas which attract moisture and repel ink, as well as other (image) areas which attract ink (oil-based) and repel water. The plates are each attached to a cylinder and kept moist so that ink only adheres to the designated image areas. As printing progresses, the ink is transferred to a rubber/polymer 'offset' blanket, which is affixed to a second cylinder, and the ink is transferred in turn to print on to the packaging material.

The printed carton board can then be subject to a range of other processes including:

Embossing – this is an optional process, depending on customer requirements. A 'male' embossing plate, with a positive design attached (commonly a crest or a logo) is pressed down on to the substrate, while at the same time a 'female' counter plate is fixed underneath the substrate. The substrate is squeezed hard between the plates and is then permanently shaped in the image of the plates. The majority of folding carton converters (like Amcor) own embossing machines, which are a low-value commodity technology.

Foil stamping – under this process, certain metallic materials (commonly aluminium, for example) are lifted off a roll and applied to the carton board substrate in the required design. This can be used to apply a 'prestige' look to premium products, or even be used to coat entire folding carton blanks in certain circumstances. This can be undertaken at the same time as embossing, on the same machine, if required.

Cutting and creasing – this is undertaken via a single, standardised process. A die is created which has both cutting blades (that slice through the carton board) together with creasing blades (with blunted ends), which are used to create flat 'carton blanks' i.e. non-assembled cartons.

Shipping to customer – carton blanks are stacked on pallets, wrapped and then shipped to a customer's plant. The customer folds the carton blanks to create the finished folding carton box and packs their own finished product.

Most tobacco packaging products today are produced with Gravure technology. One of the main reasons for this is that consistently higher quality results can be achieved compared to Offset printing. In addition, some specific finishes cannot be achieved by the use of Offset technology (for example metallic inks and certain structural varnishes). The use of Gravure technology also requires a high level of printing expertise and know-how. One of the distinct advantages of using Gravure technology is that technical experts can easily recognise the printing process in which the pack was produced. The combination of these features is also utilised by law enforcement agencies. These agencies join with legitimate industry participants to capitalise on the intelligence offered by this technology to verify product authenticity, and identify and seize counterfeiting facilities in Europe.

A generic approach to tobacco packaging would significantly lower the barriers to entry for counterfeiters because:

- a) *The level of technical difficulty to print generic tobacco packaging would be substantially lower than it is for current branded packs* – the printing requirements are simplified from the multiple (and more technically complex) features to a simple, generic pack.

In other words, by reducing the complexity or number of elements or features on a pack the production or conversion process would be simplified from several process steps to one step only (depending on the number of colours or applications required for the design). In addition, due to the proposed simplified pack and lack of specialised process that would be required for production, a counterfeiter could easily source the printing of the tobacco pack from any number of offset printers already in the market.

- b) *Lower investment required for printing equipment and assets* – the upfront investment required would be significantly less compared to that required for current packaging.

For instance, a brand new inline gravure machine costs around £6.1 - £7.4 million. A converting machine plus infrastructure costs around £8.8 million, and a converting machine, plus infrastructure plus a new building to house these machines could cost approximately £16.9 million. Reduced technical requirements would mean that market entry becomes even more attractive, less specialised and less secure, especially if second-hand equipment is purchased, and where the requirements for installation space are much smaller. For instance, a second-hand offset machine would typically cost around £43,800 - £91,100 and could easily be installed by counterfeiters in a domestic setting e.g. a garage.

In addition, converting equipment is readily available and the lead times for acquisition are relatively short - around nine months on average.

This policy initiative would enable counterfeiters to enter a less complex marketplace at a lower investment cost and/or access a wider pool of established printers who could fulfil the proposed standardised and simple print requirements.

It is not clear whether future counterfeit operators would be located domestically in the UK, or source products from overseas. However, it is clear that the scope of printers and professional printing equipment available to produce the proposed alternative packaging would substantially increase, making it easier for counterfeiters to reproduce the proposed generic design.

We understand that the specific details of the proposed design features are under development and consultation would occur regarding these details in the future. It is important to note that it would be extremely difficult for the Government to regulate designs that aim to address counterfeiting. This is particularly due to the fact, as noted in Chapter 3,

that anti-counterfeiting measures need to involve design features, constant change and SKU proliferation.

4.5 Creation of scale in the counterfeit market

4.5.1 Drivers for scale

The proposed uniform requirement for tobacco packaging would provide the opportunity and incentives for the creation of scale in the counterfeit tobacco market in the UK.

The UK tobacco market would effectively transition from a market with a large number of brands and distinct product differentiation to a single generic pack for all brands. For example, in the UK, there are currently approximately 300 to 350 active tobacco product SKUs with six different tobacco pack sizes.⁹ As noted previously, format and design of tobacco packaging varies and is also regularly updated. The designs are deliberately complex in order to mitigate against replication.

As the look and feel of tobacco packaging would be uniform under the proposed policy, and the only distinguishing features of the pack would be the brand and product name, this would create a single, generic tobacco brand in the UK market. As a result, the counterfeit tobacco market would increase substantially in the UK. The parameters for participation in the market would be reduced from the need to recreate multiple pack designs and formats, to only having to recreate one uniform pack design and format.

Based on our international experience of assisting clients in mitigating against counterfeit product, our view is that the proposed move to a generic approach to tobacco packaging would provide an increased opportunity to create scale in the counterfeit market for tobacco products in the UK as it transitions from multiple SKUs to one generic brand.

Counterfeit tobacco is an extremely lucrative market given the high rates of taxation applied to tobacco products. Therefore any initiative that creates scale in the current market must be carefully considered.

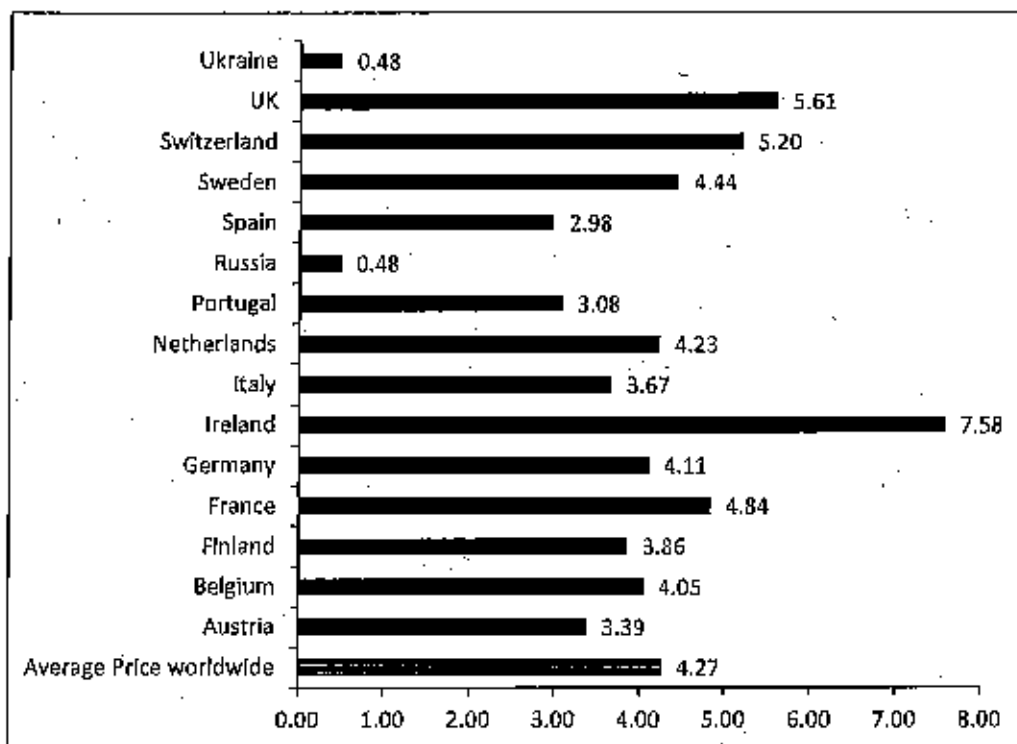
4.5.2 Implication of scale – level of organisation in counterfeit market likely to grow

The combined potential impact of reduced barriers of entry to the counterfeit tobacco market (outlined in section 4.4) and the creation of scale (discussed above), implies that the level of activities in the counterfeit market would also increase. There is evidence internationally of the involvement of organised crime in the illicit and counterfeit tobacco market. Given the relatively high rates of taxation applied to tobacco products, counterfeit tobacco is an extremely lucrative market, in which significant profits can be made.

Partnered with the potential creation of scale, is the relative appeal generated by the high price of cigarettes sold in the retail market. A benchmark of tobacco prices per pack across different countries shows that the UK is one of the highest-priced markets in Europe. As illustrated in Figure 4, based on the weighted average price per pack, the UK's average retail price reaches £5.61 per cigarette pack, exceeded only by Ireland at £7.58 per cigarette pack.

⁹ Euromonitor International, tobacco market size statistics, 2011

Figure 4: Average retail price per cigarette pack per country in £ in 2010¹⁰



There is strong evidence of major involvement of organised crime in the illicit tobacco market internationally. The issue of cigarette smuggling was recently identified by Europol (the European Law Enforcement Agency) in its public information paper *EU 'Organised Crime Threat Assessment (OCTA)'*.¹¹

Organised crime groups based in the EU are increasingly active in cigarette smuggling, seen as an attractive alternative to drug trafficking because of its lower penalties and large profits.

Member States witness both large and small scale cigarette smuggling...The size of individual consignments varies according to the means of transportation, from small amounts carried by passengers on buses, trains or ferries, to 40 ft. containers each capable of holding 10 million cigarettes.

In order to conceal consignments and their origin, organised crime groups make use of transshipment points before entry to the EU. Criminals attempt to move goods through the free trade zones of Dubai and Jebel Ali (UAE) and Port Said (Egypt), or through regions in which the EU law enforcement community has weaker cooperation arrangements, including Indonesia, the Northern Philippines and areas of the Republic of Cyprus in which the Government of Cyprus does not exercise effective control.

Of particular relevance to the context of the UK, Europol also highlights that the target markets for smuggled cigarettes are countries with comparatively high taxes on tobacco, and that the EU and trafficking of counterfeits originate mainly from China.

¹⁰ Sources: for European countries: Tobacco Manufacturers' Association, EU- EU Commission/TDC; others: Euromonitor International, market sizes (volume and value), 2010

¹¹ Europol, *EU 'Organised Crime Threat Assessment'*, 2011 available at <http://www.europol.europa.eu/>

The geography of these markets is spreading. For example, the recent International Tax and Investment Center report highlighted that many illicit factories had been detected within the EU undermining "past beliefs that only lower income, corrupt countries with weak legal structures are the source of illicit manufacturing"¹².

The same report also highlighted that "developments in recent years show that organized crime will supply any country in the world as long as there is a demand for illicit product and the potential for profit exists"¹³.

4.6 Limited capacity to authenticate and differentiate between products

As packaging experts, we are acutely aware that one of the key roles of packaging is to ensure consumers and others can recognise the authenticity of a product. Moving to generic packaging would significantly reduce the role of packaging to communicate product authenticity.

It would also fundamentally change the role that packaging plays in enabling consumers to authenticate and differentiate between tobacco products/brands. Whilst we recognise that this is an aim of the Government's policy initiative, as we have previously outlined in Chapter 2, packaging plays an important role in communicating visual cues and detailed information to consumers about the products they purchase.

Therefore, a further implication of the generic approach to tobacco packaging would be to further reduce the capacity of:

- Consumers; to verify the authenticity of a product they are purchasing,
- Manufacturers; to include anti-counterfeiting cues, e.g. specific packaging designs, and
- Enforcement authorities; to recognise counterfeit tobacco products.

It is also important to consider that a move to standardised tobacco packaging is intended to eradicate the perception of value that consumers place on different brands and types of products. An implication of this loss of value perception is that consumers will increasingly view tobacco products as a commodity, where the only key point of differentiation is price. This would increase the incentive for and the participation (intentional and unintentional) in the illicit tobacco market by tobacco consumers in the UK.

In our experience, and based on standard economic theory, the introduction of standardised packaging would have several market effects:

- Product differentiation within the market would reduce.
- In the absence of product differentiation, consumers would be more willing to switch products, leading to higher price competition and lower prices.
- Market entry of non-branded cigarettes would become easier.
- Illicit trade in cigarettes would then increase because:
 - o Contraband cigarettes would be perceived as more attractive to some consumers.
 - o Simpler packaging requirements would result in counterfeit cigarettes being easier and cheaper to produce – leading to an increase in supply.

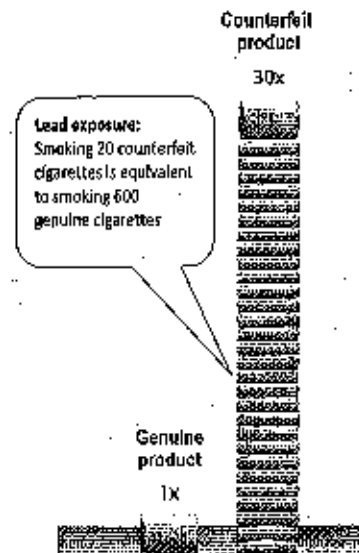
¹² International Tax and Investment Center, 'The Illicit Trade in Tobacco Products and How to Tackle It', page 10

¹³ *ibid.*, page 11

4.7 Greater health risk to consumers

Counterfeit cigarettes are not produced under regulated conditions and as such there are no government imposed controls over hygiene, ingredient composition or the level of toxic materials. An increase in the availability of counterfeit tobacco products in the UK would be likely to increase health risks to consumers arising from unregulated products.

Figure 5: Lead exposure



There is evidence from the UK with respect to the ingredient composition and level of toxins in counterfeit cigarettes. Producers of the 2010 BBC documentary, *'Smoking and Bandits'*¹⁴ bought counterfeit tobacco in Glasgow, Scotland and had the contents forensically analysed with the following results:

- The lead content in counterfeit rolling tobacco was 30 times higher than in the genuine products (as Figure 5 demonstrates).
- Counterfeit branded cigarettes contained 17 times the amount of lead when compared to the genuine products.
- Levels of poisons were in some cases six times higher than found in the genuine products.

In early 2010, the Chief Trading Standards Officer for the Lancashire County Council in the UK warned of the possibility of counterfeit cigarettes containing sawdust, rat droppings or other foreign substances.¹⁵

A recently published report from the International Tax and Investment Centre, *'The Illicit Trade in Tobacco Products and How to Tackle It'*, highlights the public health issues associated with the illicit trade in tobacco, which are outlined in Box 2.

¹⁴ BBC Documentary, *Smoking and the Bandits*, January 2011 – see <http://news.stv.tv/scotland/west-central/221538-Investigation-reveals-true-dangers-of-counterfeit-tobacco/>

¹⁵ BBC News, Alert on 'rat dropping' tobacco, 17 Jan 2010

Box 2: Public health issues associated with illicit tobacco¹⁶

The illegal trade in tobacco undermines public health initiatives to curb tobacco consumption by making cheaper cigarettes available in an unregulated environment where they may be sold to vulnerable groups such as minors. Unlike legal tobacco products which are manufactured and sold in compliance with strict regulatory requirements such as health warnings and maximum tar and nicotine levels illicitly traded products, especially counterfeit, are partly or fully outside of this regulatory framework. Research conducted by the Dutch National Institute for Public Health and the Environment (RIVM) demonstrates that counterfeit cigarettes contain cadmium levels that are five times higher and lead levels that are six times higher than in genuine cigarettes. The Centre for Public Integrity's investigation *Tobacco Underground* says: "many of the smokes are made from the lowest quality tobacco, full of stem and sawdust, and spiked with unusually high levels of nicotine. Tests reveal that counterfeit cigarettes carry a heavy load of products that could further shorten even a heavy smoker's life: metals such as cadmium, pesticides, arsenic, rat poison and human faeces." The WCO has reported seizures of counterfeit cigarettes containing mites and identified unprecedented methods of concealment (eg. in barrels of titanium sponge containing toxic chlorine gas) which posed serious health risks for the law enforcement officers charged with inspecting and seizing the illicit cigarettes from inside these containers, and which therefore could have been extremely hazardous if smoked by a consumer.

4.8 Lost excise revenue

Illicit trade of tobacco products is a major issue internationally and cigarettes are considered by the World Health Organisation to be the most widely smuggled legal consumer product globally.¹⁷ The International Tax and Investment Centre indicated that the total loss of revenue globally was estimated to be US\$40 billion in 2010.¹⁸ Europol estimates it was around €10 billion in Europe in 2010.¹⁹

Figure 6 shows the illicit cigarette trade levels as a % of the total market in selected countries.

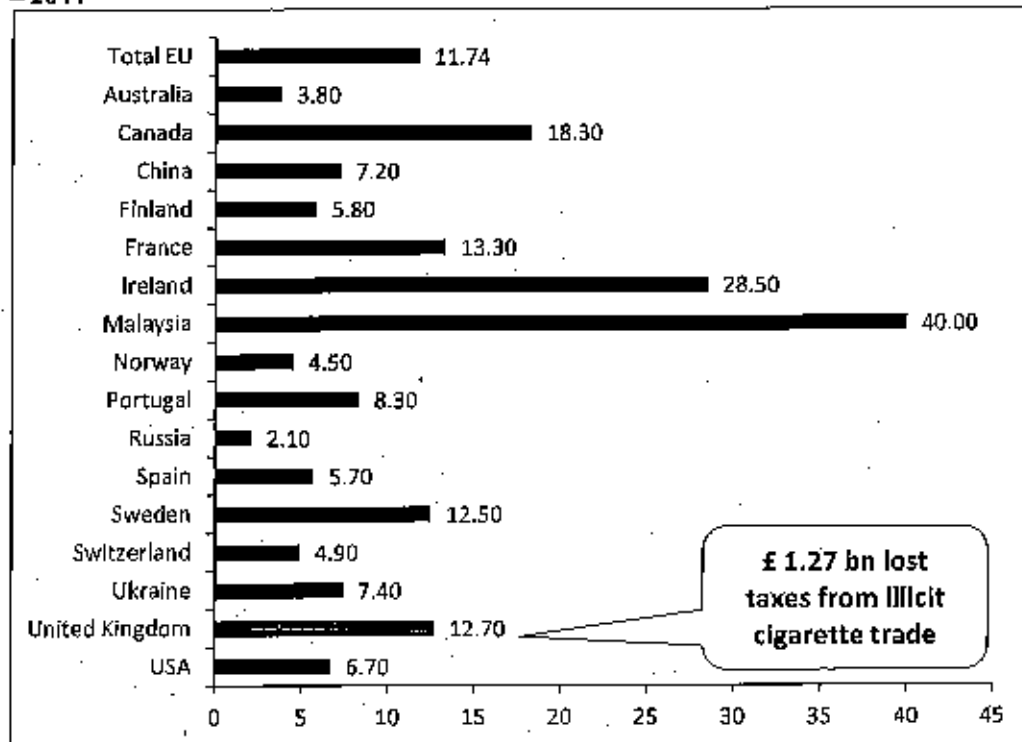
¹⁶ International Tax and Investment Center (2011) *The Illicit Trade in Tobacco Products and How to Tackle It*

¹⁷ World Health Organisation 2009b, Report on the global tobacco epidemic, Chapter 16, Geneva

¹⁸ International Tax and Investment Center, *The Illicit Trade in Tobacco Products and How to Tackle It*, page 3

¹⁹ Europol 'EU Organized Crime Threat Assessment Report', page 25

Figure 6: Illicit (illegal) cigarette trade as a % of total market and lost taxes as a result – 2011²⁰



Duty on sales of cigarette packs contributes significantly to governments' tax income. In the UK, illicit cigarette trade cost the public purse an estimated £1.27 bn in 2011.²¹

As we have outlined, we strongly believe that the proposed move to a generic approach to tobacco packaging would result in an increase in the level of counterfeit tobacco products available on the UK market. Moving to a generic approach to tobacco packaging will significantly alter the underlying market structure and incentives for participation in the counterfeit tobacco market. This is likely to lead to an increase in the level of activity in the counterfeit market.

As such, there is a significant risk that the predicted increased level of illicit trade would further increase the tax losses suffered by the Government.

²⁰ Euromonitor International, Illicit trade in % of total market size, 2011

²¹ Euromonitor International, research sources: trade sources/national statistics: This calculation is based on an illicit trade volume of 6.526 billion sticks in 2011, an average total duty (excl. VAT) of £4.13 per premium pack of 20 cigarettes, £3.96 per mid price pack of 20 cigarettes, and £3.84 per economy pack of 20 cigarettes.²¹ According to Euromonitor International data, premium, mid price and economy cigarettes held a 23%, 12% and 65% share of market, respectively in 2011

5 Conclusion

Our experience in operating in the global consumer packaging industry provides us with a unique insight into how packaging works and how it can help to ensure the integrity and authenticity of products, including tobacco products.

Whilst we acknowledge and support the health-related outcomes that the Government is trying to achieve through the standardised packaging of tobacco product policy, we are strongly of the view that it would have significant unwanted and negative implications. Most importantly, we believe that the potential impacts would be counterproductive to the key objective of the policy: to improve public health by reducing smoking and its harmful effects.

The effect of the proposed policy would be to create a generic approach to the packaging of cigarettes in the UK. In creating a generic pack, consumers would lose the ability to recognise the authenticity of products and to perceive value.

The practical implications of this proposal are likely to be a significant increase in the level of counterfeit tobacco and growth in the level of illicit trade in tobacco products in the UK. This would occur due to:

- *Lower barriers of entry to the counterfeit tobacco market*

Moving to a generic approach to packaging would lower the barriers of entry for counterfeiters, as there will only be one design to replicate.

- *Creation of scale in the counterfeit market*

A generic approach to packaging would provide an increased opportunity for achieving economies of scale in the counterfeit market. This, coupled with the appeal and possibility of high margins that can be earned from highly-taxed tobacco products, could increase the level of organised crime in the illicit tobacco market in the UK.

- *Limited capacity to authenticate and differentiate between products*

As packaging experts, we are acutely aware that one of the key roles of packaging is to ensure that consumers and others can recognise the authenticity of a product. Moving to generic tobacco packaging would affect a consumer's capacity to verify the product they are purchasing, a manufacturer's ability to include anti-counterfeiting cues and enforcement authorities' ability to recognise counterfeit products. Furthermore, it would drive consumers to see tobacco as a commodity with the only point of difference being price, resulting in a price driven market.

The possible impacts that could result from the proposed legislation factors outlined in this submission include:

- *Greater personal risk to consumers*

An increase in the availability of counterfeit tobacco products in the UK would lead to greater personal health risks to consumers as counterfeit products are unregulated and there is no control over hygiene, ingredient composition and level of toxic materials.

- *Lost excise revenue*

Increased counterfeiting would result in a further loss of taxes, effectively shifting legal tax dollars to counterfeiters.

We do not consider the measures currently in place for limiting counterfeit packaging in the UK to be adequate in order to manage or discourage the level of counterfeit tobacco trade.

The adoption of a generic approach to tobacco packaging (with the intended aim being that consumers' would not perceive any difference between tobacco products or brands) would inevitably change the underlying economic structure of the UK's counterfeit tobacco market.

As outlined herein, if passed, the proposed policy is likely to result in a substantial escalation in the level of counterfeit tobacco products in the UK, with the associated adverse impacts on consumers, the wider community and Government revenues.

As such, we submit that the proposed standardised packaging of tobacco products should not be adopted.

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[REDACTED]

From: [REDACTED]
Sent: 05 August 2014 11:12
To: Tobacco Packaging
Subject: Standardised cigarette packaging

Dear Sirs – I really think it is a step too far to legislate that cigarette packaging be standardised so that brands cannot be recognised.

It must be about 50 years since we, the public, were first informed of the health risks associated with smoking with increasing emphasis over the ensuing decades. If the message hasn't got through by now – it never will. I just cannot imagine that 'blank' packets will help at all. To pursue an idea which I consider pointless is therefore also pointless – and, therefore, I oppose the proposal [REDACTED]

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Consultation on the introduction of regulations for standardised packaging of tobacco products

Response from Greater Manchester Tobacco Alliance

6th August 2014

The Greater Manchester Tobacco Alliance is a partnership bringing together local authority public health commissioners, stop smoking service providers, Tobacco Free Futures, Public Health England, trading standards officers, GM Fire Service and other partners who have a pivotal role to play in reducing harm caused by tobacco. The Greater Manchester Tobacco Alliance works alongside the Greater Manchester Tobacco Commissioners Group to share learning, expertise and harness collective enthusiasm to tackle tobacco issues.

The Alliance, along with a range of local and regional partners, has worked collaboratively over a number of years to tackle smoking prevalence in Greater Manchester and is wholly in favour of taking action to reduce harm caused by tobacco. This includes taking a strong position in support of standardised packaging for all tobacco products.

The Alliance has previously stated that there is strong support for standardised tobacco packaging in Greater Manchester. As part of a 2008 campaign at least 27,000 public responses were collected in Greater Manchester and sent to government in support of the introduction of plain, standardised tobacco packaging.

The Tobacco Alliance has been supported by the Greater Manchester Tobacco Commissioners, Greater Manchester Directors of Public Health and other partners.

Consultation Question 1: Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

- The Alliance believes that standardised packaging should be introduced on the basis that the introduction of standardised packaging would be likely to:
 - Lead to a reduction in the numbers of young people starting to consume tobacco; and
 - Together with other policy initiatives, contribute significantly over time to a reduction in smoking prevalence rates.
- Smoking remains the major preventable cause of premature death and disease in Greater Manchester, with half of all long term smokers dying from their addiction.¹
- Tobacco use is the leading cause of premature death and preventable disease. In the North West, 13,000 people die each year from smoking related illnesses – 35 deaths every day.²
- The Chantler Review reported that the evidence does indeed support this conclusion. As Sir Cyril Chantler stated in his covering letter to the Secretary of State: *"it is in my view highly likely that standardised packaging would serve to reduce the rate of children taking up smoking"* and *"the body of evidence shows that standardised packaging, in conjunction with the current tobacco control regime, is very likely to lead to a modest but*

¹ ASH Smoking Statistics 2014 http://www.ash.org.uk/files/documents/ASH_93.pdf

² Public Health England Local Tobacco Control Profiles <http://www.tobaccoprofiles.info/profile/tobacco-control/data#gid/1000110/pat/6/at/102/page/9/par/E12000002/are/E06000049>

important reduction over time in the uptake and prevalence and thus have a positive impact on public health."

The Alliance considers that the case for standardised packaging has been made and that the Government should take swift action on this intervention and resist any efforts by the tobacco industry or others to delay production of the final Regulations.

Consultation Question 2: Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging, that you wish to bring to our attention?

The Alliance would draw the Government's attention to new data that has been submitted separately by Tobacco Free Futures. In particular:

- Support for standardised packaging is at an all-time high with 64% of people in the North West in favour and only 10% opposing³. Nationally, public support is equally high, and perhaps surprisingly more people that smoke support standard packs (32%) than oppose (30%) with the remainder ambivalent or undecided.
- 81% of young people in the North West think that the Government should do more to tackle smoking.⁴
- The tobacco industry has claimed that tobacco consumption in Australia has risen since the introduction of standardised packaging. Independent evidence does not support this proposition.

Consultation Question 3: Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?

- The Alliance welcomes the regulations. The Alliance supports suggestions to strengthen the regulations to achieve the desired outcome of protecting children from the harm of smoking and ensure they are possible to enforce once enacted.
- We are satisfied that the existing measures along with those requirements that are being introduced by the EU Tobacco Products Directive should not make the counterfeiting of standardised cigarettes and packets any easier than they currently are. The Alliance would like the Government to amend the regulations so that the regulations also apply to specialist tobacco products including cigars and cigarillos and the outer sleeve of multi packs. There is no mention in the legislation of chewing tobacco and other emerging tobacco products such as blunts. We believe that all tobacco products should be included within the regulations. If not, this might be interpreted as endorsement of the idea that they are in some way less harmful to health.
- We also would like you to specify that this applies to all products regardless of the dimensions of cigarette and tobacco packets as this may be useful in preventing any attempt to circumvent the intent of the regulations by introducing an element of branding.

³ YouGov survey for ASH, March 2014. Fieldwork undertaken between 5th-14th March 2014

⁴ YouGov Survey. Fieldwork undertaken between 29th October - 1st November 2010

Consultation Question 4: Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?

- The Alliance welcomes the overall recommendations of the consultation-stage impact assessment particularly its statement that the implementation of standardised tobacco packaging is worth pursuing now and that the cost of delaying a decision is too great to the public's health and the economy.
- The Alliance welcomes the decision to review the policy after five years which will allow time for early impacts to become clear although it needs to be borne in mind that long term impacts such as reduced youth uptake, reductions in smoking prevalence and improvements in the public's health will take several years to become apparent.
- Public Health England predicts that total savings from the introduction of standardised packaging across Greater Manchester would be up to £32 million.

We are of the opinion that standardised packaging regulations should be accompanied by other government action and it is therefore important that the UK Government gives careful thought to how to maximise the public health benefits of standardised packaging, by:

- Implementing a national mass media campaign around the time that standardised packaging comes into effect
- Supporting enforcement through regional partnerships against illicit trade, and work on illicit trade by HMRC and the Border Agency
- Considering tax rises on tobacco products particularly to counteract any possible negative effects from brand-shifting or price cutting
- Ensuring that national budget allocations to Greater Manchester reflect the need to provide complementary services on tobacco control and smoking cessation



Department
of Health



Llywodraeth Cymru
Welsh Government



The Scottish
Government
Riaghaltas na h-Alba



Department of
Health, Social Services
and Public Safety
www.dhsspsni.gov.uk

Consultation on the introduction of regulations for standardised packaging of tobacco products – Response Form

a. Are you responding (required):

- As a member of the public (go to question b)
- As a health or social care professional (go to question b)
- On behalf of a business or as a sole trader (go to question c)
- On behalf of an organisation (go to question c)

b. Please provide your details and contact information:

Name of respondent (required)

Address of respondent (required):

Contact email address (required):

Now go to question f

c. Please provide your organisation's details and contact information:

Name of organisation (required):

Name of person providing submission (required):

[REDACTED]

Job Title (required):

Public Health Programme Manager

Contact address of organisation (required):

Luton Borough Council, Public Health, 4th Floor Unity House, 111 Stuart Street,
Luton LU1 5NP

Contact email address (required):

[REDACTED]

Is this the official response of your organisation? (required):

Yes

No

d. If you are responding on behalf of a business, what type is it?

Tobacco retailer (supermarket)

Tobacco retailer (convenience store)

Tobacco retailer (other type of shop or business)

Specialist tobacconist

Duty free shop

- Wholesale tobacco seller
- Tobacco manufacturer
- Retailer not selling tobacco products
- Pharmaceutical industry
- Business involved in the design or manufacture of packaging
- Other (please provide details below)

If other, please tell us the type of business:

e. If you are responding on behalf of an organisation, what type is it?

- NHS organisation
- Health charity/NGO (working at national level)
- Local Authority
- Local Authority Trading Standards or Regulatory Services Department
- Local tobacco control alliance
- Retail representative organisation
- Industry representative organisation
- Other type of business representative organisation
- University or research organisation
- Other (please provide details below)

If other, please tell us the type of organisation:

f. Does your response relate to (required):

United Kingdom

England only

Scotland only

Wales only

Northern Ireland only

g. Do you, or the business or organisation you represent, have any direct or indirect links to, or receive funding from the tobacco industry? (required)

No

Yes (please describe below)

If yes, please describe:

h. If you do not wish your details to be identified in the summary report of consultation responses, please tick this box

Consultation questions

1. Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

Tobacco Free Luton is a member of the Smokefree Action Coalition and supports their response to the consultation

2. Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging that you wish to bring to our attention?

Tobacco Free Luton is a member of the Smokefree Action Coalition and supports their response to the consultation

3. Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations as drafted?

Exemption for tobacco products other than cigarettes and hand-rolling tobacco

Tobacco Free Luton would like to see all tobacco products come under the new regulations, including niche products such as shisha and smokeless tobacco.

Shisha

Much of the shisha used in the UK contains tobacco and produces both negative cigarette-like health effects such as increase in cancer, low birth weight and lung function and shisha specific health effects such as carbon monoxide poisoning.

There is growing evidence that shisha is used by young people, both within the communities where it has a cultural history and within other populations though large scale national surveys in the UK are lacking. For example, a survey by Jawad et al in 13-17 year olds shows that shisha use outstrips cigarette smoking at 12% [JAWAD, M., LEE, J. T., WILSON, A. et al. (2012) Waterpipe and cigarette smoking among secondary school students in London: a comparison of prevalence, beliefs, cessation and predictors [unpublished]]. A survey of young people aged 16-25 in Luton found that of the 194 respondents (weighted towards South Asian communities), 7% said they smoked shisha daily and 24% said they smoked shisha a few times a week.

Smokeless tobacco products - prevalence and health

Public Health conducted a Health Needs Assessment of smokeless tobacco products in 2013. These products are used by women and young people, are culturally widely acceptable amongst South Asian communities and many users are not aware that they contain tobacco. National prevalence is very low, however in localities where these communities are present, prevalence and health inequality is considerable. Niche tobacco products must be included in all tobacco policy and regulation enforced to help reduced inequality in these communities and support the NICE guidance on smokeless tobacco use <http://www.nice.org.uk/guidance/PH39>

Smokeless tobacco accounts for a significant and growing portion of global tobacco use, especially in South Asia. Estimates suggest that there are approximately 300 million users of the products worldwide and that within the next 5 years this will increase by 24% [ASH (2013) Towards a generation free from tobacco. Unpublished Conference <http://www.ashscotland.org.uk/conference> (accessed September 2013)]. More than a third of tobacco consumed is smokeless industrially manufactured Paan Masala and Gutka, and numerous other products, including tooth powders. Over 25 distinct types of smokeless tobacco products are used worldwide, including both commercialised and local or home-grown products, used orally and nasally. Some products combine tobacco with large amounts of chemical additives and other plant material that may have additional risk to the user. Most importantly, smokeless tobacco products contain many of the toxins and carcinogens found in cigarettes, and therefore resulting in many of the same diseases caused by smoking.

A prospective cohort study found that smokeless tobacco use was associated with mortality similar to that of cigarette smoking and with increased oral cancers, India having one of the highest rates [Centers for Disease Control and Prevention. (2004) Tobacco or health: a global status report. India. <http://www.cdc.gov/tobacco/global/> (accessed September 2013)].

South Asian women, older age groups, individuals from lower socioeconomic groups, and people of Bangladeshi origin are more likely to use smokeless tobacco. Several health problems can arise from use, including nicotine addiction, mouth and oropharyngeal cancer, dental disease, cardiovascular disease, and problems in pregnancy and after child birth (eg, fetal anaemia and stillbirth). However, there is low awareness of these health risks among health professionals and the wider public.

The use of these smokeless tobacco products is thought to be one of the main reasons why South Asian women are nearly 4 times more likely to develop oral cancers than women from other ethnic groups in England and 2.1 times more likely to have pharyngeal cancer compared with other women [Moles DR, Fedele S, Speight PM et al. (2008) Oral and pharyngeal cancer in South Asians and non-South Asians in relation to socioeconomic deprivation in South East England. *British Journal of Cancer* 98 (3): 633–35.].

In England, the highest proportion of self-reported use of chewing tobacco products is among Bangladeshi women (16%), followed by Bangladeshi men (9%), Indian

men (4%) and Pakistani men (2%) [The NHS Information Centre (2006) Health survey for England 2004. Volume 1: The health of minority ethnic groups. Leeds: The NHS Information Centre. <https://catalogue.ic.nhs.uk/publications/public-health/surveys/hea-surv-ethn-min-eng-2004/hea-surv-ethn-min-eng-2004-rep-v3.pdf> (accessed September 2013)]. However, it is important to note that there may be a degree of underreporting among these groups. For example, one study found that 15% of Bangladeshi women under-reported their personal tobacco use [Roth, M.A., Aitsi-Selmi, A., Wardle, H. and Mindell, J. (2009) 'Under-reporting of tobacco use among Bangladeshi women in England', *Journal of Public Health*, 31, pp. 326–34.]. Findings from the Health Survey for England suggested similar levels of under-reporting. Self-reported use of all tobacco products was 44% and 17% among Bangladeshi men and women respectively. However, when respondents with a saliva cotinine level indicative of personal tobacco use were also included, the estimates rose to 60% and 35% respectively [Sproston, K. and Mindell, J. (eds) (2004b) *Health Survey for England 2004: The health of minority ethnic groups: Summary of key findings*, Leeds: The Information Centre for Health and Social Care. <https://catalogue.ic.nhs.uk/publications/public-health/surveys/hea-surv-ethn-min-eng-2004/hea-surv-ethn-min-eng-2004-rep-v3.pdf> (accessed September 2013)].

Young people and smokeless tobacco

Traditionally smokeless tobacco has been more prevalent in older age groups; however, evidence shows increasing use of smokeless tobacco products by young people of South Asian origin in the UK. In addition evidence from the US has shown that adolescent boys who use smokeless tobacco products have a higher risk of becoming cigarette smokers within four years and that smokeless tobacco products have been marketed to youth through a number of channels, including sporting events that are widely attended by children [Tomar, S, "Is use of smokeless tobacco a risk factor for cigarette smoking? The U.S. experience," *Nicotine & Tobacco Research* 5(4):561-569, August 2003].

For years, tobacco companies have marketed smokeless tobacco products as a way to use tobacco in places or situations when smoking is not allowed or is not socially acceptable. Seeing the downward trend in smoking rates and the increasing popularity of smokeless tobacco products, cigarette companies have released their own smokeless tobacco products that draw on the brand names of their popular cigarettes to attract new users. People purchasing smokeless tobacco would not be easily able to tell that the product contained tobacco because of the lack in health warning. These products are more often cheaper compared to cigarettes so are more appealing and attractive to younger users.

The problem of the easy availability and increasing use of smokeless tobacco products by young people of South Asian origin in the UK needs to be addressed. It is almost always present in the South Asian home. For example, Paan is readily and cheaply available to both children and adults. Research in Bangladeshi young people, aged 12–18 years in east London, found high levels of regular paan use for both the tobacco-containing and tobacco-free forms. Of concern is that only a third of these young people knew of the association between tobacco-containing paan and

cancer. A similarly high prevalence of use has also been shown among south Asian adults in the UK.

The niche tobacco pilot project in Bradford and Kirklees in 2011 (Trading Standards Niche Tobacco Education Project Leeds) reported that almost 40% of participants in the project were users of niche tobacco [Trading Standards Niche Tobacco Project (Leeds) http://www.val.org.uk/_documents/Niche-tobacco-project-info.pdf (accessed September 2013)]. This is significantly higher than the national average of niche tobacco users. With a large BME community in a number of districts in the county, anecdotal evidence from those workshops suggests that many younger members are actively participating in shisha smoking sessions in the family environment, and are unaware of the health risks associated with this and other niche products.

The workshops found that children as young as 8 were participating in using niche tobacco at celebrations such as Eid and weddings. The project also identified that unlike cigarette smoking older members of the community are tolerant and supportive of niche tobacco usage due to the cultural significance of the products and the lack of awareness about the risks associated with using them. Chewing tobacco is also prevalent among teenagers and children in these communities due to the easy availability of these products [Longman JM, Pritchard C, McNeill A et al. (2010) Accessibility of chewing tobacco products in England. *Journal of Public Health* 32 (3): 372–8.]. The brightly coloured packaging and sweet flavours of some products suggest that they are targeted at young consumers.

4. Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?

Tobacco Free Luton is a member of the Smokefree Action Coalition and supports their response to the consultation.

Thank you for participating in this consultation.

The Department of Health and Devolved Administrations will only contact you should we seek further information about your response.

How to get involved in the consultation

The consultation will run for 6 weeks, from 26/06/14 to 07/08/14. Responses are invited from any interested group, company or person.

Respondents are encouraged to provide their views online, but responses can be made in any of the following ways:

Completing the online form on the Department of Health website at:

[http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-](http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1)

[1](http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1)

- **Filling in the response form by downloading it at:**

<https://www.gov.uk/government/consultations>

- **Emailing your response to:**

TobaccoPackaging@dh.gsi.gov.uk

- **Posting your response to**

Department of Health
Standardised Packaging Tobacco Consultation
PO Box 1126
CANTERBURY
CT1 9NB

[REDACTED]

From: [REDACTED]
Sent: [REDACTED]
To: [REDACTED]
Subject: [REDACTED]

Standardising tobacco packaging has severe unintended consequences and there is no credible, or new, evidence that suggests this arrogant action will achieve any improvement other than to **increase costs, reduce competitiveness, reduce brand awareness and cause confusion** whilst at the same time **increasing the ability of tobacco smugglers to avoid VAT payments** even more than at the present level by increasing the levels of smuggled contraband goods and making the UK a more forbidden place to live and enjoy.

I fully understand that cigarette and pipe tobacco related products can be traced as a cause for some medical problems but education is a more powerful and productive vehicle.

We have seen a major reduction in young people smoking in the past ten years and this trend is continuing.

I am amazed that waste in the NHS is not being tackled, e.g. as a result of a medicine review last week with my doctor he stopped two repeat prescription items that have been flagged as potentially problematic, I returned more than 200 heat-foiled tablets only to be told they would be '*dumped*' rather than re-issued, I don't know what the cost was but this was 100% waste.

I look forward to reading the results of the consultation and remind you that I strongly disagree with just doing something for the sake and appearance of doing something even though it is wrong.

[REDACTED]

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**CONSULTATION ON THE INTRODUCTION OF REGULATIONS FOR THE
STANDARDISED PACKAGING OF TOBACCO PRODUCTS**

ITPAC CONSULTATION SUBMISSION

A. ITPAC ASSOCIATION

ITPAC is a trade association which represents the interests of 14 distributors of imported tobacco products in the UK. The Association's Core Members consist mainly of small and medium sized private companies, most of whom employ less than 50 people. These suppliers focus on specialist tobacco product ranges such as cigars, pipe tobacco and snuff.

ITPAC's Core Members are: Bull Brand Ltd, Davidoff Distribution (UK) Ltd, Gawith Hoggarth TT Ltd, Heintz van Landewyck, Hunters & Frankau Ltd, Karelia Tobacco Company (UK) Ltd, Ritmeester Cigars UK Ltd, Samuel Gawith & Co. Ltd, Scandinavian Tobacco Group UK Ltd, Tabac World Ltd, Tor Imports Ltd.

ITPAC's Associate Members, in their capacity as distributors of imported tobacco products, are: British American Tobacco UK Ltd, Gallaher Ltd (a member of the JTI Group of companies) and Imperial Tobacco UK Ltd, but they are represented separately by the Tobacco Manufacturers' Association.

The name and address of the respondent is:

[REDACTED] Imported Tobacco Products Advisory Council,
[REDACTED] Hampshire GU30 7LA

Contact email address [REDACTED]

Contact Phone Number [REDACTED]

B. RESPONSES TO CONSULTATION QUESTIONS

1. Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

(i) Timetable

The Chantler Review was required to be completed in 3 months (reporting by March 2014). The amount of key information (from all sides) which was required to be gathered on this critically important subject resulted in a particularly compressed timetable. Against this, the Australian Government, which introduced Standardised Packaging (SP) on 1st December 2012, has announced that it will undertake a review of the effects of that measure in December 2014. Clearly, if the Australian Government considers that a 2 year period since implementation is appropriate in order to arrive at a realistic level of compelling evidence, the Chantler Review's ability to do so in such a short period of time must be questioned.

(ii) Evidence from Australia

The Chantler Review disregards evidence from Australia which so far demonstrates that SP has failed to:

- reduce the volume of tobacco sales
- reduce smoking prevalence
- deter young people from smoking

Indeed, the same evidence, ignored by the Chantler Review, shows that SP has resulted in a material growth in the illicit market there. See response to Question 2, section (vi) below.

(iii) Specialist Tobacco Products

ITPAC would point out that none of the evidence reviewed by Chantler (nor that produced by the Stirling Review and others) involves specialist tobacco products such as cigars and pipe tobacco. Since there is no evidence, there can be no justification for them to be included in the draft Regulations.

(iv) Stirling Review

The Chantler Review largely accepts the evidence quoted in the Stirling Review which is widely accepted to be unconvincing, given the levels of assumption and hypothesis contained in the latter document, and which includes an admission to this effect by the authors themselves.

(v) Impact on Business

The Chantler Review takes no account of the impact on businesses operating in the tobacco supply chain and, due to the compressed timetable, was only able to conduct limited hearings (from which ITPAC was excluded).

(vi) Conclusions

The Report of the Chantler Review includes a number of statements which do not provide compelling and specific evidence that SP will meet the Government's policy objectives. The Report states:

"Research cannot prove conclusively that a single intervention such as standardised packaging of tobacco products will reduce smoking prevalence"

and also makes it plain at the outset that:

"There are limitations as to the likely effect of standardised packaging on tobacco consumption"

For all these reasons, ITPAC finds insufficient grounds to support the conclusions which Sir Cyril Chantler claims to have reached.

2. Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging, that you wish to bring to our attention?

ITPAC stands opposed to the principle of SP for any category of tobacco product; there is no credible evidence to support the claim that its introduction would positively affect the tobacco-related attitudes, beliefs, intentions or behaviours of those whom the Government is seeking to protect.

(i) Non-UK Duty Paid and Illicit Trade

Partly as a consequence of successive UK Governments' high tobacco duty policies, which have helped to establish substantial price disparities between the UK and all other EU countries except Ireland, large quantities of tobacco products, mostly cigarettes and hand-

rolling tobacco, but also including premium hand-made cigars, are purchased abroad and brought back into the UK, or are imported illegally.

The non-UK duty paid and illicit market is comprised of the following main components:

- Cross-border purchases, complying with the EU's indicative allowances, brought into the UK by individuals for their personal consumption (legal);
- Smuggled, well-known, brands brought into the UK mainly from the EU, Eastern Europe and elsewhere (illegal);
- Cheap, unknown or lesser known, brands brought into the UK mainly from Eastern Europe and the Far East (illegal);
- Counterfeit products replicating well-known brands (illegal).

ITPAC estimates that legal cross-border purchases consist of c. 25% of this trade. The majority of the illegal trade consists of well-known brands smuggled in from the EU, Eastern Europe and elsewhere.

Since 2008 HMRC and the UK Border Agency have introduced sophisticated measures, and worked closely with the tobacco industry, to reduce the consumption level of non-duty-paid and illicit tobacco yet, in spite of these, the incidence of this trade remains at a high level. HMRC's estimates for the 2012/13 year show the total non-UK duty paid share of consumption of cigarettes to be up to 16% and of hand-rolling tobacco to be up to 48%.

In this context, the unintended consequences of SP are likely to be:

- An increase in cross-border trade because the opportunity for adult smokers to buy a packet of cigarettes or hand-rolling tobacco, in their current familiar packaging as opposed to a standardised pack, is highly likely to add further competitive advantage over and above price to branded packs from overseas.
- Even more seriously, the illicit trade would have a further damaging effect on health because SP would increase the distribution of cheaper, inferior products in the UK. These products are unregulated, untested, often reported to contain rogue substances, and are sold indiscriminately to underage and vulnerable people. Additional drivers for this increase are that SP will result in easier replication by counterfeiters of the one basic main SP design than is the case with current tobacco packaging, and also lower counterfeiters' cost of production (due to the one basic design) thereby making their products even more competitive and accessible in the illicit marketplace.
- The possibility also exists that, if the UK introduces SP independently, there will be an increase in counterfeiters' practice of faking foreign (non-SP) products masquerading as overseas packs which, according to consumers' perceptions, are genuine smuggled products.

These latter 2 points provide clear indications of the likely adverse effect on public health, including that of under-age people, which would be brought about by SP.

(ii) Young people

ITPAC fully supports the Government's efforts to address smoking by under-age people, but does not consider that SP will positively affect their tobacco-related attitudes, beliefs, intentions and behaviours. It drew the Department's attention to the following studies in its 2012 SP Consultation submission, and does so again because of the importance of this topic.

In the Future of Tobacco Control Consultation 2008 the document states (Section 3.77) that 'Children may be encouraged to take up smoking if plain packages were introduced, as it could be seen as rebellious'. As acknowledged by the Department of Health in this document, ITPAC is concerned that a likely unintended consequence of the SP of legal tobacco packs could be an increase in their curiosity-value and attraction to younger consumers, which could make them 'cool' and 'enticing'

Further evidence in relation to the danger to young people is outlined in The Illicit Tobacco: North of England Study 2011 which found that '23% of 16-24 year old smokers say that they still buy illicit tobacco', that '14 and 15 year olds are twice as likely to buy illicit tobacco (as) adults', and also that 'almost 9 out of 10 people agree that children and young people are at risk because they can buy easily and cheaply from unscrupulous dealers'. Additionally, a survey by Tobacco Free Futures found that 50% of the tobacco bought by 14 to 15 year olds is illegal. See <http://www.tobaccofreefutures.org/category/strands/making-tobacco-less-affordable/>.

At best it is not proven that SP will have any impact on youth smoking. At worst, young people's access to illicit tobacco could be greater and so increase unregulated sales to them.

(iii) Price

The lack of branding as a result of SP would result in the only immediate competitive differentiation being via price. This would lead to the commoditisation of the category, which in turn would undermine premium brands and could also lead to lower quality. It might be argued that down-trading by adult consumers to the lower price end of the market can be offset by increases in tobacco duty but, as has been demonstrated over time, this practice will merely serve to increase the proportion of illicit tobacco products consumed in the market with the consequences outlined in 2(i) above.

(iv) Lower Ignition Propensity

Lower Ignition Propensity cigarettes were mandated across the EU with effect from 17th November 2011, and required cigarettes to be produced with fire retardant paper which causes the cigarette to self-extinguish when left unattended. This was promoted as a vital measure to help prevent, inter alia, house fires.

It is widely known that the majority of illegal products entering the UK do not comply with European Safety Standards. If therefore SP results in an increase in the illegal trade it will represent an additional health hazard.

(v) Retail Transaction Times

Recent retail trade reports indicate that the display ban in large shops continues to cause both consumer and trade confusion particularly for slow-moving, specialist tobacco products, which are suffering from long service times. This effect will be felt more widely next year when the display ban is extended to small shops where staffing resources are limited. SP, if introduced, would exacerbate this problem and increase the incidence of incorrect identification of products for consumers.

As such, claims made in the Impact Assessment that retail transaction times will improve as a result of SP are clearly entirely misguided.

(vi) Evidence from Australia

Further to the points relating to evidence from Australia in the response about the Chantler Review (see B.1(ii) on Page 1) ITPAC understands that the following key market developments have occurred following the introduction of SP in that country:

- Over 5 years in the lead-up to the introduction of SP total tobacco industry volumes were declining at an average rate of -4.1 per cent. In the 12 months after SP was introduced on 1st December 2012, industry volumes actually increased +0.3 per cent or 59 million sticks (InfoView).
- A year after SP was introduced the decline in the number of people smoking actually halved. From 2008 to 2012 smoking incidence was declining at an average rate of -3.3 per cent a year. Since SP was introduced the rate of decline slowed to -1.4 per cent (Roy Morgan).
- The number of cigarettes smoked on a daily basis declined at a rate of -1.9 per cent in the five years leading up to SP, while it slowed to -1.4 after the introduction (Industry survey).
- In the first full year of SP the amount of illegal tobacco in Australia grew by 20 per cent. Nearly 14 per cent of all tobacco (KPMG) consumed is now sold on the black market and mainly smuggled into Australia from Asia and the Middle East. These are branded packs sold for less than half the price of legal packs and the majority do not carry health warnings. Illegal tobacco now costs the Australian Government over 1 billion dollars p.a. in foregone excise revenue.
- Since SP was introduced the number of 18-29 year old smokers purchasing low priced cigarettes has more than doubled to 34.6 per cent.

It is thereby clear that the long term trend in the decline of tobacco volumes and smoking rates have slowed and not accelerated since SP was introduced. Additionally, the incidence of illicit and counterfeit trade has increased. This runs directly counter to the Australian Government's intentions in taking this policy forward.

(vii) Proportionality

Under the current circumstances, with the level of regulation which already exists and is subsequently planned for the tobacco sector, and when the evidence in support of such a move and the resulting public health benefits are questionable, the introduction of SP in the UK would, in ITPAC's view, be entirely disproportionate.

3. Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?

(i) Specialist Tobacco Products

Given its focus on the specialist sectors of the trade, ITPAC welcomes the specific exclusion of Specialist Tobacco Products from the draft Regulations set out in Appendix B of the Consultation document for reasons of their low rate of use, particularly amongst young people.

ITPAC does however also note that the Regulations could be extended to Specialist Tobacco Products in the future if, for example, the market changes and these products become more prevalent amongst young people.

Given that there will be those who will make submissions in response to the Consultation calling for SP to include *all* tobacco products, ITPAC considers that it should nevertheless highlight a number of reasons why SP would equally be unjustified, unnecessary and disproportionate for these types of products:

- Evidence Base: as has been stated there is no real-world evidence base that SP will achieve the stated Public Health objectives for any tobacco product. Furthermore, in the case of specialist tobacco products such as cigars and pipe tobaccos which were not included in any of the studies evaluated to date, there is no evidence whatsoever supporting the efficacy of SP for these products.
- The consumption levels of cigars and pipe tobaccos are insignificant and declining, and their share of the UK tobacco market is very small. For the record an ITPAC review of sales of tobacco products to the trade in the UK indicates that in 2012 cigars represented 0.8% and pipe tobaccos 0.3% of total tobacco volume.
- Young people: as is stated in the Consultation document, usage of cigars and pipe tobaccos amongst young people is extremely limited. They are not widely smoked by young people and certainly not used as an 'alternative' to cigarettes for reasons of cost and availability in the market. The 2012 Omnimas Survey findings report the following usage demographics:

Cigars: 90% of users are over 25 years old, and 78% are over 35 years old

Pipe tobaccos: 97% of users are over 25 years old, and 94% are over 35 years old

- Product Range: the ranges of cigars, pipe tobaccos and snuff available on the market are significantly wider and more diverse than for other tobacco products (and vary widely in size and shape). An ITPAC survey conducted in November 2012 found that the numbers of different Brands and Stock Keeping Units (SKUs) of tobacco products available across the different categories in the UK market overall were as follows (an SKU represents each separate unit of a product that can be purchased by a customer):

	<u>Brands</u>	<u>SKUs</u>
Cigarettes	59	297
Roll your Own	30	103
Cigars	100	893
Pipe tobacco	227	509
Snuff	66	162
Others	<u>27</u>	<u>120</u>
Total	509	2,084

- The specialist tobacco product categories of cigars, pipe tobaccos and snuff, which have a very low level of consumption in the market, nevertheless account for the vast majority of the products on the market (77% of the Brands and 75% of the SKUs).

The trade implications of SP relate principally to the difficulties that retailers will face in locating products which have been requested by customers in their shops, a factor that will create different problems across different categories of tobacco product.

The most recent survey of its members by the Association of Independent Tobacco Specialists (AITS) found that shops which concentrate on specialist products stock a minimum of 200 brands up to a maximum of over 1,000 different SKUs, with an average of 500 SKUs per outlet (and many of these outlets will qualify as Specialist Tobacconists who will be permitted to display the products). Without the current easily differentiated packs to distinguish each product, and with a standard pack colour and typeface, the task of identifying an adult customer's choice from such an extensive selection in a retail shop would become highly complex and unworkable, would undermine customer relationships, and would also be financially damaging to retailers' businesses.

An assumption that if all tobacco products were to be subjected to the same SP Regulations, and that no single product would suffer competitively as a result, would ignore the realities of modern trading conditions. The UK is not a fortress protected from conditions in the outside world. It is part of a single European market within the EU and British citizens enjoy the freedom to buy products from anywhere in the world.

The small British-based companies that import tobacco products and the specialist retailers who sell them to the British public would find it extremely challenging to continue to trade in the face of this type of competition.

(ii) Apparent Regulatory Anomaly

ITPAC would draw the Department's attention to an apparent anomaly in the Draft Regulations.

The anomaly relates to "Provisions which apply to all tobacco products or to both cigarettes and hand rolling tobacco" in Part 4 of the Draft Regulations in Appendix B of the Consultation document (pages 30 and 31). In Part 4, Sections 11 and 12 clearly apply to cigarettes and hand rolling tobacco. However, Part 4 Section 10 (Product presentation) appears to apply to all tobacco products. In this Section paragraph 3(d) states that the labelling of these products may not contain any element or feature which "refers to taste, smell or any flavourings or other additives, or the absence of such thing".

This means that, whilst these products may contain flavourings or other additives they cannot refer to them on the packaging.

In the revised Tobacco Products Directive (2014/40/EU), Article 7 Section 12 exempts non-cigarette RYO products from the 'characterising flavours' requirements; however Article 13 (Product presentation) states that the labelling and any outside packaging of these products shall not contain any element or feature which "refers to taste, smell, any flavourings or other additives or the absence thereof"

Although the Draft Regulations for SP are consistent with the Tobacco Products Directive, ITPAC would reiterate that this will have a considerable impact on non-cigarette/RYO flavoured products such as cigars and pipe tobacco. Any relief which the Department might be able to secure from this apparent anomaly for this small, specialist sector of the trade which is already under considerable pressure, would of course be particularly welcome.

4. Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?

(i) Policy Options

Three options are assessed in the Impact Assessment (IA):

1. Maintain all existing tobacco control measures currently in place and expected measures, including the display ban and the introduction of the revised TPD requirements in 2016;
2. Go beyond the TPD and require SP;
3. Defer a decision pending collection of evidence from experience in Australia.

The assessment of Option 3 however states that it is recognised that there may be a case for delaying a decision on SP until evidence from Australia, and any other jurisdiction that introduces SP, becomes available. The extent to which deferring a decision would be beneficial depends on the type of evidence which is likely to become available from international experience, against the public health costs of not taking action. While preliminary evidence on serving times is already emerging, other impacts will require a longer period of observation. The assessment concludes with the following statement: "A survey from the Australian Institute of Health and Welfare is expected to report results of overall prevalence in October 2014 and estimates for youth prevalence are expected in August 2015, in the Australian School Students Alcohol and Drug survey. Even then, it will be difficult to distinguish the impact of plain packaging from other drivers of prevalence".

Option 2 is recommended "in view of the possibility of very substantial health gains that it offers, deferral of which would be permanently detrimental to successive cohorts of young people and would-be quitters" in spite of the fact that the evidence in the Chantler Report and the Stirling Review does not, in ITPAC's view, present a sufficiently compelling case for the introduction of such a critically important measure as SP.

(ii) Quantification of Losses and Benefits

The IA's assessment period is limited to 10 years, and the following cost impacts are defined:

- losses to HMT £2.3bn, the majority relating to the lifespan of smokers who quit;
- transition costs to manufacturers, packaging companies, wholesalers and retailers £176m-£181m (including £166m from brand value);
- benefits to health from the reduced take-up of smoking £4.4bn;
- benefits from improved quit rates £21.5bn;
- benefits from retail transaction times (1.5 seconds per transaction) £0.069bn;
- manufacturing cost savings £0.3bn.

ITPAC is concerned at the assumptions made and the viability of these calculations. For example, as mentioned above, there is no realistic likelihood that SP will reduce retail transaction times. Further, it is not at all clear how the valuation of £166m for the brand value of the tobacco industry, or the remaining £10m-£15m for 'transition costs' was reached, or how these numbers can be substantiated. Also, as acknowledged in Section 186 of the IA, the benefits largely stem from the health and pecuniary benefits to those who either do not take up or quit smoking. There are two key issues with the calculation of these benefits. The first is that the estimate of the impact of standardised packaging is based on a distillation of expert opinion rather than any hard evidence. The second is that the assessment uses median values

for these expert estimates (1% for adults and 3% for children). The low end of the range suggested by at least one expert in each case was 0% and 0.4%. If these lower rates turn out to be correct most of the benefit from the policy disappears.

(iii) Illicit Trade

As outlined in the response to Question 2 Section (i) above ITPAC is concerned at the impact which SP will have on UK illicit trade. ITPAC therefore welcomes the statements in the IA that "There is a risk of an adverse impact of SP on the non-UK duty paid segment of the market by encouraging cross-border shopping and/or a larger illicit tobacco market. If this risk occurred it would increase the losses to the Exchequer and decrease the health benefits", and also the statement that "Although compliance measures are in place to mitigate generic risks associated with illicit tobacco goods, HMRC assesses that SP is likely to enhance and diversify current risks that the UK faces from tobacco fraud, although there is no direct information or evidence to enable estimation of any increase to the size of the illicit market. Further to this, an increase in cross border shopping cannot be mitigated where it involves travellers from the EU legally importing unlimited quantities of duty paid (but not UK duty) tobacco products for their own use. A potential increase in the size of the illicit market, apart from the adverse effect on duty receipts, may limit the potential influence of future tobacco duty policy. The potential impact on the UK duty unpaid market remains unknown and unquantified. If the illicit market increased significantly it could significantly increase the costs of a SP policy".

(iv) Small and Micro Business (SMB) Assessment

The IA makes the following statements:

- Costs to retailers in the form of increased serving time are expected to be negligible with the impact being short lived (a matter of weeks). Thereafter, *retailers are expected to see a reduction in transaction times.*
- SMBs are expected to incur costs in the form of reduced profits from their tobacco sales; also, the expected estimated fall in smoking prevalence rates will lead to a reduction in overall tobacco consumption as well as the down trading from more profitable higher priced brands to less profitable lower priced brands. However, the IA states that, by way of compensation it is expected that consumers will reallocate their income expenditure to other goods and services in the economy, and that *since SMBs are a component of the economy, losses from reduced tobacco sales may be offset by consumption of their other products.*
- Responses to the first Consultation suggested that tobacco may account for up to 30% of the revenue of a convenience store although, anecdotally, the profit margins on the sale of tobacco may be relatively low. *Small retailers such as CTNs, in order to thrive in this changing world (eg internet sales, economic cycles, big supermarket competition and demographic changes) already need to be planning their future business strategies, considering diversifying, and thinking about how to cope with all the trends and shocks that are likely to affect them.*

ITPAC would challenge these assumptions on the basis that there is absolutely no realistic evidence to support the assertion in the first point ('reduction in transaction times'), that the assumption made in the second point ('... since SMBs are a component of the economy, losses from reduced tobacco sales may be offset by consumption of their other products') is economically unviable, and that the third point ('small retailers already need to be planning their future business strategies') is unreasonable given the major challenges which SP would place on an important economic sector which is already under threat and facing considerable regulation.

C. CONCLUSION

A significant level of tobacco regulation has been introduced over the past 10 years, in addition to relentless annual excise increases. Furthermore, a full display ban will be in effect from April 2015 and an extensive range of measures, including 65% health warnings (itself a significant step towards SP), will be implemented from May 2016 as a result of the revision of the EU Tobacco Products Directive. Further still, the Government is currently consulting on a ban on smoking in private vehicles carrying children, and is soon expected to introduce a long-overdue ban on proxy purchasing of tobacco products.

Additionally, in ITPAC's opinion, the documents and evidence, including that in the Chantler Report, and also the IA which has received only an 'amber' rating from the RPC, in support of such a critically important measure as the introduction of SP, do not make a sufficiently compelling and watertight case for the introduction of a new policy.

Under these circumstances it is ITPAC's view that the introduction of SP is a step too far, and the Government should give serious consideration to resisting the ideological temptation to take the policy of SP forward.

[REDACTED]

From: [REDACTED]
Sent: 06 August 2014 11:38
To: Tobacco Packaging
Subject: Re: Standardized Packaging
Attachments: Eurobarometer 2012 factsheet UK.PDF

TOBACCO MANUFACTURERS ASSOCIATION OF DENMARK
TOBAKSINDUSTRIEN

6 August 2014

TobaccoPackaging@dh.gsl.gov.uk

Sir

Tobacco Manufacturers Association of Denmark represents Danish based companies which produce cigars and pipe tobacco for the UK market. The largest member is also present through a subsidiary in the United Kingdom. We are concerned about a possible introduction of a standardized packaging regime in the United Kingdom as we fear it might interfere with Intellectual Property Rights (IPR) and serve as a potential very dangerous precedence for the protection of brands/trademarks in general also outside the tobacco categories. Not least a strict protection of IPR in general is of the utmost importance for the global competition between EU and the emerging economies as also pointed out in the EU IPR strategy from May 2011. We fear that a UK standardized packaging regime may undermine the future EU ability to argue for strict IPR protection for all type of products in negotiations with countries like China and Brazil - to the detriment of European economy.

We therefore see a standardized packaging regime as an unproportional high risk to run.

Notwithstanding the above, the Tobacco Manufacturers Association of Denmark concurs to the fact that Specialist Tobacco Products have been excluded from the draft regulations for standardised packaging of tobacco products due to their low rates of use, particularly by young people.

According to paragraph 5.10 of the consultation paper, "data show that the prevalence of cigar and pipe smoking in England is much lower than cigarette and hand-rolling tobacco smoking and that a very small number of children and young people use this type of tobacco. In 2011, 18% of people aged 16-19 years smoked cigarettes, but 0.2% of this age group smoked cigars and 0.1% smoked pipes. Today, almost all cigar smokers are male and over 25 years of age. Pipe smokers tend to be male and over 20 years of age".

Other studies like to the most recent special Eurobarometer report on tobacco dated May 2012 for UK (see the attached), also indicates that cigars and pipe tobacco often are smoked on an irregular basis as well. Thus, in the United Kingdom only 1% of smokers reported to smoke cigars and/or pipe tobacco on a daily or weekly basis.

We thank you for this opportunity to contribute.

Best regards,
TOBAKSINDUSTRIEN

[REDACTED]



European Commission

EUROBAROMETER

Attitudes of Europeans towards Tobacco

EU27

Number of interviews: 26.751

Fieldwork: 25/02-11/03/2012

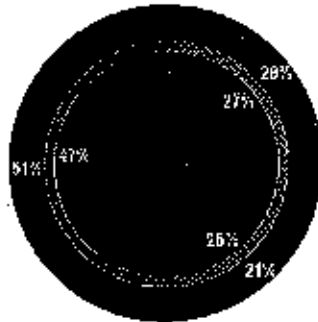
UK

Number of interviews: 1.331

Fieldwork: 25/02-11/03/2012

Methodology: face-to-face

QD1. Regarding smoking cigarettes, cigars or a pipe, which of the following applies to you?



EU27 Outer pie UK Inner pie

- You currently smoke
- You used to smoke but you have stopped
- You have never smoked

	EU27		UK	
	EB77.1	EB77.1-EB72.3	EB77.1	EB77.1-EB72.3
● You currently smoke	28%	-1	27%	-1
● You used to smoke but you have stopped	21%	-4	26%	+1
● You have never smoked	51%	+2	47%	=

References: EB77.1 (02-03/2012), EB72.3 (10/2009)
Base: All respondents

QD1. Regarding smoking cigarettes, cigars or a pipe, which of the following applies to you?

You currently smoke

EU27

UK

	EU27	UK
TOTAL	28%	27%

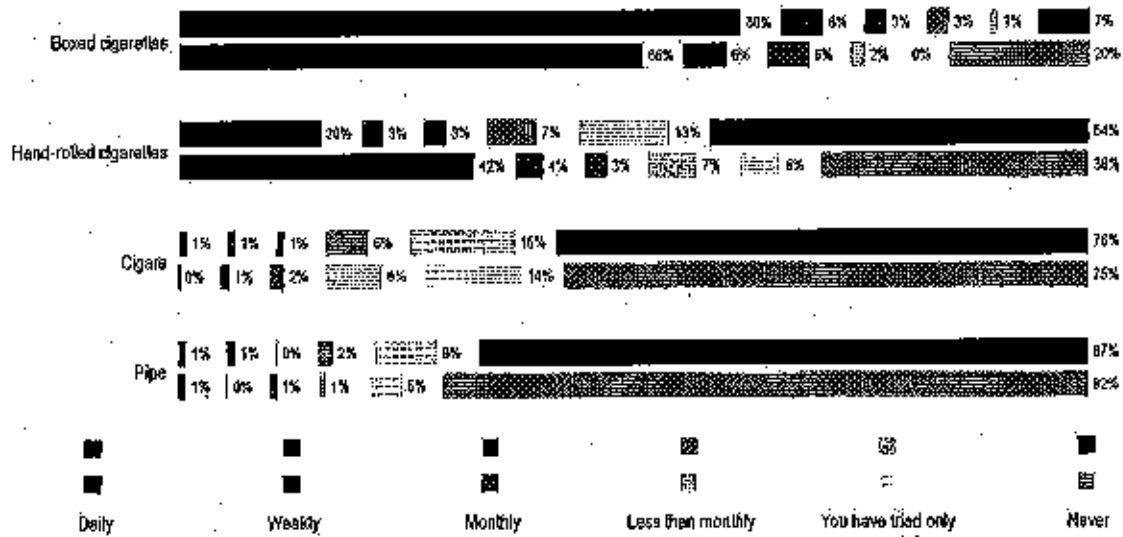
Sex	EU27	UK
Male	32%	28%
Female	24%	26%

Age	EU27	UK
16-24	28%	30%
25-39	37%	36%
40-54	34%	28%
55+	17%	17%

Difficulties paying bills	EU27	UK
Most of the time	46%	48%
From time to time	34%	40%
Almost never	23%	22%

Socio-demographic breakdown

QD7. How often did you use the following tobacco products?



Base: Current smokers

EUROBAROMETER 77.1 RESULTS FOR THE UK





European Commission

EUROBAROMETER

Attitudes of Europeans towards Tobacco

EU27

Number of Interviews:
26.751

Fieldwork:
25/02-11/03/2012

UK

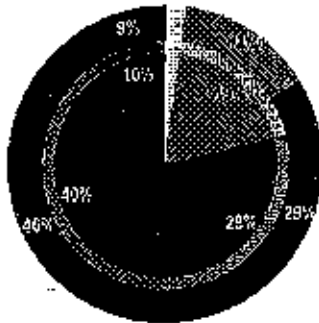
Number of Interviews:
1.331

Fieldwork:
25/02-11/03/2012

Methodology: face-to-face

EUROBAROMETER 77.1 (EU27) AND 77.2 (UK) - ATTITUDES TOWARDS TOBACCO

Q08. On average, how many cigarettes do you smoke each day?



EU27 Outer pie UK Inner pie

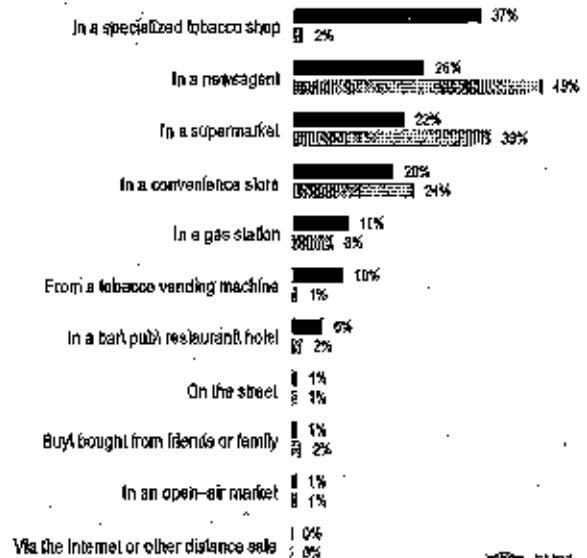
EU27 v UK

	EU27	UK
	EB77.1	EB77.1
Less than 1 cigarette	2%	2%
From 1 to 5 cigarettes	+2	+2
From 6 to 10 cigarettes	+3	-1
From 11 to 20 cigarettes	-6	+2
21 cigarettes or more	-2	+3

- Less than 1 cigarette
- From 1 to 5 cigarettes
- From 6 to 10 cigarettes
- From 11 to 20 cigarettes
- 21 cigarettes or more

Reference: EB77.1 (02-03/2012), EB72.3 (10/2009)
Base: Current and ex-cigarette smokers

Q016. Where do/did you regularly buy tobacco products?

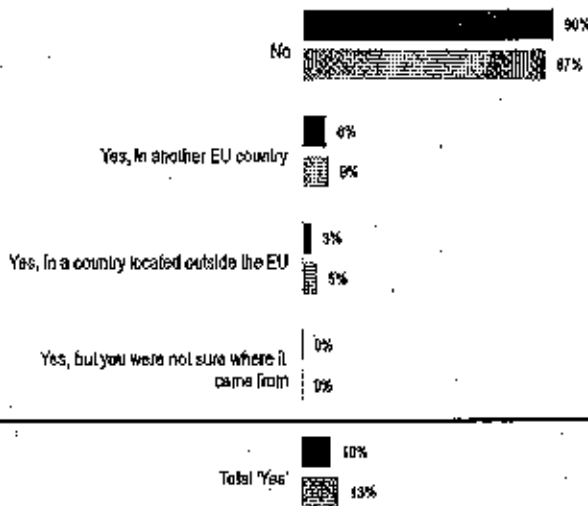


Base: Current and ex-smokers

EU27
UK

EUROBAROMETER 77.1 (EU27) AND 77.2 (UK) - ATTITUDES TOWARDS TOBACCO

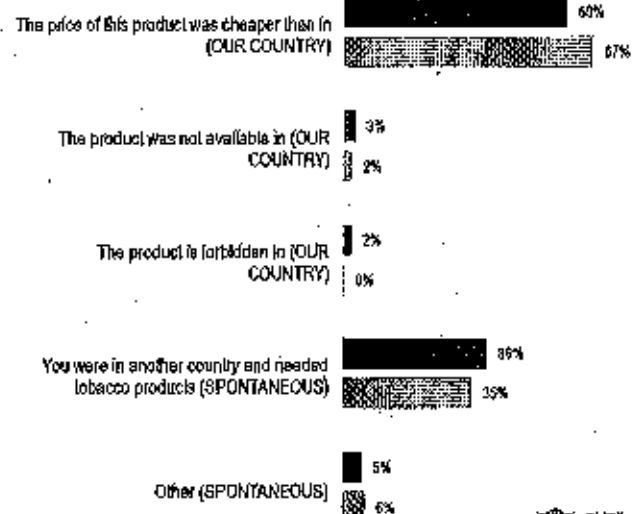
Q018. In the past 12 months, have you bought tobacco products in another country than (OUR COUNTRY)?



Base: All respondents

EU27
UK

Q019. For what reasons have you bought tobacco products in another country?



Base: Respondents who bought tobacco products in another country

EU27
UK

EUROBAROMETER 77.1 RESULTS FOR THE UK





Attitudes of Europeans towards Tobacco

EU27



Number of Interviews: 26.751

Fieldwork: 25/02-11/03/2012

UK

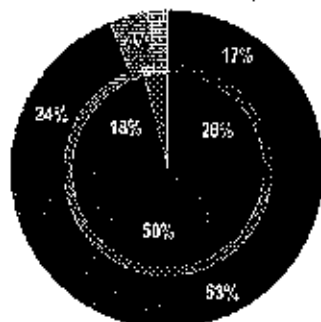


Number of Interviews: 1.331

Fieldwork: 25/02-11/03/2012

Methodology: face-to-face

QD5. How old were you when you started smoking on a regular basis, i.e. at least once a week?

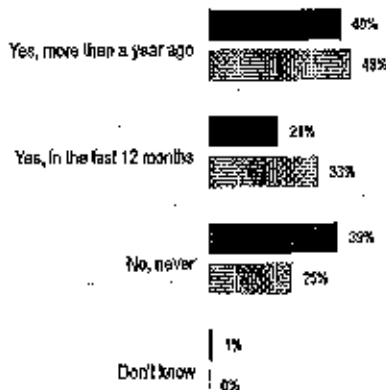


- Less than 15 years old
Between 15 and 18 years old
Between 19 and 25 years old
Older than 25 years old
Refusal
Don't know

EU27 Outer pie UK Inner pie

Base: Current and ex-smokers

QD12. Have you ever tried to quit smoking?



Base: Current smokers

EU27 UK

QD10. The last time you visited ... in the last 8 months in (OUR COUNTRY), were people smoking inside?



EU27 UK Yes No Have not visited in the last 8 months (SPONTANEOUS) Don't know

Evolution 02-03/2012-10/2009

Base: All respondents

QD11. How often are you exposed to tobacco smoke indoors at your workplace?



EU27 UK Never or almost never Occasionally Less than 1 hour a day 1-6 hours a day More than 6 hours a day

EUROBAROMETER 77.1 RESULTS FOR THE UK





Airport Operators Association response to the Government consultation on Draft Regulations providing new rules on the packaging of tobacco products

The Airport Operators Association (AOA) is the national voice of UK airports. We are a trade association representing the interests of UK airports and the principal such body engaging with the UK Government on airport matters.

This is our response to the Department of Health consultation on standardised packaging issued on 26 June 2014.

Executive summary

Applying this legislation to UK airport export shops would disproportionately damage UK airports, while achieving minimal public health benefit.

Many international consumers would simply delay their purchases to the aircraft or the next stop on their journey.

This would be particularly the case for Chinese, Middle Eastern and Russian visitors, many of whom cannot understand standardised Roman script.

Nearly half of airport revenues come from commercial sources, with duty free retail, including tobacco, an important element in this. This helps to fund airport development and maintain connectivity.

Smaller point-to-point airports could be particularly badly affected.

The Government has failed to make an impact assessment of the effect of applying these regulations to duty-free shops at airports.

For all of these reasons, the AOA urges the Government to exclude UK airport export shops from the proposed regulations.

The importance of duty free sales to airport revenue, especially for smaller point-to-point airports

Industry studies show that close to half of global airport revenues come from commercial sources, with tobacco products accounting for close to a tenth of duty-free turnover. Early evidence from Australia suggests that the introduction of standardised packaging there has had a disproportionate impact on airport duty-free sales. The revenue to airport operators derived from duty-free sales contributes to meeting airport operating costs and helps to fund infrastructure development projects. This is particularly the case for many of the UK's smaller airports, where duty-free sales help to ensure that the airports are viable businesses, contributing to jobs and growth in the wider regional economy. The application of these regulations to duty-free airport sales would leave UK airports at a major commercial disadvantage to their overseas competitors.

The competitive impact

The duty-free retail channel at UK airports is not in competition with domestic retailers, but with sales that take place on board flights or retailers in other airports.

Subjecting UK duty-free shops at airports to standardised packaging requirements would place UK airports at a major competitive disadvantage to those who would not be subject to it, including:

- airlines departing from UK airports (who would be subject to neither standardised packaging nor product display regulations)
- airport retail stores in transfer lounges both within the EU (e.g. at Schiphol) and outside it (e.g. at Dubai), as well as
- airport arrival duty free stores outside the UK (e.g. at Buenos Aires and Oslo).

The UK departure airport would lose revenue both to airlines and to competitor airports outside of the UK.

The Government has already acknowledged the unique nature of duty-free tobacco sales at airports

From April 2015, all UK duty-free operators will be obliged to confine displays of tobacco products to purpose-built tobacco display areas in the secure restricted area. These will be completely hidden from the general public and have their own dedicated members of staff and tills. Once paid for, the tobacco products will be immediately put into a bag, so that other travellers will not be exposed to the packaging or branding.

This legislation, which will require significant up-front investment and continuing additional staffing costs, already deals with the issue of tobacco product visibility at UK airports, effectively shielding children from tobacco product displays, in complete contrast to the situation aboard an aircraft or at non-UK airports.

The impact on overseas visitors from particular markets

Many non-native duty-free customers have poor or non-existent English and rely on the branding of familiar tobacco products to identify the products they wish to purchase. In all likelihood, these customers would simply delay their purchases to later in their journey, to the disadvantage of UK airports. This is especially likely to be the case for visitors from countries that do not use the Roman alphabet, such as China, the Middle East, Russia and Thailand.

The Government has failed to make any impact assessment of the impact of including airport duty-free tobacco sales in these regulations

While the issue of standardised packaging for tobacco product sales has been debated over many years in the UK, there is no evidence that the Government has given serious consideration to its potential impact on UK airport revenues.

The independent review undertaken by Sir Cyril Chantler earlier this year gave no consideration to the potential combined impact on airport revenues of standardised packaging and tobacco display areas.

Equally, the Government's impact assessment, published in June 2014, failed to provide any detailed information on the effect that plain packaging could have on duty-free sales made at UK airports.

Conclusion

The UK duty-free industry plays an important role in helping to fund airports across the UK. Tobacco sales from export shops are both a significant source of revenue in their own right and help to increase sales in other product categories.

The application of standardised packaging regulation to export shops at UK airports, which rely on commercial revenues, would disproportionately damage those airports and leave them at a competitive disadvantage, while merely delaying tobacco product purchases and thus having minimal positive health impact. Coupled with an ever-increasing regulatory burden impacting UK airports, and record levels of Air Passenger Duty, the highest air tax levied anywhere in the world, these measures would have an adverse impact on all UK airports.

Taking into account all of these considerations, the AOA urges the Government to exclude tobacco products sold at UK airport export shops from any standardised packaging regulations.

For further information please contact the AOA's Senior Public Affairs & PR Manager



Consultation on the introduction of regulations for standardised packaging of tobacco products

Response from the British Heart Foundation
July 2014

The British Heart Foundation (BHF) is the nation's leading heart charity. We are working to achieve our vision of a world in which people do not die prematurely or suffer from cardiovascular disease. In the fight for every heartbeat we fund ground breaking medical research, provide support and care to people living with cardiovascular disease and advocate for change.

We are actively involved in tobacco control issues because of the strong association between smoked tobacco and ill-health including cardiovascular disease (CVD). Smoking is a major risk factor for CVD, and smokers are almost twice as likely to have a heart attack as non-smokers. Every year in the UK, 100,000 smokers die as a result of smoking, with over 22,000 smoking-related deaths from CVD.¹ Two-thirds of current smokers started before the age of 18, and each year 200,000 children and young people in the UK start.² It is therefore essential to reduce the number of people that take up smoking at an early age.

The BHF is supportive of standardised packaging, as we believe it will lead to a reduction in the number of young people taking up smoking and will, in conjunction with other policy interventions, lead to a reduction in smoking prevalence. As Wales, Scotland and Northern Ireland have all passed legislative consent motions, standardised packaging legislation would apply across the four nations. We believe that there is an urgent need for this lifesaving piece of legislation.

Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

The BHF supports the position of the Chantler Review. Sir Cyril Chantler has stated that, "*it is in my view highly likely that standardised packaging would serve to reduce the rate of children taking up smoking.*"³ Jane Ellison MP, Minister for Public Health, stated that the report found standardised packaging is "*very likely to have a positive impact*".⁴ The Chief Medical Officer, Dame Sally Davies, has also expressed her support for the report.⁵

We consider that the case for standardised packaging has been made and the necessary level of evidence has been met. We would like to urge the Government to follow the recommendations of the report which it commissioned and lay regulations on standardised packaging before Parliament as soon as possible.

¹ British Heart Foundation. *UK coronary heart disease statistics 2009-10*. London: British Heart Foundation; 2010.

² <http://www.cancerresearchuk.org/about-us/cancer-news/press-releases/more-than-200000-uk-children-start-smoking-every-year>

³ <http://www.kcl.ac.uk/health/10035-TSO-2901853-Chantler-Review-ACCESSIBLE.PDF>

⁴ <https://www.gov.uk/government/speeches/chantler-report-on-standardised-packaging-of-tobacco-products>

⁵ <https://www.gov.uk/government/news/government-response-to-tobacco-standardised-packaging-review>

We would like to emphasise the urgency of this call as there is now little time available before the 2015 UK General Election. We cannot afford to wait. Every day children are trying cigarettes for the first time,⁶ addictions are developing and people are dying from tobacco related disease. The Government must take this opportunity to act now.

Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging, that you wish to bring to our attention?

Since December 2012, Australia has implemented standardised packaging and, as such, has become an important source of evidence in this debate. The Cancer Council of Victoria (CCV) has published a useful summary of the debate surrounding Impacts of standardised packaging in Australia.⁷ The CCV has divided studies into those funded by the tobacco industry and those which are not. We agree with this approach and would like to emphasise to Government that the arguments against this measure are coming from an industry which has a long history of putting profits over public health and has already confirmed its continuing willingness to distort the facts in order to protect its commercial interests.⁸

As the CCV states, the public health community has never claimed that standardised packaging would immediately reduce smoking rates. We believe that it will discourage the uptake of smoking among young people and reduce smoking rates in the long term. This has not stopped the tobacco industry trying to undermine standardised packaging by claiming that tobacco sales have increased since the introduction of the legislation, a claim which has already been comprehensively rebutted.⁹ In fact, Australian Department of Health figures demonstrate that total consumption of tobacco and cigarettes in Australia in the first quarter of 2014 was the lowest ever recorded.¹⁰

We are aware of the tobacco industry argument that standardised packaging would increase illicit trade in tobacco. There is no reason to believe that this would be the case, as key security features present on current packs would continue to feature in standardised packs. Andrew Leggett, Deputy Director for Tobacco and Alcohol Strategy at HM Revenue and Customs has stated that he is doubtful standardised packaging would have a material effect on the illicit trade.¹¹

In response to a tobacco industry funded report, stating that smuggling had increased in Australia following standardised packaging, the Australian Government has stated that, *"The tobacco industry's estimates of the size of the illicit market are not considered to be accurate. ... Like previous illicit trade reports commissioned by the tobacco industry, the KPMG report appears to substantially exaggerate the size of the illicit tobacco market in Australia and the consequent loss of excise and duty revenue."*¹²

⁶ Every day, 39 Welsh 11-15 year olds are estimated to try smoking – estimate calculated on figures from Welsh Behaviour in School-aged Children Survey 2009/10.

⁷ <https://www.cancervic.org.au/plainfacts/browse.asp?ContainerID=industryclaimsaboutlackofeffectiveness>

⁸ <http://www.theguardian.com/society/datablog/2014/jun/06/is-smoking-increasing-in-australia>

⁹ *Ibid.*

¹⁰ <http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-kff>

¹¹ Oral evidence to the House of Lords European Union Sub Committee (Home Affairs) on 24th July 2013.

¹² Excise Tariff Amendment (Tobacco) Bill 2014 – The Parliament of the Commonwealth of Australia

We would also like to emphasise that we believe standardised packaging is one of a range of tobacco control measures which is required in the UK, for example taxation and mass media campaigns. Important as standardised packaging is, we do not view it as a stand-alone measure.

Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations as drafted?

We largely welcome the draft regulations as workable and appropriate. However, we would like to see specialist tobacco products included within the regulation. We believe that by excluding specialist products such as cigars and cigarillos, there may be a suggestion that these products are somehow less harmful to health. We are also unclear as to why the regulations do not specify size of cigarettes or tobacco packets, as is the case in the Australian regulations. We are concerned that this omission could allow the tobacco industry to include an element of branding in their products so would urge you to include specialist products and size of cigarettes and packets in the regulations.

We are supportive of Action on Smoking and Health's call that measures required to ensure that specific brand names and variants which are found to be misleading can be prohibited, including, but not limited to, those set out in recital (27) of the Tobacco Product Directive, are transposed into UK legislation.

We are also supportive of Cancer Research UK's call that the brand name of cigarettes should not be allowed to appear as laid out in Part 2, Section 5, Paragraphs (4) and (5) (a) to (h) of the draft regulations. We agree that the principle of standardisation is weakened by allowing brand identity to remain on the cigarettes and would recommend that, as in Australia, only an alphanumeric code, to aid in supply chain controls, is allowed.

Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?

We would like to support Action on Smoking and Health's (ASH) comments on this question. We do not agree with the inclusion of possible losses from a potential increase in consumption of illicit product as we do not believe that this will happen. We also support ASH's comments that the inclusion of "lost consumer surplus" based on the "intangible benefit associated with smoking a particular brand" is inappropriate. As stated by ASH, any price reductions which the tobacco industry introduced in response to standardised packaging could be effectively dealt with by increased taxation.

We urge the Government to support standardised packaging and commit to put it before Parliament before the 2015 General Election. Standardised packaging has strong public support¹³ and overwhelming support in both the House of Lords and the House of Commons.¹⁴

¹³ The poll total sample size was 12,269 adults. Fieldwork was undertaken by YouGov between 5th and 14th March 2014. The survey was carried out online. The figures have been weighted and are representative of all GB

Tobacco use continues to be the number one preventable cause of mortality in the UK and we must deal with this public health crisis urgently. Tobacco has claimed too many lives already and we need to act now to protect our children from becoming the victims of this deadly addiction. The tobacco industry wants us to believe that standardised packaging will be ineffective, but the evidence overwhelmingly demonstrates that it will reduce the number of children taking up smoking and, ultimately, save lives.

If you would like to discuss the BHF position on this further, please contact [REDACTED]
Manager, Research and Prevention, or [REDACTED]

adults (aged 18+). Respondents were shown what a standard pack could look like, including larger health warnings as in Australia.

¹⁴ Section 94 of the Children and Families Act 2014 was passed *nem con* in the House of Lords and with only 24 votes against in the House of Commons.

Consultation on the introduction of regulations for standardised packaging of tobacco products – The Co-operative response

The UK Consumer Co-operative Movement comprises 16 retail Co-operative Societies working under the banner of the Co-operative Retail Trading Group (CRTG). Together these societies operate some 4,000 food outlets. The Co-operative Group is the largest Co-operative Society, operating 2,775 Food stores. Food retailing is core to our activities, now providing more than half of the Group's turnover. Part of the retail mix is the sale of tobacco products that are sold in Co-operative Food stores, a large proportion of which are small shops where tobacco sales can be a significant proportion of overall sales. Overall tobacco sales comprise 14% of annual Co-operative Food turnover and The Co-operative Group represents 7.4% of the legitimate UK market. We therefore have a contractual relationship with several tobacco suppliers, who have also provided some support with regards to the tobacco display ban. However we wish to stress that this response has been formulated independently of any input from tobacco companies and represents the views, beliefs and concerns of The Co-operative Group and the other retail members of the Co-operative Retail Trading Group. This response has been shared with the members of CRTG who support its contents.

We understand that, whilst legal, the sale of tobacco carries certain responsibilities. We rigorously enforce the requirement to not sell tobacco products to under-18s through training our staff, 'flagging' products at set up so they produce warning messages when scanned at tills, operating a Challenge 25 policy on requesting proof of age and – in many societies – running in-house test purchasing operations to ensure the resilience of our underage sales processes. We believe that commitment from the retail sector – in conjunction with regulatory interventions such as the smoking bans, duty increases, better dissemination of information about the risks associated with smoking and wider access to smoking cessation services – have played a role in driving down underage smoking to its current historically low level. The 2014 edition of the Smoking, Drinking and Drug Use Among Young People in England report shows that the number of pupils who smoke at least one cigarette a week fell from 9% to 3% between 2003 and 2013. The number of pupils who had ever smoked a cigarette fell over the same period from 42% to 22%, the lowest level since the survey started in 1982 and only slightly higher than the 16% who had ever tried illegal drugs [\[link\]](#). Current action to reduce rates of underage smoking is proving successful. Exercise of new powers to tackle proxy purchase of tobacco and renewed commitment to disrupt the criminal gangs profiting from illegal sales will, we believe, help to further drive down underage access to tobacco. All this is possible without the introduction of standardised packaging.

We therefore do not see a need for standardised packaging to be introduced at this time. We would want to see the tobacco display ban fully implemented and its impacts analysed before we substantially change this view. We accept that, if standardised packaging is to be imposed, the proposed timings laid out in the draft regulations around the sell-through period are helpful to retailers. We think that the common-sense approach taken to harmonise the sell-through period arising from the introduction of standardised packaging with one mandated by the Tobacco Products Directive will minimise some of the additional burdens being placed on to retailers, though not all of them.

We have very real fears about the impact on retailers, particularly the depressing effect on margin. We have concerns about counterfeiting and its impact on the already-sizeable illicit UK tobacco market. We have little clarity about the impact on transaction times, though we now suspect it may not be as great as originally feared. We would like the Government to bear these concerns in mind and provide as much reassurance to retailers as possible in advance of this policy being introduced.

We also suggest that the Government take the opportunity to re-look at the requirements of the tobacco display ban should standardised packaging be introduced, with a view to removing some of the more onerous impacts upon retailers.

Co-operative Retail Trading Group

- 1) Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

No.

- 2) Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging, that you wish to bring to our attention?

In our response to the 2012 consultation we indicated four areas where we had concerns about the impact of standardised packaging on legitimate retailers. These were in the fields of operational costs (impact from increased transaction times), margin costs (impact from downtrading trends), sales costs (impact from illicit sales) and cumulative regulatory costs (impact from continuous legislative churn without evaluation). We wish to revisit these four fields to indicate where we believe the debate has now moved.

Operational costs

In our response to the 2012 consultation we stated:

"The greatest threat to retailers operationally is an increase in transaction time. With the introduction of standardised packaging there will be fewer visual cues to help staff locate the requested tobacco product... we would expect transaction times to increase, with a knock-on effect for customer service... We would argue that further research into the operational impact of standardised tobacco packaging be carried out so that we can more accurately predict the full impact and effectiveness of the proposals."

In convenience stores there are no stand-alone tills. All grocery transactions are processed via the counter (usually known as the kiosk) – including those for tobacco. Customer bill payment services (for instance via PayPoint) are also processed at the same point. We also operate a large number of post offices in store (281 by The Co-operative Group and another 277 by other CRTG member societies). The Post Office's Network Transformation plans also rely on post office services being offered from the kiosk rather than a separate stand-alone post office counter – around 280 branches will hence be offering post office services via the kiosk by April 2015. More and more services are being offered from the kiosk and we are investing to try to negate the risk of increased customer queue times and dissatisfaction. An increase in tobacco transaction times resulting in longer queues is something we are very keen to avoid as this will disproportionately affect convenience store operators. Larger stores with stand-alone tills will be somewhat insulated from this trend.

Since 2012 there have been two relevant pieces of research into the operational impact of standardised packaging, both of which are referred to on pp.27-28 of the Impact Assessment. Both have their limitations but they present dramatically different conclusions.

The Impact Assessment favours the Wakefield, Bayly and Scolio study from Australia referred to in para 108. This study argued that, between October 2012 and January 2013, average transaction times decreased by around 17%. This data has been used to estimate a 1.5 second increase in transaction times once standardised packaging has been introduced.

In comparison para 106 discusses the Rural Shops Alliance study with [Visuality](#) [link]. Funding for this review did come from British American Tobacco (BAT). However, the RSA make it clear that "all work would be conducted independently of BAT and that BAT would have no influence over how the project was conducted or how the research findings would be reported" (page 6). Albeit with a smaller polling sample they found that total transaction times increased significantly in all stores (between +55 and +93%). On average transaction times were longer in stores which were already compliant with the requirements of the tobacco display ban.

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Criticisms of the RSA study are referred to in paragraph 107. It is stated that the RSA study does not reflect real life situations because the cigarette packs are not arranged in alphabetical order. However, in real life cigarette packets are almost never arranged in alphabetical order (we are aware of only one trial by a major retailer). In fact, arranging them in alphabetical order would likely add extra time on to any transaction. Products are more commonly merchandised either by manufacturer for contractual reasons, by price segment for customer navigation or by positioning best-selling lines where they are easiest for staff to access. This would generally be in half-way up any gantry so that staff members do not have to stretch up or down to retrieve a packet. TCG complies with the requirements of the tobacco display ban in England, Wales and Northern Ireland by having sliding 'doors' covering the tobacco gantry. We therefore merchandise the best-selling lines along the left and right edges of the gantry; less effort is thereby expended to opening a door only partially to retrieve product. As an example, we would want to merchandise our best selling products in the centre left or centre right of the gantry to facilitate quicker and easier retrieval. Under the alphabetical layout proposed by Owen Carter, the best selling lines could potentially be located in the centre of the top shelf of the gantry, requiring a staff member to open the sliding door to its maximum extent and then reach up to the top shelf. While criticisms can be made of the RSA study, those put forward by paragraph 107 are not particularly useful ones.

We make no claim to be scientists; nor do we have access to the Wakefield, Bayly and Scolio study. However, we would argue that the measurement of transaction time in the RSA study (taken from a video recording of the transaction) would seem to be more objective than that in the Australian study (which was based on researchers manually operating concealed stopwatches according to a letter to the BMJ [\[link\]](#)). We freely admit that this view may be partially due to bias on our part as retailers; we cannot understand how replacing items that look different with items that all look the same will in any way speed up identification and selection of a particular item from among them.

In our experience an average increase in transaction times seems much more likely than an average decrease. It is important that this is accurately modelled because the variance equates to staff time and therefore money. Paragraph 109 of the Impact Assessment, based on a 1.5 second saving per transaction, aggregates the saving to business up to £69m over 10 years. The Co-operative Group represents 7.4% of the legitimate UK tobacco market – this could therefore result in a £5m benefit over 10 years. Conversely the RSA study estimates an increase of 28 seconds per transaction. If this was sustained it could result in a £95m on-cost to The Co-operative Group over ten years, using the same methodology. There is a huge variance between these two figures of £100m, or £10m p.a. It is obviously important to us to try to understand where on that spectrum true costs to us as a retailer are likely to fall. We therefore welcome the Opinion expressed by the Regulatory Policy Committee [\[link\]](#) that "The discussion and the conclusions should be tested during consultation and the results reported in the final IA."

The one element where both surveys concur is that after an immediate sharp increase transaction times reduce again. This would suggest that if there was an immediate increase in transaction time this would not remain in place in perpetuity. In the RSA study the increase in transaction time drops off between Day 1 and Day 7. Therefore while we doubt, based upon our own experience as retailers, that standardised packaging will result in quicker transaction times (and therefore cost savings) we also doubt that the maximum transaction time increase from the RSA study will be sustained. It seems likely that there will be an immediate sharp increase in transaction times but that this will settle down to a figure somewhat higher than present. This will present a moderate on-cost to retailers.

We would also point out that it is not just transaction times that will potentially be affected by the introduction of plain packaging. The removal of visual cues to aid immediate product recognition will have an impact at all stages of the in-store stock management process once the outer cases are split down. We would expect the process of re-stocking the gantry to take longer as staff members ensure they put the correct product in the correct location. This will take staff away from customer-facing work for longer.

Margin costs

In our 2012 consultation response we stated:

"Premium brands do generally (though not always) tend to provide greater margin and cash yield to retailers. At present even among those consumers that do not habitually choose premium brands there is a tendency to 'trade up' at weekends: people may choose a premium brand over their usual standard brand, or may switch to packaged cigarettes from roll-your-own tobacco. However, at present there is clear evidence of a move from premium to cheaper brands as discussed in paragraphs 62 - 65 in the Department of Health Impact Assessment. The premium brand share of the market fell from 34.9% to 24.6% between 2001 to 2009. It looks as though premium smokers are not quitting, they are merely down-trading. We are therefore concerned at any move to accelerate this trend as it has a direct effect upon income. As it is the packaging that tends to distinguish 'premium' brands from other brands the standardisation of packaging will remove the key element that influences consumers to purchase a premium brand. A shift away from the purchase of premium brands to standard (or economy) brands means a disproportionate reduction in income to retailers. It also, counter-intuitively, makes tobacco purchase more economical for the customer.

"We would like to see further research and modelling on consumers' behaviour. At present the proposals look set to make smoking more affordable to the public whilst hitting retailers commercially."

We still have concerns about the impact on margin. Annex D of the Impact Assessment demonstrates that it is only the ultra low price (ULP) brands that are in growth in the UK. Paragraph 244 estimates that the current rate of downtrading from the premium and mid-price categories (6.5% p.a.) will double. The sales figures we have seen from Australia showing the impact on downtrading trends suggests that this estimate may be fairly accurate. Nielsen data reported in *The Australian* in June [\[link\]](#) shows that between 2010 and 2014 the 'deep discount' section of the Australian tobacco market has grown from 3.4% to 28.2% - more than an eightfold rise. At the same time the premium and mid price segments of the market have fallen from a combined 75% share of the market to 55.5%. This is a decline in share of market of roughly 20% over just 3½ years. Table D1 of the Impact Assessment (para 243) saw a similar size of decline in the UK market over eight years (2001-2009). It might therefore be valid to assume that the rate of downtrading in the UK will be slightly more than double that witnessed at present. If the Government has any other data from Australia showing the impact on downtrading trends it would be helpful if these could be shared with retailers to allow more accurate forecasting of the margin cost of standardised packaging for their businesses.

The Chantler Review concluded that "the risks of price effects undermining the objectives of a standardised packaging policy are small." Yet due to this downtrading activity in Australia a greater proportion of tobacco is being bought at lower prices. The Australian National Tobacco Strategy 2012-18 predicted that continued rises in duty could see the price of a pack of cigarettes rise to over \$20. In actual fact Nielsen data shows that eighteen months after the introduction of standardised packaging in Australia 42.3% of all cigarette packs were purchased below a \$15 price-point. This is an increase from 25.6% of the market in 2011 [\[link\]](#). The Australian market is shifting in favour of the cheapest cigarettes on the market in a process referred to as 'commodification'.

There is another element to downtrading that has not been considered – a shift from purchase of cigarettes to hand-rolling tobacco (HRT). Figures from the Tobacco Manufacturer's Association claims that whilst consumption of cigarettes in the UK has been declining over the last ten years (from 79bn cigarettes in 2001 to 51.5bn in 2012 [\[link\]](#)), consumption of HRT has been increasing (from 9,500 tonnes in 2001 to 11,900 tonnes in 2012 [\[link\]](#)). This is of concern due to the higher prevalence of illicit HRT on the UK market (36% of all HRT in circulation is non-UK duty paid according to HMRC figures as opposed to only 9% of cigarettes [\[link\]](#)). The risk of sales diverting to the illicit sector can be reduced by determined and effective action by HMRC and partner agencies as we discuss in the next section.

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Sales Costs

In 2012 we stated:

"We fear that an increase in cross-border sales and illicit trade will meet any demand for tobacco whilst penalising law-abiding retailers and Government tax collection. Any move which has the capacity to move volume away from retailers (who can be regulated and relied upon to forward on tax receipts to the Government) to illegal activities must be questioned. The argument that standardised packs would be easier to counterfeit is a concerning one. If volume does move away from legitimate retailers the measures we have signed up to tackle under-age smoking such as Challenge 25 or the tobacco display ban (which involved a lot of expense) would be undermined. A volume shift away from legitimate retailers to the black market would make tobacco products more accessible to children and young people.

"We want the Government put in place all possible measures to ensure that the illicit trade is not boosted. Any increase in illicit trade has the capacity to increase ease-of-access to children; we would like to see what efforts would be expended alongside any standardised packaging legislation to prevent this from occurring."

The House of Commons Home Affairs Committee's June 2014 report [\[link\]](#) into tobacco smuggling stated that in 2012-13 HMRC estimated that UK duty was not paid on around 9% of all cigarettes and around 36% of all hand-rolling tobacco smoked in the UK. This equates to 1 billion illegal cigarettes in 2012 – an increase of 49% since 2011. This is split into contraband (legal products smuggled into UK), illicit whites (sold illegally) and counterfeit (illegally-manufactured copies of existing brands). This is very high. Tobacco company estimates are even higher.

Paragraph 1.2 of HMRC's 2011 *Tackling Tobacco Smuggling – building on our success* [\[link\]](#) states:

"Illicit tobacco makes smoking more affordable. Unregulated distribution networks associated with smuggling make tobacco more accessible to children and young people and perpetuate health inequalities across socio-economic groups".

Based on this analysis we would argue that illicit tobacco poses a greater risk to key sectors of the UK population than that sold by legitimate retailers who comply with underage sales legislation and pay the appropriate duty and tax to the Treasury. We are therefore obviously concerned at any suggestion that standardised packaging could make criminals' lives easier by increasing both ease of counterfeiting and also demand for the very cheapest tobacco on the market.

Jim Harra, Director General, Business Tax, HMRC, admitted in his evidence to the Home Affairs Committee on 11 March 2014 that "there is a real dearth of data that enable you to predict what the impact of standardised packaging will be on smuggling". However, he also stated that HMRC's assessment is that "it is not going to create any new risks for us but it could well change the profile of the illicit market, and we would have to respond to any changes in that market in that way, but we do not think any new risk is created." (p. Ev 12). We think this is complacent and would like to understand what contingencies – if any – HMRC believe should be put in place to ensure that any move towards standardised packaging does not benefit criminal activity at the expense of public health, Government revenue collection and legitimate retailers.

The Tobacco Products Directive will bring in an independent Track & Trace system from May 2016. Due to concerns that standardised packaging may make it easier to counterfeit product it is imperative that this system is watertight and is used effectively by HMRC, Border Force, police forces and trading standards from day one. Introduction of standardised packaging without this system in place could seriously undermine legitimate trade and public health. Standardised packaging must not be introduced before this track and trace system is in place and fully functional.

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Cumulative Regulatory Costs

In 2012 we said:

"We would like to see the efficacy of existing tobacco control measures be fully scrutinised before further legislation that could impose additional cost on retailers be brought in."

We stand by this point.

The 2012 consultation asked whether respondents could demonstrate that standardised packaging would have any impacts on public health "over and above those expected to accrue from existing tobacco control initiatives, including legislation to end the open display of tobacco in shops" (paragraph 2.8). The Impact Assessment for this consultation likewise states that the projected health benefits have been assessed "on the basis of additional benefits that would be likely to accrue over and above existing tobacco control measures and anticipated measures in place at the time of standardised packaging implementation. This includes the benefits of recently commenced legislation in England to end tobacco sales from vending machines, ending the open public display of tobacco products in shops by April 2015, and the benefits arising due to the revised TPD" (paragraph 45). In other words it estimates projected impacts over and above its estimates of the projected impacts of the display ban. We believe that implementing the display ban and then analysing its actual impact will give a stronger foundation for estimating the further benefits likely to be achieved by standardised packaging.

This is particularly the case when the hoped-for impacts of the display ban were achieved without the display ban even coming into effect. In paragraph 32 of the Impact Assessment of the 2012 consultation it was stated that "The full effect of the ending of tobacco displays is projected to be a fall in smoking prevalence among 11-15 year-olds from 5% (according to the survey of Smoking, Drinking and Drug Use Among Young People in England in 2010) to 4.2%." According to the 2012 issue of that survey [\[link\]](#), by 2012 smoking prevalence among 11-15 year-olds had actually decreased further, to 4%, without the display ban even coming into effect. The initial compliance costs for the display ban, per CRTG store, were £6,869 in England and Northern Ireland, £6,914 in Wales and £7,294 in Scotland. Across The Co-operative Group's entire Food estate of 2,185 English, 404 Scottish, 147 Welsh and 31 Northern Irish stores this equates to almost £19.2m. Yet a smaller fall in smoking prevalence among 11-15 year-olds was predicted for this intervention than that which actually occurred over 2010-2012 before the display ban could take effect. In comparison over roughly the same period it is reported [\[link\]](#) that the Australian Government's national drug strategy household survey revealed that the proportion of children who smoked daily grew from 2.5% in 2010 to 3.4% in 2013. It has been argued that the overall decline in smoking continued at the same rate before and after the introduction of standardised packaging in Australia.

In less than a decade we will have witnessed:

- Scottish Tobacco Retailers' Register – April 2011
- Tobacco display ban (large stores) in England – April 2012
- Tobacco display ban (large stores) in Northern Ireland – October 2012
- Tobacco display ban (large stores) in Wales – December 2012
- Tobacco display ban (large stores) in Scotland – April 2013
- Northern Ireland Tobacco Retailers' Register – TBC
- Tobacco display ban (small stores) in England, Scotland, Wales and Northern Ireland – April 2015
- Introduction of standardised packaging – May 2016 – May 2017
- Tobacco Products Directive (increase in minimum pack sizes) - May 2016 – May 2017
- Tobacco Products Directive (ban on menthol) – May 2020

We believe that insufficient evaluation of the results of these interventions is being carried out. In 2008 we expressed our opinion to the Government that if plain packaging and a display ban were designed to meet the same ends, we as retailers

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would prefer to see plain packaging because we felt that it would cost and impact upon retailers less than a display ban. However the Government decided to introduce a display ban instead of plain packaging. Less than six years later the display ban has not come into effect for all stores and so its effects cannot yet be quantified; despite this we are back discussing standardised packaging once again.

Nor do we yet have an authoritative analysis of the impacts of the Australian standardised packaging scheme. To produce this submission we have had to refer to many different analyses of aspects of the Australian retail experience, often with conflicting conclusions. We believe that the Australian Government is commencing its review of standardised packaging in December 2014. We believe that a much more accurate estimation of the costs and benefits of standardised packaging on the British market will be possible once this review has been published.

Constant legislative change and uncertainty is bad for retailers and ultimately bad for consumers – resource has to be diverted from innovations designed to benefit consumers into compliance with new regulations. For example, The Co-operative Group's development of new shelf edge labels that more clearly sign-posted the unit price of products to consumers was delayed when resource had to be re-prioritised to develop a system to ensure compliance with the Licensing Act 2003 (Mandatory Conditions) Order 2014's requirement to ensure that we could not sell alcohol below the level of duty plus VAT. Should standardised packaging be introduced we would strongly urge the Government to adopt a moratorium on further tobacco control regulations targeted against legitimate retailers to allow the combined impact of standardised packaging, the display ban and the TPD to be analysed (action against illicit trade during this period would, of course, not only be permitted but actively welcomed). As Regulation 10 of the Tobacco Advertising and Promotion (Display) (England) (Amendment) Regulations 2010 oblige the Secretary of State to conduct a review of the effectiveness of the ban at least every five years after its implementation this would be a good point at which to analyse whether any further legislative intervention is required.

Instead of major broad-brush legislative change we would prefer to see targeted interventions designed to protect those most at risk. Sales to under-18s are illegal and yet we know that some under-18s continue to be able to smoke. According to the Smoking, Drinking and Drug Use Among Young People in England in 2012 report [\[link\]](#), 69% of occasional smokers said that their main source of cigarettes was being given cigarettes by friends and 41% said that they bought them from 'other people' (i.e. not a shop) (paragraph 2.4.2). Now only 5% of pupils have ever tried to buy cigarettes in a shop (down from 17% in 2006). We would therefore like to see immediate exercise of powers granted under the Children and Families Act 2014 to tackle purchases of tobacco on behalf of underage individuals ('proxy purchases'). We also believe that interventions targeted at families in which one or more members already smoke will help to prevent the next generation starting. The same report stated that an 11–15 year old who lives with at least one other person who smokes is two-and-a-half times more likely to be a regular smoker as someone who lives in a household where no one smokes; amongst those who live with three other smokers regular smoking is eight times more likely (paragraph 2.3.3). Tackling this statistic must be a target area to reduce the incidence of smoking amongst young people. There clearly needs to be a focus of activity towards parents, as well as acknowledgement of some individual responsibility.

- 3) Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?

Sell-through period

We believe that the proposed timescales around sell-through periods are largely appropriate. Sell-through periods are needed to permit existing stock to be effectively cleared from supply chains without causing waste or increasing loss to retailers. Every sell-through period requires extra administration both centrally and in store, it adds in extra cost to business both through not being able to sell existing stock and also from needing to arrange uplift and transportation of that stock, and it causes waste as stock is destroyed. When pictorial health warnings were introduced in 2008 across all tobacco lines

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retailers were granted one year to sell through non-compliant stock. This enabled retailers to dispose of most existing stock through normal rate of sale. There were some slow-moving lines that we were not able to sell through during this one-year period. This non-compliant stock had to be uplifted from stores and returned to manufacturers for destruction; this involved an increase in administration and cost. The majority of these slow-moving lines were cigars, cigarillos and pipe tobacco, all of which are currently excused from the requirement to be transferred into standardised packaging. Fewer packs of cigarettes or HRT had not sold through after a year. However, because of the high value of the products affected any waste stock of cigarettes and HRT will carry a high cost to retailers. We would therefore prefer as long as possible to sell through stock from our store estate. We would regard one year as the minimum necessary.

One of our greatest fears was that we would be required to implement plain packaging across our estate in April 2015 at the same time as we implemented a display ban in 3,147 convenience stores (2,086 operated by The Co-operative Group and 1,061 operated by other co-operative societies). This would have exacerbated the operational difficulties we anticipate. The fact that implementation is not being considered prior to May 2016 reassures us. This will provide convenience store staff with at least thirteen months within which to familiarise themselves with working in a 'dark' environment before packs become standardised. We regard this as positive.

Standardised packaging will see 82% of our tobacco range representing 96% of our annual tobacco sales become illegal in their current packaging; that stock will need to be replaced with compliant product. The minimum pack size requirements of the TPD will see 50% of our tobacco range representing 62% of our tobacco sales become illegal in May 2017. See Tables 1 and 2 below for details. Additionally menthol products (which currently comprise 15% of our total tobacco range and 12% of our total tobacco sales) will be banned from 2020. We would oppose any timescales which would mean that a sell-through of 82% of our range for standardised packaging would be followed immediately afterwards by a sell-through of 50% of the range for the TPD (in effect replacing branded packs of 10s with standardised packs of 10s before having to pull those replacements from sale a year later). If the Government chooses to allow just one sell-through period during which all products affected by both standardised packaging and the TPD are to be cleared we will be able to manage this.

Sub-Category	% of Total Tobacco Range	% of Total Tobacco Sales
Cigarettes	66%	81%
Hand-Rolling Tobacco (HRT)	16%	15%
Cigars	2%	1%
Pipe Tobacco	<2%	<1%
Accessories (no tobacco content)	15%	3%

Table 1: Sub-category breakdown of TCG tobacco range and sales

Products Affected By	% of Total Tobacco Range	% of Total Tobacco Sales	Notes
Standardised Packaging	82%	96%	All cigarettes and HRT will be affected
TPD Minimum Pack Sizes	50%	62%	56% of all cigarette sales and 83% of all HRT sales will be affected
TPD Menthol Ban	15%	12%	Some products in range will already be banned by minimum pack size changes

Table 2: Proportions of TCG total tobacco range and annual sales affected by upcoming legislation

Furthermore, the TPD will bring in a new Track and Trace system from May 2016. As we stated above, we believe that it is imperative that this system accompanies – or, preferably, precedes – the introduction of standardised packaging to make it easier to identify illicit product on the UK market.

Incidentally, Regulation 24 (1), as attached to the consultation document, states that "These regulations do not apply to the supply before 21st March 2017 of a tobacco product produced before 20th May 2016..." We assume that this is a misprint and is meant to read '21st May 2017' in light of the references to a twelve-month sell-through period made elsewhere in the document. Otherwise retailers would only be given ten months to sell through existing stock, which we do not believe is adequate. Please could this be clarified at the earliest possible opportunity?

A national approach

The Co-operative Group operates Food stores across England, Wales, Scotland and Northern Ireland. It has a store in every post-code area in the UK. Other Co-operative societies likewise operate in more than one country – Midcounties has stores in both England and Wales and Scotmid has stores in England as well as Scotland. We therefore welcome one national system of standardised packaging.

In April 2014 the Welsh Government's Public Health White Paper stated that they "reserved [their] position to consider taking forward the standardisation of packaging for tobacco products, should the UK Government decide not to legislate". In June the Scottish Health Minister was quoted as saying that the Scottish Government was prepared to "go it alone" should Westminster "water down" its plans for introducing standardised packaging. Therefore should the current regulations not be approved it is entirely possible that separate regulations could be introduced elsewhere in the UK with different requirements. This would create greater operational problems (for instance, in terms of coding products, merchandising plans, depot pick slots and staff training) than one unified national system and we would like to avoid such a scenario. Furthermore, if standardised packaging schemes were introduced by the devolved governments they might miss the window afforded by the TPD sell-through period. This would mean that retailers would either face two separate sell-through periods or they would be faced with a shorter sell-through period. Neither would be good for reducing regulatory costs.

Tobacco display ban

If tobacco is sold in standardised packaging this does undermine the rationale for keeping it off display. We therefore believe that any legislation bringing in standardised packaging should take the opportunity to remove some of the more onerous impositions associated with the tobacco display ban. We are not calling for the ban to be revoked in total, not least because any announcement to this end by the Government would only occur once the expenditure on gantry refitting has already been made. However, we do believe that standardised packaging will remove the rationale for criminalising inadvertent displays of tobacco by store staff.

Section 21 of the Health Act 2009 requires that, prior to making a "requested display" of tobacco products an individual must have "taken all reasonable steps" to ensure that the person requesting the display was over 18. Section 21 7B(6) states that:

"For the purposes of subsection (5), a person is treated as having taken all reasonable steps to establish an individual's age if—

- (a) the person asked the individual for evidence of the individual's age, and
- (b) the evidence would have convinced a reasonable person."

We would encourage the Government to look again at Section 21 with the aim of repealing 7B(4)-(7). 7B(2) would also need amending. This would have the effect of decriminalising the requested display of tobacco to an individual under 18.

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Please note that it would still be illegal to sell tobacco to individuals under 18. All Co-operative societies operate a Challenge 25 policy in relation to sales of tobacco, cigarette papers and e-cigarettes (where sold). This means that if the staff member believes that the purchaser looks younger than 25 they are asked to provide proof that they are over 18. Without this proof of age the sale is refused.

This policy is governed by the use of 'till flags'. When an age-restricted product is scanned at the till a message is displayed noting how old a purchaser would have to be to legally purchase that product and asking the staff member to check for age. The only way to get rid of the message and complete the sale is to follow its instructions. Training of all customer-facing staff members on our age-related policies takes place at least twice a year but it is this warning which governs the sale or refusal of all age-related products in store.

This system has worked well for many years. However for it to work effectively a product has to be scanned. For a tobacco product to be scanned it has to be retrieved from behind the gantry doors. For a product to be retrieved it will have to be displayed. But the law requires that before any tobacco products can be displayed proof of age must be requested and checked. This presents us with a bit of a Catch-22 situation. We have a very good system to prevent the sale of tobacco products to individuals who cannot prove that they are over 18 but that system, by being based on the scanning of a product's barcode, cannot prevent the display of tobacco products to an individual under the age of 18. We have to rely on training alone, without the added rigour that our existing till flag system provides. The requirements of Section 21 of the Health Act therefore present us with operational difficulties.

We do not think that repealing the requirements to check for age prior to making a requested display will harm children. We will still have a very good system to prevent sales to children. If a display is made all an underage individual will see is standardised packaging (with, admittedly, some branded cigars and pipe tobacco which, as paragraph 5.12 of the consultation document notes, experience "low rates of use, particularly by young people"). Standardised packaging will make the prohibition of requested displays to under-18s obsolete. As part of the Government's commitment to Red Tape Reduction we would encourage decriminalisation of the requested display of tobacco products to under-18s as a deregulatory measure. We would also note that:

- It is not an offence for under-18s to witness the display of tobacco products as long as it is not at their request (if they are accompanying someone who requests a display, for instance)
- it is not an offence to display cigarette papers to under-18s despite the fact that it is illegal to sell them to under-18s
- it is not a criminal offence to display tobacco products upon request in Scotland (it is only an offence in England, Wales and Northern Ireland)

We are aware that any repeal of these clauses would only in the first instance affect England and not Wales or Northern Ireland, but we would hope that profitable discussions could take place with Welsh and Northern Irish Ministers to replicate this action.

Furthermore, display of tobacco products is allowed "in the course of being placed in the storage unit only" and this display "lasts for no longer than is necessary to place products in the storage unit" (Tobacco Advertising and Promotion (Display) (England) Regulations 2010, Regulation 6). We have supplied our stores with blue crates for transferring stock across the shop floor. The cost for this is £45 per store. This adds up across our network – TCG will have 2,086 stores implementing the display ban in April 2015 and this therefore equates to an additional £94,000 to meet our requirements at this time. We would suggest that the Government look at amending the regulations to allow uncovered transport of tobacco across the shop floor (a distance of mere metres in our smaller stores). However we understand that it is unlikely that the Government would be able to make any statement on this early enough to aid retailers – we will be making this expenditure in September 2014. Yet even so, there will be a big non-monetary gain for retailers operationally as stock would not have to

be decanted from a secure tobacco cage in the warehouse into the blue crate, transported across the shop floor in the crate, and then removed from the crate for restocking the gantry.

Finally, Regulation 8 (3) requires that only Helvetica typeface must be used on price lists. Not every computer has access to Helvetica typeface and so it would make compliance easier if this requirement was not so stringent. For instance, Arial is almost identical to Helvetica but is more widely available. The display ban in Scotland permits the use of either Helvetica or Arial which seems much more workable without undermining the intention of the regulations. Similarly, we have experienced overly-stringent interpretations of the rules on font sizes from a couple of Trading Standards Officers since the display ban was introduced. The Tobacco Advertising and Promotions (Display of Prices) (England) Regulations and subsequent regulations in Northern Ireland, Wales and Scotland specify that the wording on any price lists should be such that "no character is greater than 4 millimetres high" (7.1 (d)). We therefore use size 14 font on price lists, as is recommended in guidance. However we have had a handful of complaints from TSOs stating that the letters on the price lists in certain stores is nearer 5mm than 4mm. Upon investigation we have found that this has been caused by slight misalignment of the printer heads in store. As we are dealing with very small sizes of lettering we would appreciate it if any re-issued guidance to enforcement officers ahead of the small store display ban could underline acceptable tolerance levels where hardware like printers are not sensitive enough to ensure compliance 100% of the time.

- 4) Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?

As stated above, we believe that the publication of the official Australian Government review of standardised packaging will allow much greater clarity of costs and benefits arising from the policy. UK Government analysis of the results of the tobacco display ban, once implemented, will then allow a more accurate estimate of what benefits could be expected from a similar policy in the UK "over and above" (in the words of the 2012 consultation) those already achieved.



Department
of Health



Llywodraeth Cymru
Welsh Government



The Scottish
Government
Riaghaltas na h-Alba



Department of
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Consultation on the introduction of regulations for standardised packaging of tobacco products – Response Form

a. Are you responding (required):

- As a member of the public (go to question b)
- As a health or social care professional (go to question b)
- On behalf of a business or as a sole trader (go to question c)
- On behalf of an organisation (go to question c)

b. Please provide your details and contact information:

Name of respondent (required)

Address of respondent (required):

Contact email address (required):

Now go to question f

c. Please provide your organisation's details and contact information:

Name of organisation (required):

FRESH- Smoke Free North East

Name of person providing submission (required):

[Redacted]

Job Title (required):

Director

Contact address of organisation (required):

Bede House, Belmont Business Park, Durham, DH1 1TW

Contact email address (required):

[Redacted]

Is this the official response of your organisation? (required):

Yes

No

d. If you are responding on behalf of a business, what type is it?

Tobacco retailer (supermarket)

Tobacco retailer (convenience store)

Tobacco retailer (other type of shop or business)

Specialist tobacconist

Duty free shop

- Wholesale tobacco seller
- Tobacco manufacturer
- Retailer not selling tobacco products
- Pharmaceutical industry
- Business involved in the design or manufacture of packaging
- Other (please provide details below)

If other, please tell us the type of business:

e. If you are responding on behalf of an organisation, what type is it?

- NHS organisation
- Health charity/NGO (working at national level)
- Local Authority
- Local Authority Trading Standards or Regulatory Services Department
- Local tobacco control alliance
- Retail representative organisation
- Industry representative organisation
- Other type of business representative organisation
- University or research organisation
- Other (please provide details below)

If other, please tell us the type of organisation:

f. Does your response relate to (required):

United Kingdom

England only

Scotland only

Wales only

Northern Ireland only

g. Do you, or the business or organisation you represent, have any direct or indirect links to, or receive funding from the tobacco industry? (required)

No

Yes (please describe below)

If yes, please describe:

h. If you do not wish your details to be identified in the summary report of consultation responses, please tick this box

Consultation questions

1. Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

1. Fresh is the North East of England's comprehensive tobacco control programme, commissioned by all 12 local authorities in the region. Fresh was the UK's first dedicated tobacco control office, set up to tackle the worst smoking rates in England which, in 2005, were 29% amongst the adult population. By 2012 this had dropped to 22%. Fresh works in partnership with the 12 local authority-led tobacco control alliances to deliver comprehensive activity at regional and local levels and to influence action nationally in order to support smokers to quit, prevent young people from starting to smoke and to protect people from tobacco-related harm. Fresh is also one of the lead partners in the national Tackling Illicit Tobacco for Better Health Partnership which aims to reduce the demand for and the supply of illicit tobacco as part of broader strategies to reduce tobacco use.

2. During the 2012 consultation on standardised tobacco packaging, 129 organisations in the region called for packs to be standardised, including all 12 local authorities.

3. We welcome the findings of the Chantler Review, particularly the impact that standardised tobacco packaging could have on uptake of smoking among young people

4. Smoking is the leading cause of health inequalities. The richest smokers die earlier than the poorest non-smokers as found in Gruer et al (1) who concluded that the scope for reducing health inequalities related to social position is limited unless many smokers in lower social positions stop smoking.

5. Tobacco use is the leading cause of premature death and preventable disease. In the North East, 5,500 deaths every year occur as a result of tobacco use.

6. Around 9,000 young people in the North East start to smoke every year and we need to do all we can to ensure that this number reduces to negligible levels. Repeated surveys of North East smokers have found the average age of trying cigarettes and starting to smoke to be 15.

7. We particularly welcome Chantler's dismissal of tobacco industry scaremongering about the alleged impact of standardised packaging on the illicit tobacco trade. Chantler is not convinced by the tobacco industry's argument that standardised packaging would increase the illicit market, especially in counterfeit cigarettes. Recent figures from Australia have also indicated that the illicit market has not increased since the introduction of the measure and that tobacco use is at an all-time low (2).

8. The ideal time to implement standardised packaging would be May 2016 at the same time as the EU Tobacco Products Directive, which includes updated larger health warnings and graphic warnings on the front of the packs. We consider that the case for standardised packaging has been made and that regulations should be laid before Parliament in advance of the 2015 General Election.

(1) <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2645845/>

(2) <http://www.health.gov.au/Internet/main/publishing.nsf/Content/tobacco-kff>

2. Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging that you wish to bring to our attention?

9. A considerable amount of new information on the potential effectiveness of standardised packaging since has emerged since the previous consultation in 2012.

10. Support for standardised packaging is at an all-time high with 69% of people in the North East in favour (3) and only 9% opposing. Nationally, public support is equally high, and perhaps surprisingly more smokers support standard packs (32%) than oppose (30%) with the remainder ambivalent or undecided. Our experience of talking to smokers on this issue suggests most smokers are very keen for their children not to start.

11. Further measures to regulate tobacco are popular with the public – only 12% of people in the North East think the government is doing too much to tackle smoking (4).

12. There is still a worrying lack of awareness about the impact that smoking has on health. Research gathered during the development of the 'Don't be the 1' campaign suggests that 90% of North East smokers underestimate the risk that smoking kills one in two of all long term smokers. When informed of the true risk 65% admitted they find the true risk (5) worrying and 43% said it is "very worrying."

13. 82% of smokers in the North East wish they had never started and 68% say they would like to be able to quit.

14. Fresh submitted the results of focus groups of smokers and non-smokers aged 18-24 during the original consultation, during which examples of Australian standardised packs were rated as likely to be most harmful and less attractive than current branded packs, with many young people feeling their greatest potential lay in dissuading young experimenters, occasional smokers and non-smokers (the stated aim of the policy rather than existing adult smokers). Discussions with young people since then has revealed further the potential impact standardised packs could have, including this film featuring two young female smokers from Gateshead, Tyne and

Wear comparing examples of Australian standardised packs with current branded cigarettes. Quotes from the young smokers included:

"It tells you... like more what it can actually do to you. They've [branded packs] just got like... little pictures on the back that you can't see when you're buying them."

"It'll probably make us want to quit smoking... like I'd probably try more than what I ever have" (6).

15. In Australia, research has shown that social norms in smoking behaviour are already beginning to change as a result of the implementation of standardised packaging. There has been a sharp rise in the number of calls to the Quitline New South Wales service (7) and that smokers are less willing to display their packs in public or to smoke in outdoor public places particularly where children are present (8).

16. Figures released by the Australian government in July have shown adult smoking rates have fallen significantly between 2010 and 2013 (9). In 2010 daily smoking prevalence amongst those aged 14 or older stood at 15.1% and has now fallen to 12.8%. The latest survey was conducted before the Australian Government's tobacco tax increases in December 2013, ruling out price as the primary reason for the dramatic fall in smoking during this 12-month period. Standardised packaging is the only major policy change over this time period and is therefore the most likely reason for the significant fall in smoking prevalence.

Tobacco industry opposition to standardised packaging - misusing data on illicit tobacco

17. The tobacco companies are spending considerable efforts in opposing any moves towards the introduction of standardised tobacco packaging. In the North East, JTI entered into a partnership arrangement with the Evening Chronicle newspaper (part of the Trinity Mirror media group) which featured three weeks' worth of JTI-funded advertising on illegal tobacco and published a series of articles generated by the company. Fresh was able to counter the misinformation provided by JTI and clearly outline that the illicit market is on a sustained long-term decline, that there is no evidence that standardised packaging would lead to an increase in the illicit trade and that all tobacco – legal or illegal – will kill one in two of its long term users.

18. The tobacco industry repeatedly claims that consumption of illicit tobacco will be increased by policies such as higher tax to reduce smoking and restricting tobacco promotion to reduce youth uptake, even though official figures show the illegal tobacco market has in fact decreased in the UK as a result of the introduction of such measures over a number of years. In November 2013 the chair of the Public Accounts Committee accused tobacco multinationals of deliberately oversupplying European markets, with the tobacco smuggled back into the UK. Committee Chair Margaret Hodge said:

"The supply of some brands of hand-rolling tobacco to some countries in 2011 exceeded legitimate demand by 240 per cent. HMRC must be more assertive with these manufactures. So far it has not fined a single one of them."

19. The tobacco industry also claims that standardised tobacco packaging will be cheaper to counterfeit. In fact, the production costs of illicit cigarettes, including packaging, are very low, at around 20 US cents a pack (10). Counterfeiters are able to produce quality and apparently genuine packaging at low prices in a short time, therefore outside packaging is a very poor indicator of whether a pack of cigarettes is licit and illicit. Furthermore, if standardised packaging was introduced, enforcers would easily be able to identify counterfeit and smuggled branded packs and illicit white packs.

20. All security features on current packs will also be present on standardised packaging and additional international tracking and tracing mechanisms to tackle the illicit tobacco trade are required through Article 15 of the revised EU Tobacco Products Directive and Article 8 of the WHO FCTC Illicit Trade Protocol.

20a. Andrew Leggett, Deputy Director for Tobacco and Alcohol Strategy at HMRC has said "we're very doubtful that [standardised packaging] would have a material effect on [counterfeiting and the illicit trade in tobacco]." (10a) This conclusion was supported by the report of the Home Affairs Select Committee which concluded that "We believe that the decision on standardised packaging should be driven by health reasons... [if there was an increase in the illicit trade] we believe that the proper response would be a more vigorous effort on enforcement rather than any lessening in the Government's drive towards introducing standardised packaging." (10b)

21. A briefing from the Tackling Illicit Tobacco for Better Health Partnership on the tobacco industry and their tactics in using illegal tobacco arguments to oppose tobacco control measures can be found here: <http://www.illegal-tobacco.co.uk/wp-content/uploads/2014/03/Illegal-Tobacco-The-facts-about-the-Tobacco-Industry-V3-28-05-14.pdf>

22. HMRC estimates that in 2000 around 20% of cigarettes and 60% of hand-rolling tobacco (HRT) smoked in the UK were smuggled, costing over £3 billion a year in lost tax revenue (11). HMRC data suggests that by 2012/13 (the latest year for which this information is available) the illicit market in cigarettes had fallen to around 9% of the UK market, and in HRT to around 36% of the market with an associated revenue loss of £2 billion (midpoint) down from £3 billion in 2000 (12).

23. A report commissioned jointly by the four transnational tobacco companies (British American Tobacco, Imperial, JTI and Philip Morris International (13)) provides estimates on the scale and development of the illicit cigarette market in Europe and reports that consumption of counterfeit and contraband declined in the UK by 6.2% despite other industry data suggesting an increase.

24. The experience from England shows that comprehensive regional illicit tobacco programmes change the social norms around illicit tobacco, reducing the size of the illicit tobacco market, reducing the proportion of smokers buying illicit tobacco and increasing the public's likelihood to report intelligence. For example, in the North East between 2009 and 2013, following partnership development, three bursts of social marketing activity and enhanced intelligence and enforcement models:

- the proportion of smokers buying illicit tobacco had dropped from 24% to 17%
- the size of the illicit tobacco market had shrunk from 15% to 9%
- the proportion of smokers who buy illicit tobacco believing that 'everybody does it' shrunk from 45% to 28%
- the proportion of adults who are uncomfortable with the illicit tobacco trade rose from 57% to 70% (14).

25. A major Trading Standards survey in the North West of England has shown that fewer young children are accessing illicit tobacco products. Between 2011 and 2013 there were reductions in:

- the proportion of young people who have bought cigarettes from sellers such as neighbours, car boots and ice-cream vans from 42% to 27%
- the proportion of young people who have bought fake cigarettes, down from 28% to 22%
- the proportion of young smokers who have ever bought single cigarettes, from 67% to 49% (15).

Tobacco industry opposition to standardised packaging – misinformation from Australia

26. Further examples of misinformation include the release of misleading figures on tobacco consumption in Australia where standardised packs have been introduced. In November 2013, a study by the consultancy firm London Economics, funded by Philip Morris, reported that since the measure was introduced, there had been no significant change in smoking prevalence (16). However, the study used an online survey panel which was not representative of the general population and had a higher than average smoking prevalence, and the sample size used was not sufficient to determine statistically significant changes (17).

27. More recently, statistics from Australia were released in June 2014 claiming that cigarette sales had increased in Australia since the introduction of standardised packaging. A number of these articles appeared in one key newspaper in Australia that had opposed standardised packs, which then picked up coverage in national newspapers in England. However, figures from the Australian Bureau of Statistics (ABS) show that in March 2014 tobacco consumption in the country was the lowest ever recorded. Analysis in Australia suggests these statistics had been completely misreported in an attempt to discourage other Ministers in the UK from proceeding with standardised packaging (18). The recent figures released by the ABS show that total consumption of tobacco and cigarettes is currently the lowest ever recorded,

dropping from \$3.508bn in December 2012 (when standard packs were introduced) to \$3.405 billion in March 2014 (19). After population growth is taken into account tobacco sales per person have continued to decrease from 920.4 cigarettes in 2012 to 906.9 in 2013 (20). The Commonwealth Treasury has further advised that tobacco clearances (including excise and customs duty) fell by 3.4% in 2013 relative to 2012 when standardised packaging was introduced.

28. Tobacco retailers in the UK, often backed by tobacco-funded organisations, have suggested that the introduction of standardised packaging means that it will take longer to serve customers and that convenience stores will lose custom. However, research in Australia (21) has shown that "retailers quickly gained experience with the new legislation... The long retrieval times predicted by tobacco industry-funded retailer groups and the consequent costs they predicted would fall upon small retailers from plain packaging are unlikely to eventuate."

28a. The government should resist efforts by the tobacco industry and its surrogates to destabilise progress towards the implementation of standardised packaging.

(3) YouGov Survey. Total sample size was 12,269. Fieldwork was undertaken between 5th and 14th March 2014. All surveys were carried out online. The figures have been weighted and are representative of all GB Adults (aged 18+).

(4) *ibid.*

(5) The Doctors Study" (Doll R, Peto R, Wheatley K, Gray R, Sutherland I. Mortality in relation to smoking: 40 years observations on male British doctors. *British Medical Journal* 1994; 309:901-911).

(6) <http://www.youtube.com/watch?v=R1AEH4Pemiw>

(7) <https://www.mja.com.au/journal/2014/200/1/association-between-tobacco-plain-packaging-and-quitline-calls-population-based>

(8) <http://onlinelibrary.wiley.com/doi/10.1111/add.12466/abstract>

(9) <http://www.aihw.gov.au/alcohol-and-other-drugs/ndshs/>

(10)

http://www.cancerresearchuk.org/prod_consump/groups/cr_common/@nrel/@pol/documents/generalcontent/smuggling_fullreport.pdf

(10a) Oral Evidence to the House of Lords European Sub Committee (Home Affairs) on 24th July 2013

(10b)

<http://www.publications.parliament.uk/pa/cm201415/cmselect/cmhaff/200/200.pdf>

(11)

http://customs.hmrc.gov.uk/channelsPortalWebApp/channelsPortalWebApp.portal?_nfpb=true&_pageLabel=pageLibrary_MiscellaneousReports&propertyType=document&columns=1&id=HMCE_PROD1_031246

(12)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/249543/131009_Publication_of_Tobacco_Tax_Gap_estimates_2012-13.pdf

(13)

http://www.pmi.com/eng/media_center/media_kit/Documents/SUN%20Report%202013.pdf

- (14) http://www.illegal-tobacco.co.uk/wp-content/uploads/2014/03/NE_Illicit_Tobacco_Report_key_findings.pdf
- (15) http://tobaccofreefutures.org/wp-content/uploads/2013/08/8353_TSNW-Young-Persons-Alcohol-Tobacco-Report_130605_V3.pdf
- (16) <http://londoneconomics.co.uk/wp-content/uploads/2013/11/London-Economics-Report-Australian-Prevalence-Final-Report-25-11-2013.pdf>
- (17) http://www.cancervic.org.au/downloads/tobacco_control/2013/Critique_by_Cancer_Council_Victoria_on_report_by_PMI_26.11.13.pdf
- (18) <http://www.abc.net.au/mediawatch/transcripts/s4026465.htm>
- (19) <http://www.health.gov.au/internet/main/publishing.nsf/Content/tobacco-kff>
- (20) <http://www.theguardian.com/society/datablog/2014/jun/06/is-smoking-increasing-in-australia>
- (21) <http://tobaccocontrol.bmj.com/content/early/2013/05/25/tobaccocontrol-2013-050987.abstract>

3. Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations as drafted?

29. We broadly welcome the comprehensive draft regulations particularly in terms of the stipulated colour of tobacco packets; the minimum number of cigarettes or minimum weight of hand rolling tobacco that a packet can contain; the reassurance that these regulations will not affect other labelling requirements for tobacco products such as health warnings and fiscal marks; the scope of the regulations across the UK; the clarity of the regulations in relation to their impact on trade mark protection; the scope to include the changes required for Directive 2014/40/EU.

30. However there are some issues with the draft regulations that we would like to see addressed.

31. The draft regulations apply only to cigarettes and hand-rolling tobacco. We believe that the regulations should also apply to specialist tobacco products including cigars, cigarillos and 'blunts'. The rationale for this exclusion is low rates of use, particularly by young people, and the provision is made that that the regulations could be extended if young people become increasingly attracted to these types of tobacco. Our view is that this opportunity should not be missed to highlight to young people the dangers of these products before consumption increases and that the regulations should be extended now to include specialist tobacco products rather than when these products have become a problem so that there is a level playing field.

32. The draft regulations do not propose requirements relating to the size or length of cigarettes. Evidence in the North East shows that young women in

particular are attracted to slim cigarettes therefore regulations should be included to stipulate a minimum size of cigarette. This would also prevent any opportunity for slim cigarettes to be repositioned as cigarillos thereby becoming exempt from regulations given their specialist tobacco products status (unless this exemption is removed as recommended).

33. The draft regulations do not propose requirements relating to the size of cigarette or tobacco packets. Instead, the only stipulation in terms of size is 'cuboid' and this is open to interpretation. This is a real concern and a potential weakness in the regulations. Dimensions should be provided to ensure consistency and to prevent the tobacco manufacturers from determining the size themselves and using it as a means of product differentiation. In Australia, the minimum dimensions for a 20 pack of cigarettes are stipulated as follows and we recommend the UK government follows this model:

Physical features of cigarette packs

The dimensions of a cigarette pack, when the flip-top lid is closed, must not be:

- (a) height — less than 85 mm or more than 125 mm; and
- (b) width — less than 55 mm or more than 82 mm; and
- (c) depth — less than 20 mm or more than 42 mm.

33a. Once standardised packaging is introduced, brand names, variant names and brand descriptors will all become important tools for the tobacco industry to differentiate their brands from others. Recital (27) of the EU Tobacco Products Directive covers this issue listing words that are misleading e.g. 'low-tar' and 'light.' However, the list included at Recital (27) is not comprehensive and we urge the government to include additional words where there is evidence that they are misleading to consumers by creating the false impression that they are less harmful to health e.g. 'smooth,' colour names such as 'gold' or 'silver' and numbers. The burden should be on the tobacco industry to prove that any brand names, variants or descriptors are not misleading before they can be put on sale in the UK.

34. The requirements prevent packaging from producing a noise or scent but do not prohibit any smell arising from a permitted additive. Tobacco manufacturers will be innovating packaging now to ensure they can work around these regulations therefore we feel that any scent other than that which normally arises from tobacco products should be prohibited. This is particularly relevant for menthol cigarettes which, under the directive 2014/40/EU, have an exemption until 2020. The development of capsule cigarettes shows that the tobacco industry is still innovating in this area.

34a. Leading up to the legislation in Australia, tobacco companies launched strategies to try to secure its customer base, refreshing brand names and providing extra 'value for money' to retain consumer interest including the launch of capsule cigarettes, re-designing packaging and lengthening product names to increase their prominence. The government should be mindful of any similar activity in the UK and take action as necessary. (21a)

35. The requirements only apply to retail packaging of tobacco products and not packaging that is used only within the tobacco trade, for example for stock management in a warehouse or wholesale premises. It would be preferable for the requirements to apply to all tobacco packaging to avoid any potential confusion over definitions of warehouses.

36. To aid enforcement of the regulations, it would assist if images of the packages, currently in Appendix C of the consultation document, were placed in the body of the regulations. A similar approach is used in other legislation that has specific labelling or presentation requirements, for example the regulations on pack health warnings.

37. Local authority Trading Standards officers will be tasked with enforcing this legislation. Trading Standards departments are playing an increasing role in public health and in tobacco control in particular. We feel therefore that it is important that the UK government invests in this vital service and provides it with the leadership and powers it needs to sustain this vital function.

(21a) Scollo M, Occleston J, Bayly M, Lindorff K, Wakefield M. Tobacco product developments coinciding with the implementation of plain packaging in Australia. *Tobacco Control*, 30 April 2014. doi:10.1136/tobaccocontrol-2013-051509

4. Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?

38. We welcome the overall recommendations of the consultation-stage impact assessment particularly its statement that the implementation of standardised tobacco packaging is worth pursuing now and that the cost of delaying a decision is too great in public health terms.

39. We welcome the decision to review the policy after five years which will allow time for early impacts to become clear although it needs to be borne in mind that long term impacts such as reduced youth uptake, reductions in smoking prevalence and improvements in public health will take many years to manifest.

40. We understand the difficulty of apportioning value to certain outcomes from interventions but there are some statements within the impact assessment that are particularly difficult to accept including:

"an additional benefit [of implementing standardised packaging] is the possible enhancement of price competition between tobacco companies and the potential for accelerated product innovation to exploit other avenues for product differentiation."

"consumer surplus [identified as a cost] represents the loss of the ability of those who continue to smoke to gain the intangible benefit associated with smoking a particular brand that only the packaging of that brand, as it is currently available, can produce."

The reality is that all cigarettes, regardless of brand or price, will kill one in two of its long-term users. Making products more affordable or more attractive cannot be judged to be a benefit.

41. We support any effective measures to maintain the costliness of tobacco in particular adjusting rates on tobacco duty above those currently required by the duty escalator, given that price is the single most effective policy lever for reducing smoking prevalence available to governments. Peto (22) has recommended an approach to taxation that would have a significant impact on consumption: tripling inflation-adjusted specific excise taxes on tobacco which would approximately double the average price of cigarettes (and more than double prices of cheaper brands) which would reduce consumption by about a third and actually increase tobacco revenues by about a third. We can fully expect the tobacco industry to respond to standardised packaging by dropping prices to make smoking more affordable.

41a. It is important to note that tobacco sales are undergoing a long-term decline from the peak of tobacco smoking in the 1950s when adult male smoking prevalence was 80%. Female smoking reached a peak of 45% in the mid 1960s. Smoking prevalence has since declined rapidly amongst men and women and is now less than 20%. Data from HMRC shows the impact that this has had on sales of tobacco with the number of sticks cleared for UK sales falling from over 94 million in 1992/3 to just under 38 million in 2012/13.

42. The impact assessment considers the potential costs that may arise through increases in the demand for and the supply of illicit tobacco. However, we draw the consultation team's attention to:

- the findings of Chantler who is not convinced that standardised packaging would increase the illicit market and found no evidence that standardised packaging is easier to counterfeit.
- evidence from Australia which has shown there to be no increase in the illicit tobacco trade since the measure was introduced while tobacco consumption has fallen

- the conclusion of the Home Affairs Committee inquiry into tobacco smuggling which recommended that any risks in this area could be mitigated by increasing enforcement action

- Peto's view (23) that use of specific excise taxes on tobacco (rather than ad valorem taxes), stronger tax administration, and practicable controls on organised smuggling can limit the problem. Even with some smuggling, large tax increases can substantially reduce consumption and increase revenue especially if supported by better tax enforcement

- the impact that health-related social marketing can have on reducing smoking at population level and, in turn, reducing the illegal tobacco market, as seen in the North East, North West and South West where the illicit tobacco market share has reduced significantly

43. The impact assessment also considers the costs for retailers and states that, anecdotally, the profit margins on the sale of tobacco may be relatively low. John McClurey, elected member for Gateshead Council and Independent retailer in Newcastle, maintains that:

"most traders rely less and less on tobacco profits since the gross profit is so small. I make as much profit from a pack of chewing gum as a £6 pack of cigarettes. What my customers save by quitting or never starting to smoke, they can spend on other things. That means more money into the local economy."

44. Standardised packaging was introduced in Australia on conjunction with larger health warnings and sustained mass media campaign, the per capita equivalent of which at then exchange rates would be £33.7 million a year in the UK. Australia is also committed to annual increases in tobacco taxation of 12.5 per cent over inflation each year for four years from December 2013.

45. Tobacco control policies should be comprehensive and complementary if they are to achieve maximum possible impact and we would support the government in refreshing its Tobacco Control Plan for England for the period in which standardised packaging is likely to be implemented. Consideration by the government must be given to the following areas if the public health benefits of standardised packaging are to be realised:

- Funding a sustained mass media campaign to support the implementation of standardised packaging
- Ensuring that stop smoking services are funded adequately
- Supporting and investing in efforts to reduce the supply of and demand for illicit tobacco through partnerships between health and enforcement based on the model of the Tackling Illicit Tobacco for Better Health Partnership (24)

- Considering tax rises on tobacco products over and above the existing escalator, particularly to counteract any possible negative effects from brand-shifting or price-cutting
- Considering further levies on the tobacco industry based on local sales data and designed to fund broad tobacco control and health costs caused by tobacco consumption.

46. The benefits of introducing standardised packaging identified in the impact assessment far outweigh the costs, many of which can be quantified at the North East level:

- Overall, the main smoking related diseases are conservatively estimated to cost the NHS across the North East £110.4 million per year
- The cost of smoking-related hospital admissions in the North East alone is calculated to be nearly £65.8 million per year
- An additional £32.1 million is lost to the regional economy each year through increased levels of absence from work from smokers compared to their non-smoking counterparts, which accounts for over 361,000 additional lost days of productivity per year across the North East.

47. We urge the government to act now to introduce standardised packaging as a matter of priority and take this vital and popular step towards making smoking history.

(22) <http://www.nejm.org/doi/full/10.1056/NEJMra1308383>

(23) <http://www.nejm.org/doi/full/10.1056/NEJMra1308383>

(24) www.illegal-tobacco.co.uk

Thank you for participating in this consultation.

The Department of Health and Devolved Administrations will only contact you should we seek further information about your response.

How to get involved in the consultation

The consultation will run for 6 weeks, from 26/06/14 to 07/08/14. Responses are invited from any interested group, company or person.

Respondents are encouraged to provide their views online, but responses can be made in any of the following ways:

Completing the online form on the Department of Health website at:

[http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-](http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1)

[1](http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1)

- **Filling in the response form by downloading it at:**

<https://www.gov.uk/government/consultations>

- **Emailing your response to:**

TobaccoPackaging@dh.gsi.gov.uk

- **Posting your response to**

Department of Health
Standardised Packaging Tobacco Consultation
PO Box 1126
CANTERBURY
CT1 9NB



Department
of Health



Llywodraeth Cymru
Welsh Government



The Scottish
Government
Riaghaltas na h-Alba



Department of
Health, Social Services
and Public Safety
www.dhsspsni.gov.uk

Consultation on the introduction of regulations for standardised packaging of tobacco products – Response Form

a. Are you responding (required):

- As a member of the public (go to question b)
- As a health or social care professional (go to question b)
- On behalf of a business or as a sole trader (go to question c)
- On behalf of an organisation (go to question c)

b. Please provide your details and contact information:

Name of respondent (required)

Address of respondent (required):

Contact email address (required):

Now go to question f

c. Please provide your organisation's details and contact information:

Name of organisation (required):

Royal College of Physicians

Name of person providing submission (required):

[Redacted]

Job Title (required):

Head of PR and public affairs

Contact address of organisation (required):

11 St Andrews Place
Regent's Park
London NW1 4LE

Contact email address (required):

[Redacted]

Is this the official response of your organisation? (required):

Yes

No

d. If you are responding on behalf of a business, what type is it?

Tobacco retailer (supermarket)

Tobacco retailer (convenience store)

Tobacco retailer (other type of shop or business)

Specialist tobacconist

- Duty free shop
- Wholesale tobacco seller
- Tobacco manufacturer
- Retailer not selling tobacco products
- Pharmaceutical industry
- Business involved in the design or manufacture of packaging
- Other (please provide details below)

If other, please tell us the type of business:

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- NHS organisation
- Health charity/NGO (working at national level)
- Local Authority
- Local Authority Trading Standards or Regulatory Services Department
- Local tobacco control alliance
- Retail representative organisation
- Industry representative organisation
- Other type of business representative organisation

University or research organisation

Other (please provide details below)

If other, please tell us the type of organisation:

Medical Royal College

f. Does your response relate to (required):

United Kingdom

England only

Scotland only

Wales only

Northern Ireland only

g. Do you, or the business or organisation you represent, have any direct or indirect links to, or receive funding from the tobacco industry? (required)

No

Yes (please describe below)

If yes, please describe:

- h. If you do not wish your details to be identified in the summary report of consultation responses, please tick this box**

Consultation questions

- 1. Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?**

The RCP is delighted and encouraged that Sir Cyril's report recommended that the introduction of standardised packaging was 'likely to lead to a modest but important reduction over time in the uptake and prevalence and thus have a positive impact on public health'.

The RCP also welcomes the support of both the Minister for Public Health and the Government's Chief Medical Officer, Dame Sally Davies. On the basis of Sir Cyril's report and the widespread support for this measure in the public health community, there should be no delay in introducing the regulations on standardised packaging.

- 2. Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging that you wish to bring to our attention?**

The introduction of standardised packaging is likely to work best as part of a package of measures, including mass media campaigns, tax rises on tobacco products, and further investment in stop smoking services both in hospitals and in the community.

Since the 2012 consultation, there is new evidence from Australia following the introduction of standardised packaging, showing a decrease in the daily smoking rate greater than the underlying trend, a decrease in the amount smoked, and a decrease in total tobacco consumption. All of these measures point towards standardised packaging having a beneficial effect overall.

- 3. Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations as drafted?**

The RCP would like the regulations to apply to other specialist tobacco products including cigars and cigarillos.

On Regulation 10, the RCP recommends that the prohibition of specific brand names and variants which are found to be misleading should not be limited to those set out in recital (27) of the TPD, and it should be up to the tobacco industry to demonstrate that any brand names, variants or descriptors are not misleading before they can be put on sale in the UK. This will ensure that tobacco companies cannot begin to use new and misleading descriptors to market products in the absence of branding.

4. Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?

Thank you for participating in this consultation.

The Department of Health and Devolved Administrations will only contact you should we seek further information about your response.

How to get involved In the consultation

The consultation will run for 6 weeks, from 26/06/14 to 07/08/14. Responses are invited from any interested group, company or person.

Respondents are encouraged to provide their views online, but responses can be made in any of the following ways:

Completing the online form on the Department of Health website at:

<http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1>

- o **Filling in the response form by downloading it at:**

<https://www.gov.uk/government/consultations>

- o **Emailing your response to:**

TobaccoPackaging@dh.gsi.gov.uk

- o **Posting your response to**

Department of Health
Standardised Packaging Tobacco Consultation
PO Box 1126
CANTERBURY
CT1 9NB



Department of Health



Llywodraeth Cymru
Welsh Government



The Scottish Government
Riaghaltas na h-Alba



Department of Health, Social Services and Public Safety
www.dhssps.hi.gov.uk

Consultation on the introduction of regulations for standardised packaging of tobacco products – Response Form

a. Are you responding (required):

- As a member of the public (go to question b)
- As a health or social care professional (go to question b)
- On behalf of a business or as a sole trader (go to question c)
- On behalf of an organisation (go to question c)

b. Please provide your details and contact information:

Name of respondent (required)

Address of respondent (required):

Contact email address (required):

Now go to question f

c. Please provide your organisation's details and contact information:

Name of organisation (required):

Name of person providing submission (required):

[Redacted]

Job Title (required):

Tobacco Control Manager

Contact address of organisation (required):

Policy and Information Department, Angel Building, 407 St John Street London, EC1V 4AD

Contact email address (required):

[Redacted]

Is this the official response of your organisation? (required):

Yes

No

d. If you are responding on behalf of a business, what type is it?

Tobacco retailer (supermarket)

Tobacco retailer (convenience store)

Tobacco retailer (other type of shop or business)

Specialist tobacconist

Duty free shop

- Wholesale tobacco seller
- Tobacco manufacturer
- Retailer not selling tobacco products
- Pharmaceutical industry
- Business involved in the design or manufacture of packaging
- Other (please provide details below)

If other, please tell us the type of business:

e. If you are responding on behalf of an organisation, what type is it?

- NHS organisation
- Health charity/NGO (working at national level)
- Local Authority
- Local Authority Trading Standards or Regulatory Services Department
- Local tobacco control alliance
- Retail representative organisation
- Industry representative organisation
- Other type of business representative organisation
- University or research organisation
- Other (please provide details below)

If other, please tell us the type of organisation:

f. Does your response relate to (required):

United Kingdom

England only

Scotland only

Wales only

Northern Ireland only

g. Do you, or the business or organisation you represent, have any direct or indirect links to, or receive funding from the tobacco industry? (required)

No

Yes (please describe below)

If yes, please describe:

h. If you do not wish your details to be identified in the summary report of consultation responses, please tick this box

Consultation questions

1. Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

Please see attached document

2. Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging that you wish to bring to our attention?

as above

3. Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations as drafted?

as above

4. Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage Impact assessment?

as above

Thank you for participating in this consultation.

The Department of Health and Devolved Administrations will only contact you should we seek further information about your response.

How to get involved in the consultation

The consultation will run for 6 weeks, from 26/06/14 to 07/08/14. Responses are invited from any interested group, company or person.

Respondents are encouraged to provide their views online, but responses can be made in any of the following ways:

Completing the online form on the Department of Health website at:

<http://consultations.dh.gov.uk/tobacco/standardised-packaging-of-tobacco-products-1>

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- **Posting your response to**

Department of Health
Standardised Packaging Tobacco Consultation
PO Box 1126
CANTERBURY
CT1 9NB

**Cancer Research UK submission to the Consultation on the introduction of regulations
for standardised packaging of tobacco products**

- I. Introduction
- II. Summary of response
- III. (Q1) Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?
- IV. (Q2) Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging, that you wish to bring to our attention?
- V. (Q3) Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?
- VI. (Q4) Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?
- VII. Declaration of interests

I. Introduction

About Cancer Research UK¹

1. Every year around 300,000 people are diagnosed with cancer in the UK and more than 150,000 people die from cancer. Cancer Research UK is the world's leading cancer charity dedicated to saving lives through research. Together with our partners and supporters, our vision is to bring forward the day when all cancers are cured. We support research into all aspects of cancer through the work of over 4,000 scientists, doctors and nurses. In 2012/13, we spent £351 million on research in institutes, hospitals and universities across the UK. The charity's pioneering work has been at the heart of the progress that has already seen survival rates in the UK double in the last forty years. We receive no government funding for our research.
2. Cancer Research UK is a registered charity in England and Wales (1089464) and in Scotland (SC041666). Registered as a company limited by guarantee in England & Wales No.4325234. Registered address: Angel Building, 407 St John Street, London EC1V 4AD.
3. Cancer Research UK welcomes comprehensive tobacco control measures worldwide, in line with the principles laid out in the World Health Organisation Framework Convention on Tobacco Control (WHO FCTC).

Background information on Cancer Research UK's work in Tobacco Control

4. Cancer Research UK (CRUK) invests in a range of research from behavioural health research (e.g. the Health Behavioural Research Centre at UCL) to policy relevant

translational research. We currently support the UK Centre for Tobacco and Alcohol Studies (UKCTAS) - a consortium of 13 University teams conducting research on tobacco and alcohol use and addiction. UKCTAS is one of five national public health research centres of excellence funded by the UK Clinical Research Collaboration. As member of the Collaboration we have provided approximately £2.4m to the initiative in its first 5-year phase and we are providing a further £2.5m in the second five-year phase.

5. In addition to this, we have funded policy relevant translational research through our Tobacco Advisory Group (TAG) funding committee. The committee invests almost £1m a year in tobacco control policy research and advocacy. Over the last 5-years TAG has provided more than £900,000 of funding directly to the UK Centre of Tobacco Control (CTCR) at the University of Stirling. Among the projects funded were the first British pilot study into the impact of standardised packaging in real world settings and the subsequent larger study on the impact of standardised packaging on female smokers, both undertaken by Dr Crawford Moodie at the CTCR.
6. Furthermore, three of the 37 studies evaluated in the Systematic Review of standardised packaging of tobacco, led by researchers at Stirling University, were directly funded by CRUK. A further three of the 17 of those included as part of the update review in September 2013 (now collectively referred to as the 'Stirling Review') were directly funded by CRUK.
7. CRUK is currently campaigning for the introduction of standardised packaging of tobacco products in the UK, in partnership with the Smokefree Action Coalition (SFAC) – a coalition of more than 250 health and wellbeing organisations, including the British Medical Association and Royal Medical Colleges.

II. Summary of response:

- (a) The Independent Review of the evidence for Standardised Packaging of Tobacco Products (the Independent Chantler Review) makes an overwhelmingly supportive case for the introduction of standardised packaging based on the public health gains that can be achieved. The Independent Review developed the positive case for standardised packaging, further to the evidence outlined in the 'Stirling Review'.
- (b) The Chantler Review presented a strong case that the introduction of standardised packaging would achieve all nine of the policy objectives listed in the consultation document¹. Regulations for standardised packaging of tobacco products should be presented to Parliament under Section 94 of the Children and Families Act without delay.
- (c) A number of studies commissioned by the tobacco industry have claimed that standardised packaging in Australia was not achieving its aims and having negative consequences – particularly with reference to the illicit tobacco trade. Officials in the UK and Australia have repeatedly dismissed such claims, while public campaigning – through a series of tobacco industry adverts – have concurrently been ruled as misleading. The Chantler Review consolidates many of these expert opinions, indicating

¹Policy Objectives: Part 3; p.8

that tobacco industry commissioned and funded data does not reflect the reality of the situation and their information cannot be relied upon².

(d) On the specifics of the regulations CRUK recommends that:

- It should be made clear that text giving details about how to contact the producer cannot be used to promote the 'quality' of, or 'satisfaction' derived from tobacco products, in line with manufacturer's descriptors.
- We believe that 'bevelled or rounded edges' for tobacco packs should be prohibited under these regulations because they are a design feature which serve no purpose, other than to enhance the sensory appeal of tobacco products.
- We believe that 'shoulder hinge' opening mechanisms should be prohibited under these proposals. Such opening mechanisms – laterally along the surface of the pack – split health warnings, risking a reduction in their intended effect.
- These regulations should be applied to all tobacco products, including 'specialist tobacco products' that are not incorporated as part of the draft proposals. The exemption of certain types of tobacco, which are no less deadly, and no less addictive, risks creating a two-tier regulatory system which would undermine the potential comprehensiveness of this measure.
- We believe that the dimensions of the pack should be regulated as to ensure the minimum size for health warnings of height not less than 44mm and width not less than 52mm – as mandated by the Tobacco Products Directive – can be implemented.
- We recommend that the brand name of the cigarette should not be allowed to appear on the cigarette; the principle of standardisation is weakened by allowing brand identity to remain on the cigarettes themselves. The brand name is not required to assist in supply chain controls, and therefore serves no purpose other than a promotional one.

(e) We fully expect the tobacco industry to challenge, both domestically and internationally, any legislation which would require the standardisation of their products. The tobacco industry have argued that standardised packaging would be an infringement of their intellectual property. However this argument has been tested in, and dismissed by, the Australian High Court. The tobacco industry has openly admitted to supporting countries in making claims through the World Trade Organisation against Australia, and we urge not to weaken these proposals in response to such bullish action by a historically litigious industry. The World Health Organisation fully backs standardised packaging in line with the Framework Convention on Tobacco Control.

III. (Q1) Do you have any observations about the report of the Chantler Review that you wish to bring to our attention?

8. Cancer Research UK supports the conclusions of the Independent Chantler Review. The cumulative findings of academic research – coupled with official figures from Australia – leads us to the conclusion that there can be no doubting the efficacy of standard packs in reducing the appeal of tobacco products to young children. There is substantial evidence that advertising and promotion draw young people into smoking^{3,4,5} and that packaging is an important part of tobacco promotion⁶. To inform the UK's consultation on standardised packaging, the Department of Health commissioned a systematic review⁷ of all the

available evidence for its impact. Leading CRUK researchers were involved in the review. A total of 37 studies were included meeting stringent methodological and relevance criteria. After the review was published, research in Australia^{6,9}, the UK^{10,11}, Norway¹², Brazil¹³, Canada¹⁴, the USA¹⁵, France and Germany¹⁶, has supported its findings. A review from the UK Centre for Tobacco Control and Alcohol Studies in September 2013¹⁷ detailed a total of 54 studies on standard packaging. They consistently demonstrate that standard packs would reduce the appeal of smoking.

9. The WHO FCTC guidelines recognise that: 'There is a fundamental and irreconcilable conflict between tobacco industry and public health interests'¹⁸. Article 5.3 of this global public health treaty explicitly protects public health policy from tobacco industry interference. However, through engaging with the tobacco industry in his position as an independent reviewer, Sir Cyril concluded that the tobacco industry themselves – who have spent vast sums of money in the UK claiming standardised packaging would increase the illicit trade – were not convinced the measure would make tobacco products easier to counterfeit, with Sir Cyril stating he did "...not have confidence" in tobacco industry commissioned reports¹⁹.
10. The primary purpose of the Chantler Review was to examine the public health impact of the policy, however it also unpicked the major tobacco industry arguments relating to claims that the illicit tobacco trade will increase following the introduction of standardised packaging. The House of Commons Home Affairs Select Committee, in its report on the illicit tobacco trade published in June 2014, stated: "We believe that the decision on standardised packaging should be driven by health reasons and the imperative need to reduce the numbers of young people who start smoking. We note the statement of Sir Cyril Chantler to the effect that he was not convinced that standardised packaging would bring about an increase in the illicit market; even if this were the case, we believe that the proper response would be a more vigorous effort on enforcement rather than any lessening in the Government's drive towards introducing standardised packaging".²⁰
11. The Public Health Minister, Jane Ellison, said of the independent review "...Sir Cyril's report makes a compelling case that if standardised packaging were introduced it would be very likely to have a positive impact on public health and that these health benefits would include health benefits for children"²¹. Echoing this sentiment, we believe that the Review demonstrated a strong case that all nine of the policy objectives listed in the consultation document^b would be achieved through the introduction of this policy. Regulations for standardised packaging of tobacco products should be presented to Parliament under Section 94 of the Children and Families Act, without delay.

IV. (Q2) Do you have any information, in particular any new or additional information since the 2012 consultation, relating to the wider aspects of standardised packaging, that you wish to bring to our attention?

12. Since the launch of the initial consultation in March 2012, a number of studies commissioned and funded by the tobacco industry have been unpicked and discredited by both the public health community and the conclusions of the Independent Chantler

^bPolicy Objectives: Part 3; p.8

Review. Furthermore, claims made in tobacco industry campaign material have been repeatedly denounced as “misleading” by the advertising regulator. In contrast a body of peer-reviewed evidence, which continues to grow, consistently demonstrates the potential public health gains the measure can deliver for the UK, as well as early indications of the efficacy of the measure since implementation in Australia.

13. For decades the tobacco industry has embarked on activities that sought to misinform, protect against liability claims and avoid government regulation. Public health organisations remain concerned by the tobacco industry’s ongoing attempts to distort scientific evidence and cast doubt on legitimate research into the effects of tobacco use, such as questioning the definition - and extent - of the addictiveness of tobacco, and challenging the links between second hand smoke and lung cancer^{22,23,24}. The same tactics have been employed in order to attempt to create doubt as to the efficacy and unintended consequences of the introduction of standard packs. In reality, the evidence the tobacco industry’s arguments have relied upon lack both relevance and quality^{26,28}. 77 of 143 pieces of the transnational tobacco corporations’ cited evidence submitted to the UK consultation on standardised packaging²⁷ were used to promote their claim that standardised packaging ‘won’t work’. Of these 77, just 17 addressed standardised packaging: 14 were industry connected and none were published in peer-reviewed journals²⁸.
14. Tobacco companies have compounded the misleading effect of their distortion of the evidence base, through mass advertising campaigns focussed on opposing standardised packaging. For example, in July 2012 Japan Tobacco International (JTI, Gallaher in the UK) launched a £2m investment in an advertising initiative to contribute to the debate on standardised packaging in the UK²⁹. Following complaints from a number of organisations – including CRUK - the Advertising Standards Authority (ASA), in three separate adjudications, ruled that the adverts had breached the Committee on Advertising Practice Code, (CAP edition 12) with respect to the following points: 3.1, misleading advertising (March 2013)³⁰; 3.1 & 3.3, misleading advertising and 3.7, substantiation (April 2013)³¹; 3.1, misleading advertising and 3.7, substantiation (August 2013)³². In July 2014, a fourth JTI advert was ruled to have been misleading, in respect of parts 3.1 and 3.3 of the CAP edition 12³³.
15. One of the “misleading” adverts – and a running theme of tobacco industry opposition to the measure – focuses on the claim that standardised packaging would result in an increase to the illicit trade in tobacco products. The Deputy Director for Tobacco and Alcohol Strategy at HM Revenue and Customs (HMRC) has said of standardised packaging: “...we’re very doubtful that it would have a material effect [on counterfeiting and the illicit trade in tobacco]”³⁴. Notably HMRC have in fact highlighted that oversupply by manufacturers continues to play a part in facilitating tobacco smuggling; for example they estimate that the aggregate actual supply of some brands of hand rolling tobacco to some countries exceeded legitimate demand by 240 per cent in 2011³⁵. In their June 2014 report, on their inquiry into tobacco smuggling, the Home Affairs Select Committee concluded: “It is astonishing that no UK tobacco manufacturer has ever been fined for the oversupplying of products to high-risk overseas markets ... the penalties available are too weak and enforcement too rare”³⁶.

16. At European Union (EU) level, questions have been asked in the European Parliament about the slow progress of an investigation by the European anti-fraud office (OLAF) regarding a complaint that JTI may have breached sanctions against the Syrian regime by selling large quantities of cigarettes to a business owned by relatives of the Syrian president³⁷.
17. The consultancy KPMG has produced both a half year³⁸ and annual report for the twelve months ending December 2013, on the illicit tobacco market in Australia, which they claim shows the illicit trade grew 2.1 per cent in the period³⁹. KPMG refer to their expertise from their production of illicit trade reports in the EU; "Project Star" (now "Sun") written for Phillip Morris International, as a result of the agreements brokered with OLAF in 2004. Between 2004 and 2010 OLAF signed legally binding agreements with the world's four largest tobacco manufacturers⁴⁰. The four companies agreed to pay a collective total of \$2.15bn to the EU and countries participating in the agreement and tighter control on their supply chain businesses⁴¹. The Cancer Council Victoria analysis of the report⁴² concludes that there are "fundamental concerns" about the representativeness of the data used and both "substantial underestimation" and "over-sampling" of certain segments of the market. Sir Cyril Chantler, in his independent review, referring to the KPMG half-year report stated: "...Australian Government departments, both Health and Customs, appear to be strongly of the view that KPMG's methodology is flawed... I do not have confidence in KPMG's assessment of the size of – or changes in – the illicit market in Australia"⁴³.
18. The tobacco industry continues to claim that the level of illicit trade in Australia has increased since, and as a result of, the introduction of standardised packaging. For example, British American Tobacco told investors in March 2014 that total illicit activity in Australia had risen by more than 30 per cent since the introduction of standardised packaging⁴⁴. The tobacco industry in Australia also claims an increase in tobacco sales from 21.015bn sticks in 2012 to 21.074bn in 2013,⁴⁵ which the industry and its front groups in the UK have claimed demonstrates that standardised packaging was not working.
19. Although the industry reported a small (0.28 per cent) increase in sales year on year, they did not report the increase in the Australian population between 2012 and 2013. Adjusted for population, tobacco sales per person by their measure of consumption would in fact have fallen, from 920.4 per person in 2012 to 906.9 in 2013⁴⁶. Adjusting official Australian Treasury figures for the population growth in Australia of 1.7 per cent show a 5 per cent drop in cigarettes sold per head of population in the first year since standard packs were introduced⁴⁷. Other factors such as tax rises will also be having an impact but consumption of tobacco is not increasing as some claims in the media have suggested. The Australian Department of Health has released figures showing that total consumption of tobacco and cigarettes in Australia in the first quarter of 2014 was the lowest ever recorded, as measured by estimated expenditure on tobacco products:
- \$5.135 billion in September 1959;
 - \$3.508 billion in December 2012 (when standardised packaging was introduced); and
 - \$3.405 billion in March 2014⁴⁸.

20. Australian Treasury figures show that tobacco clearances (including excise and customs duty) fell by 3.4 per cent in 2013 relative to 2012 when tobacco plain packaging was introduced. Clearances are an indicator of tobacco volumes in the Australian market⁴⁹.
21. The Australian Government and customs officials have also rejected tobacco industry claims that illicit trade in Australia has risen since the introduction of standardised packaging⁵⁰ and have described the methodology of tobacco industry commissioned reports on the illicit trade as "flawed"⁵¹.
22. In July 2014 figures from the Australian Institute of Health and Welfare⁵² showed that smoking prevalence (daily smoking) in Australia fell from 15.1 per cent to 12.8 per cent (of those aged 14 and over) between 2010 and 2013. This is a 15 per cent reduction in the period. The survey was conducted before the large tax rise in December 2013, meaning that the standardised packaging is the only major tobacco control policy to be introduced during this period. The results also show that less young people are taking up the habit. The proportion of 18-24 year olds who had never smoked increased significantly between 2010 and 2013 (from 72% to 77%)⁵³.
23. CRUK statistical analysis of Citigroup research ('Australia data provides ammunition for plain packaging elsewhere')⁵⁴ demonstrated the following: *There was a very small increase in youth smoking (ages 12-17) of 0.9% but this was not statistically significant and therefore may just be due to random variation between the samples. The proportion of 12-17 year olds that had never smoked remained very high at 95%. We will need to continue monitoring this data as these children grow up and move into the 18-24 year old age group, in order to see whether the introduction of standardised packaging has helped to ensure that they are less likely to start smoking as adults. Encouragingly for those currently aged 18-24 there was a significant increase in the proportion that had never smoked along with a continued decrease in the proportion that smoke every day. The figures also show that there was a significant decrease in daily smoking rates for all ages between 25-59. The trends therefore indicate that the introduction of standardised packs is likely to have helped to ensure that smoking rates in Australia are now at a record low.*
24. Early research from Australia revealed that smokers using standard packs were 70 per cent more likely to say they found their cigarettes less satisfying. Furthermore, smokers using standard packs were 81 per cent more likely to rate quitting as a higher priority in their lives than smokers using branded packs⁵⁵. A study also showed a 78 per cent increase in the number of calls to smoking Quitlines⁵⁶. A further study showed that, among socioeconomically disadvantaged smokers, standard packs were associated with significantly reduced 'positive smoker characteristics' and reduced purchase intentions⁵⁷.
25. An observational study of café strips in Australia, looking at personal pack display, found that 81.4 per cent of tobacco packs were displayed face-up. This highlights how tobacco pack marketing endures outside of the retail environment and continues to be seen in an unregulated environment – indiscriminate of age⁵⁸. A previous study looking at the impact of standardised packaging found that pack display in cafes, restaurants and bars with outdoor smoking areas fell by 15 per cent after the introduction of standard packs⁵⁹.
26. A further experimental study of socioeconomically disadvantaged smokers' ratings of 'plain' and 'branded' cigarette packaging⁶⁰ found that 'plain' standardised packs were

associated with a reduced positive cigarette brand image and purchase intentions among highly socioeconomically disadvantaged smokers, in comparison with branded counterparts.

27. Another Australian study looking at tobacco product development – alongside the implementation of standardised packaging⁶¹ - found unprecedented levels of product development in the months leading up to the introduction of the measure. The author concludes that governments working toward standardised packaging should be aware of likely industry activity between legislation being proposed, passed, and implemented.
28. Research in Ireland⁶² conducted on behalf of the Irish Heart Foundation and the Irish Cancer Society looked to gain an in-depth understanding of how teens respond to tobacco packaging and the potential impact of proposed standardised packaging on their decision to smoke. Among its findings, the research demonstrated that standardised packaging is immediately rejected by teenagers, and that negative responses to proposed packaging suggest strong potential to influence smoking choices and behaviours among this age cohort.
29. A survey conducted on behalf of the British Heart Foundation⁶³ which was undertaken in the UK and Australia, compared the attitudes of 2,500 under-18s to cigarette packs and the health warnings they carry. The polling found that:
 - Only 36 per cent of UK teenagers are deterred from smoking by current [branded] cigarette packs, compared to half (48 per cent) of teenagers in Australia, where packs are almost entirely covered by graphic warnings (i.e. standardised packaging).
 - In Australia 59 per cent of under-18s thought the new packs would make people their age less likely to smoke and 66 per cent of Australian teens think that standard packs should be introduced elsewhere in the world.
 - 10 per cent of teenagers in the UK make the incorrect assumption that certain cigarette brands are healthier than others – twice as many as Australian teens.
30. In Australia, the Cancer Council Victoria's "Plain Facts"⁶⁴ website is an excellent repository of information both of the research on the impact of standardised packaging and for critiques of a number of tobacco-industry funded pieces of research and media coverage. This response will not repeat the information hosted on this website in full, but we wanted to highlight the availability of this as a resource.

V. (Q3) Do you have any comments on the draft regulations, including anything you want to draw to our attention on the practicalities of implementing the regulations, as drafted?

31. In relation to schedule 1: section 3(1) "Text which gives details about producer", it is vital that parts (a) to (d) are exhaustive. Currently information about a producer and their customer service function are listed with a preamble relating to the "quality" of the product: *We manufacture our cigarettes to the highest quality standards* (Phillip Morris Limited); *These cigarettes are produced to the highest standards of quality* (Japan Tobacco International). Similar text is used to confer that a level of satisfaction should be derived from the product: *If you are not completely satisfied...* (Japan Tobacco

- International). This information serves no purpose in informing the consumer of the practical information required to raise a concern with the manufacturer. We would therefore recommend a prescribed line "To contact the manufacturer..." followed by the contact details as laid out in parts (a) to (d) of the draft regulations be stipulated in the regulations. This should be extended to hand rolling tobacco as laid out in schedule 3: section 3(1).
32. Part 2: section 4(3) relating to the material, shape, opening and contents of unit packs of cigarettes states that packs must be cuboid shaped, but may have "bevelled or rounded edges". There is no reason to allow this design feature to remain when the Chantler Review makes it clear that pack design plays an important role in increasing the appeal of tobacco products. In diluting the comprehensiveness of the measure, this allowance undermines the objectives of the policy.
33. Further to paragraph 33 there is no reason to allow for "shoulder box hinged lids" [4(3) and (6)] which, like the allowance of rounded or bevelled edges, would serve to weaken the effectiveness of the policy – reducing the potential for meeting the nine policy objectives. The current regulations do not mandate minimum pack dimensions (developed below). Therefore, under the draft regulations the lateral surface of the unit pack – which displays the mandated picture health warnings – could be split by the use of a shoulder hinge opening mechanism, reducing its intended effect. We recommend the following amendments be made to mitigate this (i) minimum pack dimensions are stipulated (ii) shoulder hinge openings are not allowed under the proposed regulations.
34. Despite the consultation document outlining that only 0.2 per cent of 16-19 year olds in England (2011) smoke cigars and 0.1 per cent use a pipe for smoking tobacco, the exemption to specialist tobacco products risks creating a two-tier regulatory system. In this specialist tobacco products - not covered by the regulations - could be redesigned in order to appeal to a different demographic. Similarly younger people could make an organic shift toward use of these products owing to the enduring 'novelty' which the proposal would create. In Australia, under the equivalent legislation (Tobacco Plain Packaging Act 2011, 148, 2011) specialist tobacco products are included under the remit of standardised packaging requirements. As a result there is no comparison that could be made regarding an uptake in the use of specialist tobacco products among the younger demographic. However the evidence from the Chantler Review demonstrates the role tobacco marketing plays in increasing the appeal of tobacco products. It would therefore follow that an exemption to specialist tobacco products would diminish full public health gains that could be made with the implementation of the policy.
35. It is not clear why the dimensions of cigarette packs are not regulated under this proposal. Like in Australia (see division 2.1 "Physical features of retail packaging" of the Tobacco Plain Packaging Regulation 2011) we believe the dimensions of retail packaging should also fall under the remit of these regulations. Under the tobacco products directive (2014/40/EU) health warnings are mandated to be a minimum size of height not less than 44mm and width not less than 52mm, which restrict some tobacco products that do not have the adequate surface area to conform to this standard.
36. Article 8 of the WHO FCTC Protocol to Eliminate the Illicit Trade in Tobacco Products⁶⁵, which relates to tracking and tracing, requires that: "...the Parties [to] agree to establish

within five years of entry into force of this Protocol a global tracking and tracing regime, comprising national and/or regional tracking and tracing systems and a global information-sharing focal point... With a view to enabling effective tracking and tracing, each Party shall require that unique, secure and non-removable identification markings such as codes or stamps, are affixed to or form part of all unit packets and packages and any outside packaging of cigarettes within a period of five years and other tobacco products within a period of ten years of entry into force of this Protocol for that Party". Although this protocol sets a minimum requirement to trace products to pack level, Australian standardised [plain] packaging legislation allows for cigarettes to be labelled with an optional alphanumeric code - which may assist in the tracing of products in order to combat the illicit smuggling of products outside of their intended market. This code must not be linked to either brand variant or cigarette emissions. The EU Tobacco Products Directive (2014/40/EU) similarly mandates the introduction of a track and tracing system under articles 15 & 16 relating to 'Traceability' and 'Security Features'.

37. There were early examples from Australia of tobacco companies exploiting even this allowance of the alphanumeric code in order to 'brand' the cigarettes. Health Minister, Tanya Plibersek said: "They have letters on them: like NYC, LDN for London, SYD for Sydney, AUS for Australia, we think those sort of letter tags suggest some meaning to people who are smoking"⁶⁶.
38. With regard to the design of cigarettes themselves we believe that the brand name of the cigarette should not be allowed to appear as laid out under part 2, section 5, paragraphs 4 and 5(a) - (h). The principle of standardisation is weakened by allowing brand identity to remain on the cigarettes themselves. We would recommend that on this point the UK regulations, mirror those of Australia, in only allowing for an alphanumeric code to remain on manufactured cigarettes - used to aid in supply-chain controls (as detailed above). With relation to paragraph 37 there is not yet agreement on what the technical standards for track and tracing will look like. Hence the requirements for pack and or product level coding may be required to change in line with the provisions of any technical standards introduced as an EU standard or standard among the Parties to the WHO FCTC Illicit Trade Protocol.

VI. (Q4) Are you aware of any further evidence or information which would improve the assumptions or estimates we have made in the consultation-stage impact assessment?

39. We are pleased that the consultation stage impact assessment recognises both the massive financial burden of tobacco use and the potential economic benefit that could be gained with the introduction of the measure.
40. A June 2014 report⁶⁷ - commissioned by CRUK, the Wellcome Trust, the Department of Health, and the Academy of Medical Sciences - showed that the annual return in cancer research is 40 pence in every pound. Global research efforts have led to cancer treatments and interventions delivering health gains equivalent to £124 billion for UK patients between 1991 and 2010. The study found that smoking reduction accounted for around 65 per cent (£80 billion) of the net monetary benefit (NMB) for the UK, between 1991 and 2010.

41. In May 2014, CRUK, in partnership with the National Cancer Intelligence Network, released a new report showing that inequality is linked to more than 15,000 extra cases of cancer each year, and more than 19,000 extra deaths⁶⁸. 11,000 of these extra deaths were due to lung cancer and notably smoking accounts for 86 per cent of lung cancer case in the UK⁶⁹. Although the consultation's policy objectives do not explicitly refer to the reduction of inequalities, smoking accounts for approximately half of the difference in life expectancy between the lowest and highest income groups⁷⁰. This makes tobacco control central to any strategy to tackle health inequalities. Standardised packaging is a cornerstone of any comprehensive tobacco control policy, which is vital to reduce smoking-related health inequalities in the UK.
42. The tobacco industry has argued that standardised packaging would be an infringement of its intellectual property rights. Standardised packaging constitutes a restriction of the use of a trademark, not its appropriation. The trademarks are not being *acquired* by any party – it is their *use* that is being restricted. International trade agreements declare that they should not be interpreted in a way which prevents implementation of public health measures⁷¹.
43. This argument has already been tested in Australia where tobacco companies argued that the Government had appropriated their property by requiring the removal of promotional marketing. However the Australian High Court dismissed this claim.⁷² The judgment in the case brought by JTI noted that: "The TPP Act is not a law by which the Commonwealth acquires any "interest in property, however slight or insubstantial it may be". The TPP Act is not a law with respect to the acquisition of property".
44. Australia has also been challenged by the international community over its standardised [plain] packaging law. Under the World Trade Organisation (WTO) countries are able to challenge the practices of other countries by calling for a disputes panel to be convened. Private businesses and organisations are not permitted to do this. However, the tobacco industry is a driving force behind these challenges, with Philip Morris openly admitting that it is supporting countries in bringing these claims against Australia.⁷³
45. The importance of countries taking a lead in the international community on this vital public health measure should not be understated, as Director-General of the WHO, Dr Margaret Chan, has made clear⁷⁴. New Zealand has made a commitment to implementing standard packs, pending the outcome of legal challenges mounted against Australia⁷⁵. A host of other countries including France, Norway, Canada, India, Finland and South Africa are among those at various stages of consideration of the policy. The WHO strongly backs standard packs⁷⁶ as they are in line with the WHO Framework Convention on Tobacco Control. The UK is one of 178 parties to this unique global health treaty.
46. Following this six week consultation on the draft regulations, the Government will then have to notify the European Union of the draft Regulations, under the Technical Standards and Regulations Directive (98/34/EC). This process can take up to six months. Therefore, time is now short if Parliament is to get the opportunity to vote on the Regulations before the General Election. If this opportunity were to be missed now, it

would be widely understood as a public health defeat and a suggestion that the tobacco industry still has excessive influence at the heart of Government.

47. **Declaration of interests:** Cancer Research UK, consistent with its Vision and Mission, opposes the promotion and use of tobacco in all its forms, and wishes to do everything it can, as far as reasonably practicable, to avoid links with the tobacco industry. We have strict guidelines which detail that all staff, including employees, contractors, agency staff, volunteers, secondees, students and consultants should not work with the tobacco industry, either directly, or through a third partner. Cancer Research UK will not accept applications from research teams in receipt of tobacco industry funding. In the WHO FCTC, there are strong, comprehensive guidelines to protect tobacco control policies from the vested interests of the tobacco industry⁷⁷.

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